



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Timothy P. Villagomez
Lieutenant Governor

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

August 15, 2007

I am Benigno R. Fitial, the Governor of the Commonwealth of the Northern Mariana Islands, and I represent the government of this territory of the United States, and the people who elected me into public office. I appear before you today to testify on H.R.3079, legislation to amend the Joint Resolution Approving a Covenant to Establish a Commonwealth of the Northern Marianas Islands.

Hafa Adai, Madame Chairwoman and Members of the Committee. Welcome to the Commonwealth of the Northern Mariana Islands. We appreciate your time and personal commitment in visiting our islands.

Before I turn to H.R. 3079, I would like to thank Representative Flake and Delegate Fortuno for their introduction of H.R.3165, amending Headnote 3A. Enactment of this legislation would greatly assist the Commonwealth in its efforts to preserve and develop the diversified economy required to meet the needs of its citizens.

H.R. 3079 is virtually identical to Senate Bill 1634 with respect to its immigration and labor provisions. Lt. Governor Villagomez and I have each testified before the Senate Committee on Energy and Natural Resources this year and set forth our reasons for opposing S.1634. We have supplemented our testimony with extensive materials and met with Members of both Houses and their staffs to discuss these proposals. Let me summarize some of our main concerns.

The Need for a GAO Study

We have consistently urged the need for a careful and professional study of the Commonwealth before enactment of legislation such as H.R.3079. We are pleased that Members of Congress have requested the Government Accountability Office to undertake this task. Such a study would necessarily focus on two objectives of critical importance to consideration of H.R.3079: (1) to provide current and reliable information about the Commonwealth as it exists today – its economy, workforce, changing population, and labor and immigration programs; and (2) to assess the economic, political, and social consequences of preempting the CNMI immigration and labor laws and substituting a federally managed

guest work program in the Commonwealth. We do not understand why the Interior Department and other supporters of this legislation are unwilling to let GAO complete its work before urging Members of Congress to enact legislation that will damage the Commonwealth economy and its U.S. citizens.

The Commonwealth in 2007

Congress last considered these issues during hearings in 1998 and 1999, which resulted in a bill passed by the Senate in 2000. The most frequently cited facts supporting this legislation were a 1997 report from the U.S. Commission on Immigration Reform, a 1997 report from the Department of the Interior, a 1998 report from the Immigration and Naturalization Service, 1999 data on wages, a 1999 statement by the INS General Counsel, and 2000 data on unemployment. We are concerned that these very same facts – now long out of date -- are still being urged on the Members of Congress to justify legislation such as H.R.3079. We believe this is unfair. It is why we emphasize the need for a GAO study before Congress acts. Let me give you a few examples.

- The two-tiered economic model that prompted the Senate to act in 2000 no longer exists in the Northern Marianas. We have substantially reduced our reliance on alien workers. With the closures of most apparel factories and the economic decline over the past two years, the number of alien workers has fallen from its peak of about 30,000 a few years ago. We expect the figure to be approximately 20,000 by the end of this year, and decrease further to about 15,000 in 2008.
- The old allegation that the “bloated” CNMI Government is an employer of last resort for local residents also fails to acknowledge today’s facts of life. With a recent ten percent reduction in government payrolls – and the likely need for more reductions in the next year – we are compelled to work harder to train and place our U.S. citizens in the private sector. I have insisted on more rigorous enforcement of our current labor laws to achieve this objective. Our legislature is currently considering a new comprehensive labor law, with several provisions aimed at increasing the training of local residents so that they can replace alien workers in the private sector.
- Contrary to past allegations, we have an effective and fair system for handling complaints by alien workers. My Administration has eliminated a backlog of 3,400 pending labor cases that I inherited from my predecessors. In almost all these cases, the worker filed the case in order to stay in the Commonwealth beyond the time legally permitted under her or his entrance visa. They did so because the work environment in the CNMI and the earning potential are much more favorable than in their home country. The statistics show that there were relatively few cases of wage disputes – far lower than the comparable statistics in most States – and there were only two cases involving claims of on-the-job injuries.
- New procedures at our Department of Labor are designed to prevent any new backlog from developing. The Department’s Hearing Office has dramatically increased the number of hearings and the dollar amounts awarded and collected. Increased use of mediation supervised by a hearing officer resulted in the resolution through mediation of more than 50% of the cases filed in 2006.

- We have achieved the repatriation of several thousand alien workers. The closure of the 3,400 backlog cases in many instances eliminated the basis on which the alien worker was remaining in the CNMI. The Department's efficient handling of the apparel factory closures also prompted the voluntary repatriation of hundreds of workers, as did the publication by the Department of its first "no hire" list early in 2007. Further efforts are underway to identify, and deport if necessary, those alien workers no longer entitled to remain in the CNMI.

Commonwealth Control of Immigration

Commonwealth immigration laws and regulations control the entry of aliens into the CNMI in a manner consistent with the intent and policies of the federal immigration system. This Administration in 2006 appointed Melvin Grey, a man with 29 years of experience with the U.S. immigration system, to serve as Director of Immigration. (I invite you to meet Mr. Grey and his staff during your visit to Saipan.)

The Commonwealth's commitment and institutional ability to maintain an effective system of immigration control is evidenced by its implementation of a computerized arrival and departure tracking system. Financed by the federal government, the Border Management System has been fully operational since 2003, with the entry and departure of each traveler recorded. The Commonwealth also operates the Labor and Immigration Identification System, which records the immigration entry permits to the various classes of immigrants entering the CNMI. We are currently reevaluating these computerized systems to determine whether their components should be updated or replaced to reflect the advances in technology over the past decade. Even within their limitations, however, these systems give local immigration officials controls that their federal counterparts do not have.

The Commonwealth administers a visa waiver system that is fully consistent with the federal system and, in some respects, more stringent. For example, the Commonwealth excludes some countries, such as Indonesia and Malaysia, because of security risks, document availability risks, and document fraud risks, even though their citizens are permitted entry into Guam. In contrast with federal immigration officials, CNMI officials have relatively few travel and identity documents to process for compliance. With very few exceptions, all travelers to the CNMI, regardless of citizenship, are required to present a passport for entering and departing the CNMI. Electronic passport readers capture the significant data from the passports in a secure electronic database.

In supporting federal legislation such as H.R. 3079, the Interior Department emphasizes the screening process used by federal consular officers abroad and suggests that the CNMI procedures are ineffective in comparison. We disagree. The CNMI Visitor Program requires a sponsor for most aliens seeking admission to the Commonwealth. The sponsor must supply documentation identifying the visitor, the intent of the visit, contact information for the alien and the sponsor while the visitor is in the CNMI, and an affidavit of support. In this affidavit, the sponsor must promise to support the visitor if necessary, that the visitor will not become a charge of the community, and that the sponsor will reimburse the CNMI for all expenses incurred as a result of the visitor becoming a deportable alien, including detection, detainment, prosecution, and repatriation. Some exceptions or waivers to these sponsorship requirements are available on a very restrictive basis, such as for nurses

and student nurses coming to the CNMI to take the National Collegiate Licensure Examination.

The Division of Immigration allows some selected travel agencies to gather information regarding prospective visitors and submit the completed applications to the Division for its consideration. Each of these agencies, however, has posted a \$500,000 bond which is subject to forfeiture in the event of a breach of the operating agreement between the CNMI and the travel agency or tour operator. These procedures have been used effectively in connection with charter flights to the CNMI from China and Russia – critical new markets for the CNMI visitor industry. More effective screening procedures have produced a significant decline in the number of exclusions in recent years. From a total of 74 exclusions in calendar year 2001, the figure has fallen to only seven in 2006.

The Commonwealth's law enforcement efforts over the past several years show many successful prosecutions and a strong record of cooperation with federal law enforcement agencies. These prosecutions have involved alien smuggling, international firearms trafficking, employment of illegal aliens, prostitution, and various forms of document fraud. The CNMI assisted federal immigration officials in processing shiploads of smuggled aliens into Guam that the federal officials were unable to address.

In light of this record, we were disappointed by the recent allegation by the Interior Department before the Senate Committee that "human trafficking remains far more prevalent in the CNMI than it is in the rest of the U.S." Upon examination, however, it became clear that Interior's conclusion resulted from a very basic misuse of statistics. To support its indictment of the Commonwealth, Interior compared the number of trafficking incidents in the CNMI and the United States with the number of residents in each of the two areas (about 70,000 for the CNMI and 300 million for the U.S.). The proper comparisons to be made are between the number of victims in the U.S. and the CNMI and the respective number of entrants into each jurisdiction annually. In recent years the CNMI has had about 450,000 entrants annually and the United States in 2005 had 33,675,608 entrants – based on data published by the Department of Homeland Security and GAO. Using these statistics, it appears that the CNMI had one trafficking offense for each 12,500 entrants, whereas the U.S. had one trafficking offense for each 1,924 entrants. **Contrary to Interior's allegation, in fact the U.S. has a rate of trafficking incidents six and one-half times the CNMI figure.** What is troubling about Interior's contention is not that it is so wrong, but that Interior feels compelled to present such incorrect data to Congress in order to persuade the Members to enact legislation before they have a objective report of the relevant facts from GAO.

Interior's recently expressed concerns about the Commonwealth's administration of its refugee protection program are similarly overstated. The Commonwealth recognizes the international obligations of the United States under the relevant treaties. We realize that the Department of Homeland officials are entitled to monitor and protect the integrity of our refugee protection program. Under my Administration we have followed the same policies and procedures under the Memorandum of Agreement with the U.S. Citizenship and Immigration Services (USCIS) as was done by the prior Administration. We believe the system has worked well over the past few years, during which a total of 32 refugee cases were initiated – two in 2004, 13 in 2005, 14 in 2006, and three to date in 2007. I am unaware of any serious differences of opinion between CNMI and USCIS officials that developed during this period regarding the administration of the program. I understand that the Attorney

General is consulting with USCIS officials regarding the assistance that USCIS has offered to provide to the CNMI. I am confident that these current discussions will produce a mutually satisfactory accommodation.

The CNMI Economy and the Path to Recovery

This Committee is generally aware of the economic circumstances that have adversely affected the Commonwealth over the past several years. (Attachment 1 to this testimony sets forth the details documenting the extent of this depression and its impact on government revenues and our budget.) Let me touch on some of the main points:

- **Apparel Industry:** The number of apparel factories has declined from 34 to 15 – with additional closures anticipated later this year or early next year. The number of alien workers in apparel manufacturing has declined from 16,000 to 6,000. The value of apparel sales has declined from \$1.06 billion in 1999 to \$489 million in 2006. The taxes and fees paid by the apparel industry to the CNMI fell from \$80 million in 2001 to an expected \$30 million in 2007.
- **Visitor Industry:** Visitor arrivals are down 40% since 1996. The causes were obvious: the Asian financial crisis (1997), 9/11 attack, SARS, and increased fuel costs. The discontinuation of flights to Saipan by JAL and Continental in 2005-6 was a serious blow to our most important tourist market – Japan. The decline in arrivals has led to the closure of hotels and tourist-oriented businesses.
- **Government revenues** have declined from a peak of \$248 million in 1997 to an estimated \$163 million in 2007—a decline of about 34%.
- **Increased unemployment**
- **Dozens of closed businesses in the CNMI**

The Commonwealth does have a program for recovering from this depression. In my State of the Commonwealth speech last April, I emphasized five major points: (1) continued effective law enforcement; (2) creating new work opportunities for our citizen labor force; (3) improved utility operations and service; (4) expansion of the base for our visitor industry; and (5) continued efforts to secure new investment. This overall plan has the endorsement of both the Legislature and the private sector. We have made some significant progress towards achieving these objectives.

- We have a revised 2007 budget that reflects our declining revenues, protects essential public services, and does not add to the deficit that we inherited.
- We have reduced government employment, enforced an austerity program, and are ready to implement a reduction in force if that becomes necessary.
- To deal with the need to increase airline seat capacity for the CNMI, we have obtained a major increase in flights from Korea that began last May, some short-term commitments from Continental for this summer, increased charter flights

from China, and a substantial commitment by Northwest for renewal of flights from Osaka beginning in December 2007. I am personally engaged in discussions with Japanese, Chinese, and Korean officials and airline executives regarding our need for increased flights from those countries.

- As the apparel manufacturing business has declined, we are having some success in attracting different kinds of new industries – financial services companies and educational institutions offering English-language training and other courses primarily for foreign students.
- We have attracted major new investments from Japanese companies (Sumitomo and NTT DoCoMo Inc.) and Korean companies. Kumho Asiana, the parent of Asiana Airlines, has purchased one of our golf courses and is committed to major renovations and improvements involving several hundred million dollars. Last month, I attended the groundbreaking ceremony at the future site of a \$300 million hotel and villa complex on Saipan undertaken by the KSA Group of Korea – the first new hotel on Saipan in many years. These were two of the many projects described in my State of the Commonwealth address – most of them scheduled to begin within the next 6-12 months.

Let me state the obvious: there is no quick fix for the Commonwealth's current problems. Because of the delay in implementing new airline commitments and the need for additional such commitments, we are unlikely to see any substantial increase in visitor arrivals for about 18 months. The benefits of the recent – and scheduled -- investments in hotels and other tourist attractions will also take time to develop. Although the construction activity on such projects produces some needed stimulus to the economy, substantial increase in revenues for both the private and public sectors takes more time. But we do have a vision. And, with all due respect for our critics, we prefer our vision to that of the government bureaucrats 8500 miles away.

The ability of the private sector and my Administration to deal with our economic crisis has been complicated by the recent imposition of the federal minimum wage on the Commonwealth. I am pleased to report that collaboration between federal and local labor officials was very successful in preparing for as smooth a transition as possible given the short time frame for compliance and the variety of questions presented by employers and employees. Employers throughout the Commonwealth are concerned by the uncertainty under the federal law with respect to additional yearly increases in 2008 and beyond and the difficulty in planning ahead under these circumstances. We will be monitoring the impact of this first increase and will be requesting this Committee's assistance as appropriate.

Impact of H.R. 3079 on the CNMI

The enactment of H.R.3079 will seriously damage the CNMI economy. It will drastically change the rules under which investors commit their funds to the Commonwealth. It generates uncertainty throughout the economy. This uncertainty is real. It leads potential investors to reexamine the profitability of investment in the Commonwealth. It leads committed investors to reexamine the nature and timetable for implementing their plans. It raises serious questions regarding the continuation of the

special visa programs vital to the visitor industry, the educational industry, and retirement facilities for Asian nationals.

Once the several federal departments begin to exercise their responsibilities under H.R. 3079, an entirely new element of uncertainty is created. It will be clear that no Northern Marianas Governor will be able to make the commitments necessary to attract investment to the Commonwealth from predominantly Japanese, Korean, and other Pacific Rim companies. In order to appraise investment prospects in the Northern Marianas, potential investors will have to deal with a new bureaucracy of five departments in Washington. To whom should such investors go for guidance regarding the future course of the CNMI economy? Department of Homeland Security? Department of State? Department of Justice? Department of Labor? Or the Interior Department? Or all of the above? Why should they bother – if there are other areas in the Pacific of equal promise which provide greater certainty and security which major investors reasonably demand?

Enactment of H.R.3079 will almost certainly result in increased financial dependence on the federal government by the CNMI. The Commonwealth will soon thereafter be on the dismal course being experienced by the freely associated states and most island communities in the Western Pacific – a trajectory featuring outmigration, remittances, large government payrolls, and foreign aid. This was not the objective of the United States and Northern Marianas negotiators of the Covenant. They envisioned and promised a self-sufficient local economy, to the extent possible, and a standard of living comparable to that of the average American community. In recent years the federal government has failed to honor these commitments to the Northern Marianas – such as the failure to reimburse the CNMI for the \$200 million in costs incurred by the Commonwealth providing public services to Micronesians from the other former districts of the Trust Territory of the Pacific Islands. Coming so soon after the imposition of the federal minimum wage, enactment of H.R.3079 would be another serious blow to the Commonwealth – its economy and its U.S. citizens, who lack even a token vote in the U.S. Congress.

We do not understand why this Committee cannot wait to examine the GAO's economic data, assessments, and conclusions in the study requested by Congress before acting on H.R.3079. We urge this Committee not to act on H.R.3079 until the GAO completes its analysis and reports to the Committee.

Specific Deficiencies of H.R.3079

Attached to this Statement is a section-by-section analysis of H.R.3079. Let me draw your attention to a few of its most important deficiencies.

H.R. 3079: A New Federal Bureaucracy

House Bill No. 3079 creates a new federal bureaucracy composed of five separate departments to implement the bill's provisions. It is unclear that any of these departments – with the probable exception of the Interior Department – wants to add these new responsibilities to their already full dockets. The Department of State is so overwhelmed

by passport applications that it has assigned more than one hundred of its consular officers on an emergency basis to deal with these demands. The same is true of the Department of Homeland Security, as evidenced by the recent reports of its backlogs with respect to visa applications. A short time ago, a conflict between the Department of State and the Department of Homeland Security resulted in the reversal of a commitment to provide work-based visas to thousands of well-educated, highly skilled, legal immigrants, with long experience in the country. A spokesman for Homeland Security acknowledged that there had been a failure of communication between his department and State. (New York Times, July 6, 2007, p.A9) Does anyone seriously believe that the needs of the Commonwealth --- 8500 miles from Washington without a vote in the Congress -- would get a higher priority?

We believe that the Committee should hear directly from all five agencies given duties under the bill before it is enacted. H.R.3079 raises significant issues of funding, personnel, expertise, and agency coordination that should be addressed before -- not after -- the bill is passed.

The House bill provides only a year for the five departments to consult with each other and the Commonwealth, and produce the many sets of regulations required by the bill. After the effective date of the legislation, all CNMI immigration and labor laws are expressly preempted by the legislation, with no failsafe provision in the event that the federal agencies are not ready at that time to enforce the new law. It would be only prudent to anticipate such a possibility and provide for it in the proposed legislation.

H.R. 3079: An Unprecedented and Unnecessary Assertion of Federal Authority

With respect to the authority of Congress to enact H.R.3079, the Commonwealth recognizes that the Covenant does permit application of the U.S. immigration laws to the CNMI after termination of the Trusteeship Agreement. However, H.R.3079 is far more than an immigration law. For the first time in American history, it imposes a federally designed and controlled guest worker program on a single community of U.S. citizens. It purports to pay deference to the promise of local self-government in the Covenant, but its terms are quite clear: all critical decisions regarding the future economy of the Commonwealth will be in the hands of federal officials. They will decide which industries or new investments will be entitled to access to alien workers. They will decide which special visa programs will be available to the Commonwealth's critical visitor industry. They will decide what incentives or sanctions are required to stimulate businesses to employ local workers. Local laws to the contrary are expressly preempted. To the Members of this Committee who have served in local or State government, we pose a single question: How would you have responded if Congress authorized five federal departments to descend on your community and supersede local authority over the local economy?

The Commonwealth believes that its immigration enforcement system can be more effective than a federal system administered from Washington. The small size and island character of the Commonwealth facilitates an effective immigration system -- both in excluding illegal entrants and in identifying and deporting persons no longer qualified to remain in the community. However impressive the resources of the United States appear in the abstract, the federal performance in this distant location almost always falls

far short of expectations. This certainly has been the experience in the Northern Marianas, even after the Senate hearings in 1998-99 when the Chairman of the Senate Committee on Energy and Natural Resources chastised the federal law enforcement authorities for failing to implement their responsibilities in the CNMI. It is reflected today in the performance of federal agencies responsible for handling labor cases under federal laws and in the under funding of essential border protection agencies. A case in point is the U.S. Coast Guard operation in the CNMI, which lacks even a single boat to patrol the 400 mile chain of the Northern Mariana Islands and to act in a timely fashion to apprehend smugglers or other criminals. If lack of funding is the problem here, perhaps the Commonwealth can be of assistance.

The Commonwealth acknowledges and welcomes the national security interests of the United States in protecting the borders of the Commonwealth. However, we believe that border control concerns can be addressed separately from control of the local guest worker program or the special visa programs essential to the CNMI visitor industry. With respect to the guest worker program, the decisions with respect to the nature and extent of economic development could be left to local elected leaders where such a responsibility belongs, but no guest worker would be admitted before his or her name was checked against the federal data bases to ensure that the guest worker did not present a security risk to the United States. With respect to the special visa programs used by the Commonwealth to attract visitors from destinations such as China and Russia, CNMI could similarly follow its usual procedures, which then could be supplemented by reliance on the federal data bases to provide an additional level of protection against security risks. We are prepared to work with the Committee to develop an alternative legislative approach that would address our mutual interest in having enhanced border security in the Commonwealth.

H.R.3079: Permanent Legal Residence Status for Alien Workers

In a significant departure from current immigration policy, H.R. 3079 declares which non-U.S. citizens will be given permanent legal status and permitted to stay in the CNMI or move to any part of the United States. H.R.3079 expressly grants a form of amnesty to nearly 8000 alien workers in the Commonwealth by granting them this nonimmigrant status, comparable to that enjoyed by Micronesians from the freely associated states. The bill's drafters chose to ignore that such an enhanced status was not permitted or contemplated when these workers elected voluntarily to come to the CNMI many years ago to enjoy the economic opportunities available in the CNMI. The recent Senate debate on immigration suggests that such a provision would never have been supported on the national level – either because it smacks of an amnesty provision or because it imposes an enormous burden on the Commonwealth of permanent alien residents numbering about 25% of the local United States citizen population.

The drafters of H.R. 3079 seemingly have no concern about the impact of this provision on the integrity and vitality of the indigenous Carolinian and Chamorro peoples in the Commonwealth. Permanent legal residence status permits such individuals to bring children and other relatives into the community where the status-holder elects to live. Consequently, the impact on the local CNMI community might be far greater than anticipated if most of these new permanent legal residents elected to stay in the Commonwealth and bring in children and other relatives not presently allowed to reside

in the CNMI. However well-intentioned this proposal appeared to its drafters, its consequences already have seriously affected the quality of life in the CNMI. The proposal has generated unrealistic expectations among the guest worker population in the Commonwealth, stimulated boycotts of businesses because their owners have opposed this provision, and contributed to increased divisiveness between guest workers and the indigenous peoples of the Commonwealth. We recommend that the provision be eliminated from H.R.3079.

H.R.3079: Provision for a Non-Voting Delegate in the House of Representatives

We appreciate the inclusion in H.R.3079 of a provision authorizing the Commonwealth to be represented in the House of Representatives by a non-voting delegate. We strongly support such a proposal. It is a disgrace that the U.S. Congress has for years denied the Commonwealth the same privileges as have been afforded to the other insular areas.

We believe, however, that legislation providing for a non-voting delegate should be considered on a stand-alone basis. Notwithstanding our support for such a proposal, therefore, its inclusion in H.R.3079 does not alter our view that enactment of the legislation would seriously damage the interests of the CNMI.

Lastly, we believe that the CNMI should be entitled to have a non-voting delegate in the House of Representatives before critical legislation such as H.R.3079 is enacted by the House.

Thank you for the opportunity to testify on H.R.3079. We appreciate your consideration of our views.