STATEMENT
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COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

REGARDING IMPLEMENTATION OF THE IMMIGRATION PROVISIONS IN PUBLIC LAW 110-229

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Chairwoman Bordallo and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the implementation of the immigration provisions contained in Title VII of Public Law 110-229, the Consolidated Natural Resources Act of 2008 (CNRA).

Congress was very thoughtful in its enactment of the CNRA, which took years of deliberation. Ultimately, Congress took action in recognition of five fundamental problems with continuing CNMI control of immigration: lack of institutional capacity, national security, ineffective law enforcement against organized crime, an unsustainable economic model, and inadequate protection for alien workers.

Subtitle A of Title VII of the CNRA provides for the Federal Government to apply the immigration law of the United States in the Commonwealth of the Northern Mariana Islands (CNMI). Subtitle A, which became effective on November 28, 2009, transferred border protection and security throughout the Marianas from the CNMI government to the United States Department of Homeland Security (DHS).

DHS has established and staffed facilities at ports of entry and elsewhere in the CNMI, and is working to administer a five-year CNMI transitional foreign labor program, an investors' program, a Guam-CNMI visa waiver program, and other immigration responsibilities relating to the CNMI. While DHS has made great strides in its implementation of this reform, it has faced many difficulties as well.

On May 7, 2010, the GAO released a report, *DHS Should Conclude Negotiations and Finalize Regulations to Implement Federal Immigration Law*, chronicling the difficulties encountered by DHS in fully implementing Federal immigration. The GAO found that DHS faces operational challenges as well as challenges negotiating with the CNMI government. Primarily, the report

found three key challenges: 1) the airport space provided to U.S. Customs and Border Protection (CBP) does not meet facility standards and CBP has not reached a long-term occupancy agreement with the CNMI for such space; 2) an agreement over detention space has not been completed between U.S. Immigration and Customs Enforcement (ICE) and the CNMI; and 3) the CNMI has not provided DHS with direct access to CNMI's immigration databases. The GAO report recommends DHS conclude necessary negotiations with the CNMI on these three issues. DHS has made great strides in moving forward and we fully join GAO in its recommendations that the remaining three areas of contention be resolved.

It is widely recognized that the transition to the Federal immigration system comes at a time when the CNMI is facing serious economic distress. This deepening economic crisis has triggered a growing fiscal crisis. Due to changes in world-wide trade in textiles, Saipan's last remaining garment factory ceased operation in March of 2009. The CNMI's only other major industry, tourism, is also experiencing troubling declines. Due to airline industry cutbacks and route closures, tourist numbers have fallen and will not recover if arrival capacity continues to decline.

The CNMI remains a two-tier economy where the private sector is overly reliant on foreign employees and the indigenous population is overly reliant on the public sector for employment. Because of the unique economic structure of the CNMI and the fact that approximately 50% of employees in the CNMI are foreign, private sector wages remain low and unattractive to U.S. citizen workers. Use of guest workers to fill virtually all private sector jobs- unskilled, skilled, and even professional jobs-results in emigration by many U.S. citizens who cannot find increasingly scarce government work. However, the growth of the Commonwealth will require the increased employment of U.S. citizens. U.S. citizen

In addition, the CNMI government has made policy and legislative decisions that have led to much uncertainty for the community. For instance, the CNMI government issued umbrella permits to workers prior to the transition date (November 28, 2009), which it now states it has the power to revoke. While Federal agencies working with the CNMI to implement the CNRA have applauded the CNMI for issuing umbrella permits authorizing alien workers to remain and be employed in the CNMI for the first two years of the transition period, and have fully recognized the validity of those permits during the time, the insistence of the CNMI government that the CNRA does not preempt its ability to continue to regulate alien employment is fostering a climate of confusion and disarray among workers and the business community.

Despite the best efforts of DHS (as well as DOI and DOL) to educate the community, workers, and businesses, the CNMI continues to administer the same procedures regarding employment of aliens as were required prior to the effective date of the CNRA, including issuing administrative decisions purporting to revoke or modify alien work authorization in the CNMI. The CNMI Office of the Governor and Department of Labor have issued guidance providing contradictory and incorrect information to the public, and advising employers in the CNMI that as long as they comply with local law they are not subject to an important Federal civil rights law enforced by the U.S. Department of Justice that the CNRA extended to the CNMI. In addition, through

Public Law 17-1, the CNMI has mandated that most lawfully present aliens, whether admitted by the CNMI pre-November 28, 2009 or subsequently by DHS, as well as unlawfully present aliens, must register with the CNMI Department of Labor or face jail time, a fine, or both.

One result has been a rise in service providers promising that, for a fee, an alien can receive CNMI authorization to work and remain in the CNMI. Some of these service providers have obtained such authorization from the CNMI even though under the CNRA the CNMI is no longer in control of immigration and alien employment in the CNMI.

Further, aliens who possess long-term business permits, alien investors, and corporations with alien shareholders are being denied business license renewals until CNMI entry permits are renewed by the CNMI. Many do not want to risk the loss of business revenue to fight the CNMI and simply comply at a cost of $1,000 per entry permit.

REPORT ON THE ALIEN WORKER POPULATION IN THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

When originally introduced in the Congress, the CNMI immigration legislation included a provision granting long-term foreign workers a nonimmigrant status that would allow them to continue living and working in the United States jurisdictions much like citizens of the freely associated states. The enacted version of the CNRA, however, did not resolve the immigration status of long-term workers in the CNMI. Instead, it called for a report and recommendations on the status of long-term foreign workers by the Secretary of the Interior (in consultation with the Secretary of Homeland Security and Governor of the CNMI), by May 8, 2010. Specifically, the report was to include --

- the number of aliens residing in the CNMI,
- their legal status,
- the length of time each alien has been residing in the CNMI,
- the CNMI economy's need for foreign workers, and
- recommendations, if deemed appropriate, whether or not legal foreign workers in the CNMI on May 8, 2008, should be able to apply for long-term status under United States law.

The Report was submitted to the Congress on April 30, 2010. In addition, I personally presented the Report to the Governor's office in Saipan while the Ombudsman held listening sessions with stakeholders on the same day.

In the Report, the Department recommends, consistent with the goals of comprehensive immigration reform, that the Congress consider permitting alien workers who have lawfully resided in the CNMI for a minimum period of five years to apply for long-term status under the immigration and nationality laws of the United States.

Statuses under the INA that could be considered include (but are not necessarily limited to):

(1) alien workers could be conferred United States citizenship by Act of Congress;

(2) alien workers could be conferred permanent resident status leading to U.S. citizenship (per the normal provisions of the INA relating to naturalization), with the five-year minimum residence spent anywhere in the United States or its territories; or

(3) alien workers could be conferred permanent resident status leading to U.S. citizenship, with the five-year minimum residence spent in the CNMI.

Additionally, under U.S. immigration law, special status is provided to aliens who are citizens of the freely associated states. Following this model,

(1) alien workers could be granted a nonimmigrant status like that negotiated for citizens of the freely associated states, whereby such persons may live and work in the United States and its territories; or

(2) alien workers could be granted a nonimmigrant status like that negotiated for citizens of the freely associated states, whereby such persons may live and work in the CNMI only.

Precedent for Congress granting long-term status to nonimmigrant workers residing in a U.S. territory was set by Public Law 97-271 (1982) when the Congress, citing its special responsibility and authority with respect to territories and the establishment of immigration policy, granted the opportunity to apply for U.S. permanent residence to alien workers in the U.S. Virgin Islands with more than seven years continuous residence. Public Law 97-271 was introduced and championed by the former Chairman of the Subcommittee on Insular and International Affairs, Ron de Lugo of the USVI.

In P.L. 97-271, Congress found that "in order to eliminate the uncertainty and insecurity of aliens who legally entered the Virgin Islands of the United States as nonimmigrants for employment under the temporary alien labor program, ha[d] continued to reside in the Virgin Islands for long periods (some for as long as twenty years), and have contributed to the economic, social, and cultural development of the Virgin Islands and ha[d] become an integral part of the society of the Virgin Islands, it is necessary and equitable to provide for the orderly adjustment of their immigration status to that of permanent resident aliens." Congress also found that the immigration of family members of these workers would likely be detrimental to the Virgin Islands, and sharply limited the opportunity of family members not already long-term residents of the Virgin Islands to immigrate based upon the workers' new status. Congress also significantly limited the entry of new temporary workers into the Virgin Islands. There may be some similarities between the alien workers' situation in the CNMI and that of the Virgin Islands prior to this law.

We raise the precedent of P.L. 97-271 not to suggest that it is necessarily an appropriate model for a provision for the CNMI. Any legislation providing long-term status to workers in the CNMI

would need to be carefully considered and drafted to provide appropriate provisions with respect to the extent of derivative eligibility for family members of workers and other important aspects of the program.

VISA WAIVER PROGRAM

The CNRA emphasizes the need to protect the CNMI economy and promote economic development. The CNMI has beautiful beaches and five-star hotel accommodations that are more than half empty. Given that tourism is now the mainstay of the CNMI economy, wherever possible both Federal and local officials must seek not only to avoid actions that may harm various sectors of the tourism market, but also to consider actions that promote increased tourism. As the Federal government continues to consider immigration policy for the CNMI and Guam, an important consideration is that previously, part of the attractiveness of the CNMI has been its visa-free entry for tourists. For instance, Chinese and Russian tourists accounted for 22 percent of CNMI tourists in 2008. For fiscal year 2009, Chinese and Russian tourists accounted for 9.2 percent of all arrivals. Since October 2009, the percentage of Chinese and Russian tourists account for 12.4 percent of tourist arrivals. While this number may seem small, their contribution to the economy is significant; contributing approximately 20 percent of the total economic contribution from tourism.

United States visa requirements now apply to foreign tourists to the CNMI. However, Title VII created a new Guam-CNMI Visa Waiver Program. For this new Guam-CNMI Visa Waiver Program, DHS has issued an interim final rule that waives the visa requirements for eligible visitors from 12 countries and geographic areas. At this time, China and Russia are not among the countries and geographic areas participating in the Guam-CNMI Visa Waiver Program.

On October 21, 2009, DHS agreed to administratively grant parole on a case-by-case basis to otherwise admissible (except for the lack of a visa) Chinese and Russian tourists seeking to visit the CNMI until the rule implementing the provisions of Title VII is finalized or another date designated by the Secretary of Homeland Security. DHS announced this discretionary exercise of parole authority in recognition of the contribution of visitors from China and Russia to the CNMI economy. The Department of the Interior looks forward to working with DHS on these issues, including examining whether to extend the exercise of parole authority to Guam and whether to add countries or geographic areas to the Guam-CNMI Visa Waiver Program.

While immigration transition in the CNMI has encountered a number of issues that require resolution, this has not deterred the Federal government from continuing to seek a smooth transition. We realize that change is difficult, but strongly believe that the Federalization of immigration matters in the CNMI will bring about higher security for the Marianas archipelago as well as an improved environment for business and provide economic opportunities to the people of the CNMI.