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STATEMENT OF BENIGNO R. FITIAL, GOVERNOR OF THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS, BEFORE THE
HOUSE SUBCOMMITTEE ON INSULAR AFFAIRS, OCEANS
AND WILDLIFE

May 19, 2009

Madame Chairwoman and Members of the Subcommittee:

I am Benigno R. Fitial, Governor of the Commonwealth of the Northern Mariana Islands. Thank you for the opportunity to testify regarding the implementation of Public Law 110-229.

These hearings come at a critical time in the history of the Commonwealth. Our economy is struggling in the fourth year of a serious economic depression. The uncertainties and apprehensions regarding implementation of PL 110-229 affect all segments of our community – existing businesses, potential new investors, foreign workers, and local residents.

The initial efforts by the Department of Homeland Security have not been reassuring. The Department's "final" regulations regarding a joint visa waiver program for Guam and the Commonwealth were disappointing, to say the least. They reflected a serious disregard for the economic impact of the proposed regulations on the Commonwealth's visitor industry.

Other Department actions and statements over the past few months have unnecessarily added to the community's concerns. The Department appears to be delaying its issuance of other critical regulations relating to investor visas and the future employment of foreign workers in the Commonwealth. Its statements regarding enforcement policies under federalization reveal an insistence on applying standard procedures without regard for the Commonwealth's unique history or the human costs involved. In addition, the Department has refused to hire even one employee from the CNMI Division of Immigration.

I am asking this Subcommittee to assist the Commonwealth by examining critically the Department's implementation policies and procedures to date. If an extension of the effective date of the law is required to ensure that the intent of the law is implemented fully and competently, then I urge the Subcommittee to provide such relief.

The Need to Revise and Implement the Visa Waiver Regulations

The "final" Visa Waiver Regulations published by the Department of Homeland Security on January 16, 2009, excluded the People's Republic of China ("PRC") and Russia from the joint waiver program authorized by the law. If implemented as drafted, these regulations would require the termination of all current tourist traffic to the Commonwealth from these two countries as of November 28, 2009. The Department concluded in its regulations that the Commonwealth had met the statutory criterion of demonstrating that it had received "a significant economic benefit" from the Chinese and Russian tourist markets during the one-year period before May 8, 2008. However, the Department concluded that additional procedures and policies had to be implemented before tourists from these countries could visit Guam or the Commonwealth. Department officials have stated that addressing these issues to the Department's satisfaction may take somewhere between 12 and 24 months. Commonwealth representatives and others have submitted extensive comments on these regulations to the Department and have urged a reversal of the Department's position with respect to the PRC and Russia.

We request the Subcommittee's assistance through legislative action, if required, to ensure that the Commonwealth can continue (and Guam can begin) to develop these two very important tourist markets. We believe that the Department's Visa Waiver Regulations are deficient in these respects: (1) They fail to implement the law in a manner consistent with the legislative intent; (2) They seriously underestimate the economic injury to the Commonwealth's economy if our access to these markets is terminated; and (3) The Department's economic analysis is seriously flawed.

The visa waiver provisions of Public Law 110-229 reflect a legislative intent that the Commonwealth should be permitted under the proposed joint waiver program with Guam to continue development of the China and Russia tourist markets. The law's

provisions, fairly read, indicate that countries can be included on the list if they meet two tests: (1) The Commonwealth needs to demonstrate that it had received “a significant economic benefit” from these countries during the year preceding the enactment of the law; and (2) The countries do not pose a threat to the United States. The Department did make the necessary finding with respect to economic benefit. However, its “final” regulations appear to impose even more stringent requirements with respect to China and Russia than is the case with other countries. We are confident that an appropriate legislative fix endorsed by this Subcommittee can redirect the Department of Homeland Security in redrafting these regulations.

The Commonwealth believes that the Department substantially underestimated the extent to which elimination of these two tourist markets would harm the Commonwealth’s visitor industry – now the only major industry in the CNMI. In fiscal year 2008, tourist arrivals from the PRC and Russia accounted for approximately 10% of the total visitor arrivals and contributed \$56,790,108 in direct economic impact and \$185,659,450 in indirect economic impact annually. Despite being just one-tenth of total visitor arrivals, visitors from the PRC and Russia accounted for 19.6% of the total tourism revenue from our primary, secondary, and emerging markets of Japan, South Korea, PRC, and Russia. The combined tourism revenues from these four countries for fiscal year 2008 were \$289,464,728 in direct impact and \$948,205,151 in indirect impact. Considering the significant economic impact involved, any interrupted access by visitors from PRC and Russia to the Commonwealth would have a detrimental and long-standing effect on our economy and people.

The Department’s interim final rules “recognize that there are significant limitations and uncertainties in [its] analysis.” With regard to the Commonwealth, the Department’s economic impact assessment is seriously flawed. The Department premised its rules on an estimate that the Commonwealth will lose only 5,017 and 194 visitors annually from the PRC and Russia respectively. As compared to actual arrivals in fiscal year 2008, the Department’s regulations estimate that the Commonwealth will lose only 16% of the PRC market and 3% of the Russian market. In other words, based on the actual arrivals from these two countries in 2008 the Department estimated that 26,078 PRC visitors and 5,984 Russian visitors will continue to travel to the Commonwealth

despite being required to obtain a US visa. The Department's assessment of likely economic impact was based on a report entitled "Economic Analysis for the Interim Final Rule" prepared by the consulting firm Industrial Economics, Inc. of Cambridge, MA. The Commonwealth believes that this report is deficient in these respects.

First, the report is based almost exclusively on published government reports (almost all from US agencies), a few academic reports, and numerous articles from a Saipan newspaper. The unnamed authors of the report did not visit any of the Commonwealth's islands or conduct any interviews, although one telephone conversation with the Managing Director of the Marianas Visitors Authority is cited in the report's list of references. Referring to a reported lack of data collection and accounting systems technology in the Commonwealth, the report (p.3-2) stated: "As a result, we cannot objectively measure the level of aggregate economic and productive capacity, capacity utilization, employment, personal income, consumption, savings, and other metrics that explain the well-being of the population and the average citizen." A few weeks after Industrial Economics, Inc. submitted its report to the Department, economists Dick Conway and Malcolm McPhee completed their study of the Commonwealth and the impact on its economy of Public Law 110-229 and other federal laws. Both economists have decades of experience in analyzing island economies. The study, funded by the Department of the Interior, recognized certain data limitations but nonetheless addressed precisely the range of variables identified by Industrial Economics, Inc. We respectfully suggest that the analysis and conclusions of the Conway/McPhee report be considered by the Department in the course of reviewing its Visa Waiver Regulations.¹

Second, Industrial Economics, Inc. recognized the limitations of its calculation regarding the demand elasticity for travelers from Russia and the PRC visiting the Commonwealth. Relying on studies from Canada, Australia, and the Department's CBP, the report concluded that the additional costs that would be incurred by these potential visitors if they were required to get a visa would not be a significant deterrent to their making the trip. This was the basis for the report's finding that the Commonwealth would have lost only 16% of the PRC market and 3% of the Russia market in fiscal year 2008 if the visa requirement had been in place. The report, however, conceded as follows:

¹ [Comway/McPhee Study?]

“It is likely that the demand elasticities for travelers from these countries visiting the CNMI are different from those reviewed by the Canadian Department of Finance. For example, some of these visitors may simply choose, without reservation, to forgo travel to the CNMI because of the additional burden associated with the B1/B2 visa requirement and instead seek other alternative destinations. Other destinations exist that could provide these visitors with a comparable experience to that of the CNMI without the burden of having to comply with the new admission requirements.” (p.3-18)

Based on extensive conversations with its travel industry partners with expertise in the PRC and Russia markets, the Commonwealth has concluded that such an alternative conclusion was not only “likely” but virtually certain. The recent experience of Guam – with only 659 Chinese visitors and 99 Russian visitors in the first quarter of fiscal year 2009 – certainly supports this conclusion. The consensus among these experts is that the Commonwealth will lose about 95% in each market if visitors from the PRC and Russia are required to obtain a US visa to enter the CNMI. Based on this estimate and given a time frame of twelve months before the security measures deemed necessary by the Department are put in place, the Commonwealth stands to lose \$66,795,809 in direct impact and \$218,371,673 in indirect impact. Losses of this magnitude will undoubtedly result in the closing of one or more hotels, numerous providers of specialized tourist services, and many restaurants and other retail establishments that depend significantly on tourists as well as local residents to support their businesses.

In reassessing the overall economic impact of its Visa Waiver Regulations, the Department needs to look more carefully at the impact of the regulations on the island of Tinian. Access to the PRC market constitutes nearly 70% of the entire tourism economy for Tinian. From 2002 to 2006, the number of Chinese tourists visiting Tinian increased 205%. The continued visa-free access to the China market is responsible for about 800 direct jobs on an island with roughly 3,500 people. Tinian’s local revenue is obtained solely from a casino revenue tax, which is greatly dependent on the PRC market and supports essential public services on the island. The Department’s regulations fail to recognize the current and future private business investment in continued access to the PRC market. Elimination of this market could result in the failure of a \$150 million

development (the Tinian Dynasty Hotel and Casino) and the stoppage of development of a \$60 million development (the Tinian Ocean View Resort and Condominium project), which together would provide about 1,000 jobs on the island.

If the Commonwealth is required to abandon the Russian and PRC markets for a period ranging up to 12-24 months when additional procedures are implemented, it will be extremely difficult to regain market share momentum after such an interruption. First, the Commonwealth's economy is suffering from a serious depression whose end is not yet in sight, and the Commonwealth may have neither the resources nor the personnel to support such a rebuilding effort in these markets. Second, Russian and PRC tourists have many other destinations in Southeast Asia and the Western Pacific that are fully competitive with the Commonwealth. If the CNMI is no longer competing for these tourists, other destinations will gain in reputation and market share which will make the Commonwealth's efforts to restart their programs in Russia and China even more difficult.

A deferral of the effective date of the law may be necessary to provide the time within which to revise the Visa Waiver Regulations so as to permit both Guam and the Commonwealth to develop these two markets without any risk to the national security. We request that the Subcommittee take whatever action it considers necessary to ensure that its original legislative intent on this subject is fully reflected in the Department's regulations.

The Department's Readiness to Implement Public Law 110-229

The Commonwealth is concerned that the Department of Homeland Security will not be ready to enforce Public Law 110-229 on November 28, 2009. On that date the immigration laws of the Commonwealth will be preempted by this federal law. Any shortcomings in the Department's assumption of its new responsibilities in the CNMI will present a serious national security risk to the people of the Commonwealth and the United States.

Our concern about the Department's readiness to protect the borders of the Commonwealth as the law's current effective date is based in part on the limited

information available about the Department's funding and staffing plans for the Commonwealth. We anticipate that the Subcommittee will use these hearings and its resources to develop a full record of the Department's plans in this regard. Based on such a record, the Subcommittee will be able to make its own informed assessment whether an extension of the effective date of the law is necessary.

We are aware that the Department plans to establish three air and three sea ports of entry on Saipan, Tinian, and Rota. In a letter dated January 12, 2009, to Chairman Rahall of the House Committee on Natural Resources, the Department reported on the current and planned levels of personnel and resources identified by various DHS components in order to fulfill its responsibilities in Guam and the Commonwealth under the law. In presenting its estimated needs, the Department took into account the following factors:

- “The type and amount of resources and personnel necessary to fulfill mission requirements in other similar ports of entry in the United States;
- The anticipated increase in mission requirements that will result from growth in the tourism industry and the planned realignment of military forces on Guam and in the CNMI;
- The resources that will be needed to create operations centers for components that did not have operations out of the CNMI prior to the passage of the CNRA; and
- The existing staffing and resources in other U.S. locations that can be utilized to remotely supplement operations in Guam and the CNMI.”²

Applying this methodology, the Department calculated that implementation of the law in the Commonwealth for the last four months of fiscal year 2009 and all of fiscal year 2010 would cost about \$97 million. This would require new funding of about \$91 million. The report provides the details of how these funds would be spent. It also cautioned that the calculations are based on current flights into the Commonwealth and that additional costs might be incurred depending on the scope of the Guam-CNMI Visa Waiver Program.

² A copy of the letter to Chairman Rahall and the accompanying Report are attached as Appendix 1 to this Statement.

We do not know whether the newly-appointed officials at the Department of Homeland Security have adopted this overall plan for implementing the Department's responsibilities under the law. One point is worth noting: the total estimated cost of implementation of PL 110-229 set forth by the Department is at least ten times greater than the estimated cost of this legislation provided to Congress by the Congressional Budget Office before this legislation was enacted in 2007. This Office estimated that implementing the legislation "would result in additional discretionary outlays of \$10 million over the 2008-2012 period, assuming appropriation of the necessary amounts." It also informed the Committee that "Based on information from DHS, we estimate that the department would need an appropriation of about \$3 million for start-up costs in 2008, including information technology systems, facilities and other infrastructure, and for relocating and training personnel."³

Additional information regarding the Department's plans may already have been submitted to Congressional committees. The American Recovery and Reinvestment Act, enacted on February 17, 2009, provided funds to the Department of Homeland Security in several areas that seemed relevant to the Department's needs in Guam and the Commonwealth. For example, the Act provided additional funding for the Department's Customs and Border Protection component for procurement and deployment of non-intrusive inspection systems and for planning, design, and construction of land border ports of entry. Similarly, the Department's Immigration and Customs Enforcement was provided funds for automation modernization and its Transportation and Security Administration received funds for aviation security. In each of these instances, the Act instructed that the Department submit a report on how it intended to expend the funds to the Appropriations Committees in the two Houses of Congress within 45 days. (We are not aware of any such reports having been filed.)

In addition, the Administration's budget for fiscal year 2010 in the amount of \$55.1 billion was submitted to the Congress on May 7, 2009, and should provide needed information regarding the Department's plans for implementing the law. We hope that the Subcommittee will insist on detailed information regarding the funds expended to date with respect to the Commonwealth, the additional funds to be spent during the

³ House of Representatives Report No. 110-469, 110th Cong. 1st Sess., pp. 20-22.

remainder of fiscal year 2009, and the remaining funds to be provided in fiscal year 2010. To the extent that the Department is depending largely on funds to be provided by Congress in the 2010 budget, it seems apparent that the Department will not be in a position to assume its responsibilities in the Commonwealth by the current effective date of November 28, 2009. Under these circumstances, a deferral of the effective date of the law will be required.⁴

A Deferral Would Enhance the Commonwealth's Use of New Stimulus Funding

The Commonwealth continues to suffer from a severe economic depression that began in 2005 and is far more serious than the current recession in the 50 States. The factors contributing to this depression are well known to this Subcommittee: this disappearance of the garment industry, the decline in the visitor industry, and the economic viability of the Asian countries (and their fluctuating currencies) that are the Commonwealth's principal tourist markets. Projected local revenues for fiscal year 2010 are even less than for the current fiscal year – and represent a decline of about 35% [??] over the past four years. We have just recently been informed that its Compact Impact funding for fiscal year 2010 will be reduced by 62% -- from \$5.172 million to \$1.93 million.

Public services in the Commonwealth have suffered as a result, despite our best efforts to preserve essential services. We have only recently solved a protracted public utility crisis – with the very welcome assistance of the Department of the Interior. We are presently coping with a government pension fund crisis and the nearly complete collapse of the economies on Tinian and Rota, two of the Commonwealth's smaller islands.

The economic prospects for the Commonwealth over the next few years are not promising. The Conway/McPhee economic study concluded: “As a result of the demise of the apparel industry and the expected decline of the visitor industry, the CNMI economy stands to lose approximately 44 percent of its real Gross Domestic Product, 60

⁴ The Commonwealth's Division of Immigration will continue to enforce the Commonwealth's immigration laws until the new effective date. See Appendix 2 for an updated report regarding the CNMI Division of Immigration's policies and procedures.

percent of its jobs, and 45 percent of its real personal income by 2015” under the current federal laws regarding immigration and minimum wage laws.

This dire prediction was essentially confirmed by the March 2009 report on the CNMI economy published by the First Hawaiian Bank. The report emphasized the adverse impact of the proposed visa waiver regulations and the “debilitating effect” on the CNMI economy resulting from the annual minimum wage increases. It forecast a “substantial population shrinkage” in the Commonwealth due to the mandatory reduction in the number of foreign workers and the outmigration of those workers and local residents to Guam and elsewhere with more promising economic outlooks. It described the postponement of the effective date of Public Law 110-229 as “little more than a stay of execution for the beleaguered CNMI economy.” It concluded that “the now desperate CNMI economy must, now more than ever, find some way to reinvent itself. And the possibilities for this are increasingly slim.”

Notwithstanding these pessimistic projections, my Administration is committed to taking those steps necessary to survive this depression and begin rebuilding our economy. The Recovery Act (“ARRA”) recently enacted by Congress provides unexpected new funding for the Commonwealth.

The Commonwealth submitted the certification required under the ARRA to the U.S. Office of Management and Budget on March 10, 2009. We have received notification since then of about \$34.474 million in federal formula money. We anticipate substantial additional funds through the State Fiscal Stabilization Fund, which could yield as much as \$67 million through the Department of Education. The Commonwealth has prepared competitive applications for additional funds and vetted them all through the local vetting process required by the ARRA.

The Commonwealth intends to use these funds for rehabilitation of our power generation, reduction of fossil fuel use through increased energy efficiency and alternative energy, water and waste water, roads, and education. We expect that our local educational agencies will be among the primary beneficiaries of these new federal funds.

We are establishing a new monitoring system to ensure that federal funds will be spent properly and subject to strict auditing guidelines. We have requested assistance from Interior’s Office of Insular Affairs in the development of an office for

accountability and fund management in an effort to ensure strict compliance with ARRA guidelines.

It is our hope that these funds – over the next 12 to 18 months – will enable the Commonwealth to end its current depression and begin on the road to significant economic recovery. A deferral of the law’s effective date would assist the Commonwealth in maximizing the benefits of this new funding.

We all recognize the adverse effects on the economy that will result from the law’s full implementation. As I have emphasized, these prospects have engendered great uncertainty and concern throughout our community. A single year’s delay would enable the Commonwealth to concentrate on putting the new funds to effective use while retaining the work force and population currently in the Commonwealth – to everyone’s benefit. Such action by the Subcommittee would implement the commitment embodied in Public Law 110-229’s Statement of Intent “to minimize, to the greatest extent practicable, potential adverse economic and fiscal effects of phasing-out the Commonwealth’s nonresident contract worker program and to maximize the Commonwealth’s potential for future economic and business growth.”

Other Issues

I have concentrated in this Statement on the issues of greatest importance to the Commonwealth at the present time. I recognize, however, that there are other issues regarding the law’s implementation that may be brought to the Subcommittee’s attention during this hearing or in the future. Let me comment briefly on some of them:

1. Promulgation of Regulations by DHS

I think that all the affected parties in the Commonwealth agree that it would be helpful if the Department of Homeland Security moves promptly to publish draft regulations relating to investor visas and foreign worker permits as soon as possible. As our experience with the Department’s Visa Waiver Regulations demonstrates, these regulations – dealing as they do with subjects beyond the Department’s expertise – may prompt extensive comments and require extensive discussion before they should be

published in final form. Commonwealth representatives have met and provided information to DHS personnel relevant to these potential regulations.

2. Modification of the Exemption from the Caps on H Visas

I am aware that Guam's representatives may be seeking a clarification and extension of the exemption for the national caps relating to H visas in light of the current schedule with respect to the military buildup in the Marianas. The Commonwealth supports any modification to the law desired by Guam in order to ensure that it has the workforce believed necessary to implement the buildup in an economically responsible manner.

At the same time, we believe that the Subcommittee might also clarify the duration of the exemption from the caps as it applies to the Commonwealth. We support the interpretation of the law set forth in Senate Report No. 110-324, dated April 10, 2008, regarding this provision. The Report states that the Senate intended "that this waiver of the numerical limitations for Guam and the CNMI is extended along with any extension of the five-year transition period." However, the Government Accountability Office and the Department of Homeland Security have interpreted the law to require that the exemption from the national caps will expire at the end of 2014, even if the CNMI transition program is extended beyond that date by the Secretary of Labor pursuant to the law. The Commonwealth believes that its exemption from the caps on H visas should be of indefinite duration in recognition of the Commonwealth's continued need for foreign workers in future years.

3. Status of Foreign Workers in the Commonwealth

I understand that the status of foreign workers in the Commonwealth is a subject of interest to this Subcommittee. This is obviously a matter of great concern to the entire Commonwealth community, especially those foreign workers who have contributed so much to the CNMI over the years.

A specific provision affording long-term status to certain foreign workers lawfully in the Commonwealth was contained in the bills that were the subject of Congressional

hearings in 2007. I think it is fair to say that this proposal was a very divisive one – with a wide range of views regarding its fairness, its impact on the CNMI economy, its potential reshaping of the social and political character of the Commonwealth, and its consistency with overall US immigration policy. Based on these and other concerns, the Committees in both Houses elected to strike this provision from the bills that eventually became Public Law 110-229.

As enacted, the law requires the Secretary of the Interior, in consultation with the Secretary of Homeland Security and the Governor of the Commonwealth, to submit a report on this subject to the Congress not later than two years after the enactment of the law on May 8, 2008. The report is now due in about one year. It must contain specific information regarding the number of aliens residing in the Commonwealth, their legal status under federal law, their length of residence in the CNMI, and the current and future requirements of the Commonwealth economy for an alien workforce. The Secretary's report also must contain recommendations whether Congress should consider permitting certain of these guest workers to apply for long-term status under the US immigration laws.

The Commonwealth suggests that future consideration of this issue be deferred until this report is submitted to Congress by the Secretary of the Interior. By that time, the overall review of immigration policy promised by President Obama may well be underway. Such a review certainly will be addressing the claims of large groups of aliens in the United States for an improved status and it is in that context that we believe the Commonwealth's situation should be evaluated.

4. Treatment of Foreign Workers in the Commonwealth

I know that there are critics of the Commonwealth who look for every opportunity to complain about its treatment of foreign workers. I do not believe that the topic of today's hearing – implementation of Public Law 110-229 – requires or invites any such discussion of CNMI local laws and policies regarding foreign workers.

I am proud of my Administration's efforts to revise, invigorate, and enhance our guest worker program. Our program is based on the "best practices" found around the World and is far superior to any such program previously undertaken by the federal

government. Because Members of this Subcommittee have received extensive documentation inaccurately describing our local laws and policies, I am submitting for the record recent reports prepared by my Department of Labor explaining its operations and responding in detail to these unfounded criticisms.⁵

Thank you for this opportunity to appear before the Subcommittee.

⁵ The attachments include the Secretary's annual report for 2008, a current update in 2009, and a rebuttal to the charges of Ms. Doromal.