IMPLEMENTATION OF PUBLIC LAW 110-229 TO THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS AND GUAM

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON INSULAR AFFAIRS,
OCEANS AND WILDLIFE

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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OVERSIGHT HEARING ON THE IMPLEMENTATION OF PUBLIC LAW 110-229 TO THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS AND GUAM.

Tuesday, May 19, 2009
U.S. House of Representatives
Subcommittee on Insular Affairs, Oceans and Wildlife
Committee on Natural Resources
Washington, D.C.

The Subcommittee met, pursuant to call, at 10:02 a.m. in Room 1324, Longworth House Office Building, Hon. Madeleine Z. Bordallo [Chairwoman of the Subcommittee] presiding.

Present: Representatives Bordallo, Brown, Kildee, Faleomavaega, Abercrombie, Sablan and Chaffetz.

Ms. BORDALLO. Good morning, everyone.

The Subcommittee on Insular Affairs, Oceans, and Wildlife will come to order.

The Subcommittee is meeting today to hear testimony on the implementation of Public Law 110-229 to the Commonwealth of the Northern Mariana Islands and Guam.

Under Committee Rule 4(g), the Chairwoman and the Ranking Minority Member can make opening statements.

I now recognize myself for five minutes.

STATEMENT OF THE HONORABLE MADELEINE Z. BORDALLO, A DELEGATE IN CONGRESS FROM GUAM

Ms. BORDALLO. The Subcommittee is meeting today to hear testimony on the implementation of Title 7 of Public Law 110-229, The Consolidated Natural Resources Act of 2008, which extends U.S. immigration laws to the Commonwealth of the Northern Mariana Islands and expands tourism opportunities in the Islands through the authorization of a joint Guam-CNMI Visa Waiver Program.

While the extension of U.S. immigration laws to the CNMI was provided for by the covenant which established the Northern Mariana Islands as a commonwealth of the U.S. Congress, we were very careful in including special provisions in Public Law 110-229 to ease the transition to Federal law as well as to respond to the CNMI's special circumstances.

These special provisions include the establishment of an extendable five-year transition period and guest worker program, waiving the numerical limitation on non-immigration visas under the Immigration and Nationality Act for workers entering the CNMI, granting non-immigrant status to certain alien investors so that they may remain in the CNMI, establishing a visa waiver program to facilitate travel to the CNMI by tourists and other visitors, requiring a report on the future status of certain long-term CNMI guest workers, and authorizing technical assistance to identify opportunities to diversify and grow the CNMI economy, and to recruit, train, and hire U.S. citizens and other legal permanent resident workers.

The Northern Mariana Islands is situated north of Guam, east of the Philippines, and south of Japan. The United States armed forces battled imperial Japanese forces in the Marianas during World War II, and the Northern Mariana Islands in turn became a district of the U.S.-administered United Nations Trust territory of the Pacific Islands. In 1976, Congress approved the Covenant to establish a commonwealth of the Northern Mariana Islands in political union with the United States with the enactment of Public Law 94-241.

The Covenant was approved with the expressed exclusion of the application of the U.S. immigration laws to the CNMI to give the Islands time to come up with a plan to cope with the problems which unrestricted immigration could impose upon small island communities. United States officials believed that the period of local immigration control by the CNMI would last only a few years. Instead it has continued for over 30 years.

Rather than using local immigration control to reduce the impact of immigrants on the community, the CNMI promoted the use of alien workers throughout the private sector. As a general policy, Federal laws should apply in the territories as it does in the rest of the United States, but with the modifications that take into account the particular circumstances of each of the territories. This was the intention of the drafters of Public Law 110-229, and our hearing today is convened in part to learn how we have fared in reaching this goal.

In passing Public Law 110-229, Congress hoped to strengthen border control, provide for a judicious immigration system and a new visa waiver program that would afford the economies of both CNMI and Guam the opportunity to grow and to diversify. Specifically, Congress stated that the Act should be implemented wherever possible to expand tourism and economic development in the Commonwealth. Moreover, during the Committee's deliberations on this legislation, we stated clearly that the purpose was to facilitate travel to the CNMI by tourists.

Consistent with this intent was a bipartisan acknowledgment that a transition to Federal immigration law would have to occur effectively and prudently. However, on January 16, 2009, the Department of Homeland Security issued regulations that would not expand tourism to the CNMI. They have done so for the first time since 1986 when the Guam Visa Waiver Program was created out of a recognition of the unique conditions prevailing on Guam and its isolated location, which justify a broad application of the visa waiver system.

I am deeply troubled that under the Department's regulations issued on January 16, 2009, the newly created Guam-CNMI Visa Waiver Program is actually more onerous in some respects than the mainland Visa Waiver Program, a policy objective contradictory of this Committee's stated intent in passing this legislation and a departure over 20 years of policy toward Guam.

On March 31, 2009, the Secretary of Homeland Security at the request of Island leaders and in consultation with the Secretary of the Interior, the Secretary of Labor, the Secretary of State, the Attorney General, and the Governor of the CNMI invoked her authority under the law to delay the start of the application of U.S.

immigration law to the CNMI for 180 days from June 1, 2009. Thus, delaying the effective date of the application of Federal law and the start of the transition program allows the CNMI to continue to receive tourists from China and Russia, thereby delaying the blow that would be dealt to their economy.

If in the end they are not allowed to continue to receive visitors from these two countries under the new Marianas Visa Waiver Program, while I recognize that there are many issues yet to be worked out as we move forward with the implementation of this Act, this hearing today will highlight a number of concerns that are critical to the economic interests of both Guam and CNMI. With that in mind, I look forward to hearing from our witnesses today.

[The prepared statement of Ms. Bordallo follows:]

Statement of The Honorable Madeline Z. Bordallo, Chairwoman, Subcommittee on Insular Affairs, Oceans and Wildlife

The Subcommittee is meeting today to hear testimony on the implementation of Title 7 of Public Law 110-229, the Consolidated Natural Resources Act of 2008, which extends U.S. immigration laws to the Commonwealth of the Northern Mariana Islands and expands tourism opportunities in the islands through the authorization of a Joint Guam-CNMI visa-waiver program.

While the extension of U.S. immigration laws to the CNMI was provided for by the Covenant which established the Northern Mariana Islands as a Commonwealth of the United States, Congress was very careful in including special provisions in Public Law 110-229 to ease the transition to federal law as well as to respond to the CNMI's special circumstances.

These special provisions include: the establishment of an extendable five-year transition period and guest worker program; waiving the numerical limitation on non-immigration visas under the Immigration and Nationality Act for workers entering the CNMI; granting nonimmigrant status to certain alien investors so that they may remain in the CNMI; establishing a visa waiver program to facilitate travel to the CNMI by tourists and other visitors; requiring a report on the future status of certain long-term CNMI guest workers; and authorizing technical assistance to identify opportunities to diversify and grow the CNMI economy, and to recruit, train, and hire U.S. citizens and other legal permanent resident workers.

The Northern Mariana Islands is situated north of Guam east of the Philippines and south of Japan. The United States Armed Forces battled Imperial Japanese Forces in the Marianas during World War II and the Northern Mariana Islands, in turn, became a district of the U.S.-administered, United Nations Trust Territory of the Pacific Islands. In 1976, Congress approved the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States with the enactment of Public Law 94-241.

The Covenant was approved with the expressed exclusion of the application of U.S. immigration laws to the CNMI to give the islands time to come up with a plan to cope with the problems which unrestricted immigration could impose upon small island communities. U.S. officials believed that the period of local immigration control by the CNMI would last only a few years; instead it has continued for over thirty years.

Rather than using local immigration control to reduce the impact of immigrants on the community, the CNMI promoted the use of alien workers throughout the private sector.

As a general policy, federal laws should apply in the territories as it does in the rest of the United States, but with modifications that take into account the particular circumstances of each of the territories. This was the intention of the drafters of Public Law 110-229 and our hearing today is convened, in part, to learn how we have fared in reaching this goal.

In passing Public Law 110-229, Congress hoped to strengthen border control, provide for a judicious immigration system and a new visitor visa-waiver program that would afford the economies of both the CNMI and Guam the opportunity to grow and diversify. Specifically, Congress stated that the Act should be implemented "wherever possible to expand tourism and economic development in the Common-

wealth."[1] Moreover, during the Committee's deliberations on this legislation, we stated clearly that the purpose was to "facilitate travel to the CNMI by tourists."[2] Consistent with this intent was a bipartisan acknowledgement that a transition to federal immigration law would have to occur effectively and prudently.

However, on January 16th, 2009, the Department of Homeland Security issued regulations that would not expand tourism to the CNMI. They have done so for the first time since 1986, when the Guam Visa Waiver Program was created out of a recognition of the "unique conditions prevailing on Guam and its isolated location" which "justify a broad application of the visa waiver system."[3] I am deeply troubled that under the Department's regulations issued on January 16th, 2009, the newly-created Guam-CNMI Visa Waiver Program is actually more onerous in some respects than the mainland Visa Waiver Program, a policy objective contradictory of this Committee's stated intent in passing this legislation and a departure from over 20 years of policy towards Guam.

On March 31st 2009, the Secretary of Homeland Security at the request of island leaders and in consultation with the Secretary of the Interior, the Secretary of Labor, the Secretary of State, the Attorney General and the Governor of the CNMI, invoked her authority under the law to delay the start of the application of U.S. immigration law to the CNMI for 180 days from June 1st, 2009. Delaying the effective date of the application of federal law and the start of the "transition program", allows the CNMI to continue to receive tourists from China and Russia, thereby delaying the blow that would be dealt to their economy if in the end, they are not allowed to continue to receive visitors from these two countries under the new Marianas Visa-Waiver program.

While I recognize that there are many issues yet to be worked out as we move forward with the implementation of this Act, this hearing today will highlight a number of concerns that are critical to the economic interests of both Guam and the CNMI.

With that in mind, I look forward to hearing from our witnesses today.

Ms. BORDALLO. And at this time, before I introduce the witnesses and our first panel, as Chairwoman I recognize Mr. Brown, the Ranking Republican Member of the Subcommittee from the great State of South Carolina.

STATEMENT OF THE HONORABLE HENRY E. BROWN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Mr. BROWN. Thank you, Madam Chairman. I do have an opening statement and the personal privilege to make some opening remarks.

We are meeting today to hear testimony to discuss the implementation of the Consolidated Natural Resources Act of 2008 and its effect on the Commonwealth of the Northern Mariana Islands and Guam. The Consolidated Natural Resources Act was enacted on May the 8th, 2008, and it addresses immigration security and labor issues in the Commonwealth and Guam. Congress included special provisions and Congressional intent language into the Act to allow for the flexible implementation of Federal immigration laws in the Commonwealth to ensure a smooth transition and to promote economic and travel opportunities in the region.

It has been a little over a year since the bill has been in effect, and I am interested to hear how the witnesses view the progress of the agencies in implementing this legislation.

And thank you, Madam Chair, and if I could take just a moment of personal privilege.

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[1] CNRA § 702(b), P.L. 110-229, 122 Stat. 861.
[2] H.R. Rep. No. 110-324 at 1 (2008) (Comm. on Natural Resources).
[3] 132 Cong. Rec. S4844 (Apr. 24, 1986).

I would also like to welcome the panel this morning, and particularly your Governor, and I just wanted to report to him and to the other members here from Guam what a great representative you have, and it is a pleasure of mine to serve as her Ranking Member, and she has invited me over to the island, and we hope to make that trip maybe this summer.

Also, we are real pleased to have Mr. Sablan as your representative from CNMI. We are grateful, Governor, to have you here as part of this process so you can go back and report to your people that you have sent a great representative here, and I have certainly had the pleasure to serve with him and maybe hope to see you, too.

Thank you all for being here.

Ms. BORDALLO. I thank the gentleman from South Carolina, the Ranking Member of our Subcommittee, .

If there are no objections, I ask unanimous consent to allow the gentleman from the CNMI to give an opening statement.

[No response.]

Hearing no objections, so ordered.

Mr. Sablan, please begin.

STATEMENT OF THE HONORABLE GREGORIO KILILI SABLAN, A REPRESENTATIVE IN CONGRESS FROM THE NORTHERN MARIANA ISLANDS

Mr. SABLAN. Madam Chair, thank you.

And Ranking Member, thank you for your kind words.

Good morning, Governor. Welcome, Governor Camacho and Vice Speaker Cruz.

Madam Chair, thank you for holding this hearing on the implementation of Public Law 110-229, which extends Federal immigration law to the Northern Mariana Islands. This extension will have a profound impact on the fragile economy of the Northern Mariana Islands and on individuals and families who live there.

As you know, I requested this hearing in large part to provide the new Administration the opportunity to share its plans on the implementation of the law, a complicated project that, if done in a quick and dirty fashion, could turn our already sparsely populated and economically depressed American community into a ghost town.

The agencies responsible for implementing Public Law 110-229 must effect the intentions of the law to protect the United States borders while expanding the Marianas' economy and assisting the Marianas in achieving a progressively higher standard of living for its citizens. Congress was also explicit that the policies underlying Federal immigration should be extended to the Commonwealth's shores. This must include the preservation of families, something about which we should all be passionately concerned about.

I am grateful for the opportunity to discuss with the new Administration its plans for the implementation of the law and to hear these agency heads' reactions to the documents I have submitted to the Department of Homeland Security on Public Law 110-229 since January of this year.

Madam Chair, I ask that these documents be entered into the record. My letter asking for the 180-day delay in the start of Fed-

eralization, my comments on DHS' Interim Final Rule regarding the Guam-CNMI Visa Program, and my policy letter on all the honorable groups whose niche must be considered in the extension of Federal immigration to the Northern Marianas.

[NOTE: The information submitted for the record has been retained in the Committee's official files.]

Mr. SABLAN. Thank you.

In these documents and again today I lay out my three chief concerns. Funding: The Department of Homeland Security has estimated that it would need just over $97 million to fulfill its responsibilities under Public Law 110-229. The Department has advised my office that it had approximately $5 million already budgeted. The President's proposed Fiscal Year 2010 has not specifically funded the buildup of the CNMI's borders. I want to know where will the remaining $92 million come from.

The economy: Congress intended P.L. 110-229 to improve and expand the Northern Marianas' economy. Congress intended that the CNMI's existing businesses would be protected. And yet the only regulations we have seen thus far do what Congress did not intend. They would have a needlessly ruinous effect on the CNMI's only industry, tourism. DHS does not have the discretion to omit two of the CNMI's biggest tourist markets out of the Visa Waiver Program created by Public Law 110-229, and I would ask the Department of Homeland Security to explain its overreaching authority on this matter today.

Families: Regulations concerning guest workers, investors, and other groups affected by this law have yet to be published. The uncertainty created by this lack of regulations undermine the requirement for an orderly phasing in of Federal immigration standards. I want to hear from DHS about what will happen with this group, particularly families.

The extension of Federal law could benefit us all if it is done right. It could improve our economy and improve our national security. And if it is done wrong, it will be devastating to the Northern Mariana Islands and will contravene Congress' expressed intent in bringing Federal immigration law to this far away place. If Federalization doesn't take into account our local businesses' needs for workers and tourists, if it doesn't take into account our families' needs to stay together, then the Northern Mariana Islands will suffer.

But if the Federal agencies do as they have been instructed by Congress, there is the possibility that my beautiful island home will thrive under an immigration system that is humane and fair and that expands our economic opportunities while preserving our families. I look forward to hearing what the Administration and other witnesses have to say about these concerns.

Madam Chair, I thank you. Thank you very much from the bottom of my heart for the opportunity to conduct this hearing today.

Ms. BORDALLO. Si Yu'os ma'ase', Mr. Sablan. Thank you.

I would like at this time to introduce, just so that the panel will know who is up here. I am sure you already know, but just for the record I would like to recognize the gentleman from American Samoa, Mr. Eni Faleomavaega, the young lady from the Virgin

Islands, Mrs. Donna Christensen and, of course, the gentleman from Utah, Mr. Chaffetz. Thank you very much for being here.

The Subcommittee is very honored indeed to have our Governors here with us. You know, for those in the room, when you come from Guam and the CNMI you travel 10,000 miles, and that is quite a trek for coming to a public hearing in Washington, D.C., so I thank you. And all three of the witnesses are very close friends of mine that I have known for years and years.

The first panel is made up of The Honorable Felix P. Camacho, the Governor of Guam, the second is The Honorable Benigno R. Fitial, Governor of the Commonwealth of the Northern Mariana Islands, and the third is The Honorable Benjamin J. F. Cruz, the Vice Speaker of the Guam Legislature.

And just to remind the Ranking Member here, he said he was going to visit the Islands, we will be visiting both the CNMI and Guam in August. So, be prepared for our visit, and the Ranking Member will be with us. That is on the record.

We are indeed honored, gentlemen for your presence here this morning, and I look forward to your testimony.

As we begin, I would note for all of the witnesses that the red timing light on the table will indicate when five minutes have passed and your time has concluded. We would appreciate your cooperation in complying with these limits. Be assured that your full written statement will be submitted for the hearing record. But I will say, since we have such distinguished gentlemen who have traveled so far to be at the public hearing this morning, if you go over the five minutes, I will overlook it. Just so it isn't too much over the five minutes.

At this point, I would like to recognize my good friend from Guam, The Honorable Governor Felix Camacho to address the Subcommittee. Thank you for joining us, Governor, and you may begin.

STATEMENT OF THE HONORABLE FELIX P. CAMACHO, GOVERNOR OF GUAM

Governor CAMACHO. Good morning, Congresswoman Bordallo and Members of your Committee. I thank you for affording me the opportunity to comment on the implementation of Public Law 110-229 and for your continuing interest in our economy.

I am particularly pleased to learn that the intent of this hearing is to ascertain the status of, and the progress being made in, implementing the Visa Waiver Program as authorized by the law mentioned. In enacting Public Law 110-229, it was clearly the intent of Congress to facilitate expansion of our tourism opportunities at a time when our largest source market, Japan, continues to decline for reasons demographic, economic, and social.

It should be noted that the strategic outlook for this market is not encouraging as more low-cost leisure resorts in Asia proliferates the competitive landscape, taking away Guam's share of market. In passing this law, it was also the intent of Congress to allow countries not currently on the visa waiver list to be included in the program as long as they represent a significant economic benefit and second adequate safeguards are provided with regard to our national security.

The economic benefit from Chinese tourists is well documented in both the CNMI and elsewhere. And of the three major outbound markets in East Asia, only China continues to grow in the midst of a global recession. Japanese and Korean overseas travelers which account for 90 percent of Guam's tourists declined significantly in 2008 while China grew plus 12 percent to 46 million worldwide. About 18 percent, or 8 million, of these Chinese travelers are potential tourists to non-Asian destinations, and a target 2 percent market share for Guam translates into some 160,000 visitors.

At an average of $112 in daily spending, one can surmise the significance of the Chinese market for Guam both in numbers and spending potential. Achieving even half of our target share of market at an average of a four-day stay can produce an economic benefit of $62.7 million for Guam. As travel is made available to the pool of residents beyond Beijing, Shanghai, and Guangzhou, the potential for Guam to establish direct air service and to attract 160,000 or more Chinese tourists each year is an opportunity too compelling to be denied.

As previously stated in our Visitor's Bureau comment letter on the DHS' Final Rule, the case for Guam is simple regarding the inclusion of China in the Visa Waiver Program. Guam will either see its single largest economic sector contract by minus 30 percent from a current $1.2 billion to $800 million, or it will be allowed to contain this decline, grow the China leisure market, and expand its tourism economy to its full potential under a favorable visa waiver program.

We are encouraged by this hearing because we believe that the issues associated with fulfilling Congressional intent will be sufficiently examined to produce an outcome that will enable Guam to grow other markets. I am especially interested in how much progress DHS has made to stand up the institutional and physical infrastructure required in implementing the VWP and the specific details associated with the installation of additional layered security measures.

We recognize the major hurtles that DHS will have to address in standing up a visa waiver program that would allow inclusion of currently excluded countries while safeguarding our national security. Further, we are concerned that the completion of these tasks may not occur in a timely manner. If so, and in order to prevent irreparable economic harm to the CNMI, we recommend that the current 180-day delay be extended yet again until DHS completes its task and provide the roadmap to achieve security and visa processing objectives as intended by Congress.

If further extension is warranted, however, it is imperative that Guam's needs are also addressed in the interim, specifically as regards to first H2 labor, delinkage of the H2 cap so as not to impede the construction buildup of the national defense projects associated with the forced restructure agreements such as Japan. Second is Hong Kong. The inclusion of Hong Kong residents in our current VWP for both British nationals and special administrative region passport holders.

In closing, I take this opportunity to share yet again certain principles that I believe underpin the intent of Congress in passing

Public Law 110-229. A] Recognizing the importance of tourism in the economies of Guam and the CNMI given few other economic development options because of geographic isolation, limited natural resources, and small economies of scale. B] Recognizing important source markets of economic significance to the region now and in the future, China and Russia providing the most compelling cases.

A third is recognizing Guam's strategic importance in the Pacific theater's U.S. force structure realignment, and inherent therein the need to balance U.S. security concerns with the economic interests, indeed economic survival of both Guam and the CNMI. The fourth is recognizing the stated goal of promoting economic development in the region, thereby enabling it to support the cost for infrastructure and quality of life improvements associated with a more robust regional military posture. And last, recognizing the nation's policy of constructive engagement with China, specifically through trade and commerce, that include bilateral tourism and air service arrangements concluded by former U.S. Commerce Secretary Carlos Gutierrez and highlighted more recently by U.S. Secretary of State Hillary Clinton's visit to China.

I thank you so very much for this opportunity to provide testimony.

[The prepared statement of Governor Camacho follows:]

Statement of The Honorable Felix P. Camacho, Governor of Guam

Congresswoman Bordallo, and members of your committee, thank you for affording me the opportunity to comment on the Implementation of Public Law 110-229 and for your continuing interest in our economy.

I am particularly pleased to learn that the intent of this hearing is to ascertain the status of, and progress being made in, implementing the Visa Program (VWP) as authorized by Public Law 110-229.

In enacting Public Law 110-229, it was clearly the intent of Congress to facilitate expansion of our tourism opportunities at a time when our largest source market (80% Japan) continues to decline for reasons demographic, economic, and social. It should be noted that the strategic outlook for this market is not encouraging as more low cost leisure resorts in Asia proliferate the competitive landscape, taking away Guam's share of market.

In passing this law, it was also the intent of Congress to allow countries not currently on the visa waiver list to be included in the program as long as:

a. They represent a significant economic benefit; and
b. Adequate safeguards are provided with regard to our national security.

Significant Economic Benefit

The economic benefit from Chinese tourists is well documented in both the Commonwealth of the Northern Marianas (CNMI) and elsewhere. And of the three major outbound markets in East Asia, only China continues to grow in the midst of a global recession. Japanese and Korean overseas travelers, which account for 90% of Guam tourists, declined significantly in 2008 while China grew +12% to 46 million. About 18% or 8 million of these Chinese travelers are potential tourists to non-Asian destinations, and a target 2% market share for Guam translates into some 160,000 visitors. At $112 in daily spending (U.S. Commercial Service) one can surmise the significance of the Chinese market for Guam, both in number and spending potential.

Achieving even half of our target share of market at an average 4 day stay can produce an economic benefit of $62.7 million to Guam.[1] As travel is made available to the pool of residents beyond Beijing, Shanghai and Guangzhou (more recently to about 100 second tier cities), the potential for Guam to establish direct air service

[1] Spending @ 112 per day x 4 = 448.00 x 80,000 pax = 35,840,000 x 1.75 multiplier = $62.7 million

and to attract 160,000 or more Chinese tourists each year is an opportunity too compelling to be denied.

As previously stated in the Guam Visitors Bureau comment letter on the Department of Homeland Security (DHS) Interim Final Rule (copy attached), the case for Guam is simple regarding the inclusion of China in the VWP. Guam will either see its single largest economic sector contract by -30%, from $1.2 billion to $800 million, or it will be allowed to contain this decline, grow the China leisure market, and expand its tourism economy to its full potential under a favorable visa waiver program.

National Security

We are encouraged by this hearing because we believe that the issues associated with fullfilling Congressional Intent will be sufficiently examined to produce an outcome that will enable Guam to grow other markets. I am especially interested in how much progress DHS has made to standup the institutional and physical infrastructure required in implementing the VWP, and the specific details associated with the installation of additional layered security measures.

Timing Issue

We recognize the major hurdles that DHS will have to adress in standing up a VWP that would allow inclusion of currently excluded countries while safeguarding our national security, Further, we are concerned that completion of these tasks may not occur in a timely manner. If so, and in order to prevent irreparable economic harm to the CNMI, we recommend that the current 180 day delay be extended yet again until DHS completes its task and provides the road map to achieve security and visa processing objectives as intended by Congress. If further extension is warranted, however, it is imperative that Guam's needs are also addresssed in the interim, specifically as regards:

1. H-2 Labor—Delinkage of the H-2 cap, so as not to impede the construction build up of national defense projects associated with force restructure agreements (i.e. Japan).
2. Hong Kong—The inclusion of Hong Kong residents in our current VWP for both British National and Special Administrative Region passport holders.

In closing, I take this opportunity to share yet again certain principles that I believe underpin the intent of Congress in passing Public Law 110-229:

a. Recognizing the importance of tourism in the economies of Guam and the CNMI, given few other economic development options because of geographic isolation, limited natural resources, and small economies of scale;
b. Recognizing important source markets of economic significance to the region, now and in the future, China and Russia, providing the most compelling cases;
c. Recognizing Guam's strategic importance in the Pacific theater's U.S. force structure realignment, and inherent therein the need to balance U.S. security concerns with the economic interests (indeed economic survival) of Guam and the CNMI;
d. Recognizing the stated goal of promoting economic development in the region, thereby enabling it to support the costs for infrastructure and quality of life improvements associated with a more robust regional military posture; and
e. Recognizing the nation's policy of constructive engagement with China, specifically through trade and commerce that include bilateral tourism and air service arrangements concluded by former U.S. Commerce Secretary Carlos Gutierrez, and highlighted more recently by U.S. Secretary of State Hillary Clinton's visit to China.

Ms. BORDALLO. Thank you very much, Governor Camacho, for your very thoughtful views and your testimony.

And before we introduce the next panelist, I would like to ask the people standing in the back, if you would please come forward and take the chairs around the table below the dais. It is very difficult to stand for many hours. You are more than welcome to sit around this table, thank you.

And now I am pleased to recognize and welcome our close neighbor and friend, the Governor from the Commonwealth of the Northern Mariana Islands, The Honorable Benigno Fitial. Governor, you can begin.

STATEMENT OF THE HONORABLE BENIGNO REPEKI FITIAL, GOVERNOR OF THE CNMI

Governor FITIAL. Good day, Madam Chairwoman and Members of the Subcommittee. Thank you for the opportunity to testify regarding the implementation of Public Law 110-229.

I just received news from home this morning that our rating for our general obligation bonds has been reduced from BA-3 to B-2. That is according to Moody's. 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 this law 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 reveal and 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 our immigration division. I am asking your Subcommittee, Madam Chairman, to look very carefully at the Department's implementation policies and procedures.

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 Department's visa waive regulations published early this year failed to include China and Russia in the joint Visa Waiver Program authorized by the law.

We believe the Department's regulations are deficient in three respects. One, they fail to implement Public Law 110-229 in a manner consistent with the legislative intent. Two, they substantially underestimate the damage to the Commonwealth's economy if our access to these markets are terminated. And three, the Department's economic analysis is seriously flawed.

I address each of these deficiencies in my formal statement, but I need to emphasize a few basic facts regarding the impact of these regulations. Our best judgment after consultation with experts in the travel industry is that the Commonwealth will lose about 95 percent of the visitors in the China and Russia markets under the proposed regulations. That would result in an estimated loss of about $67 million in direct impact and about $218 million in indirect impact.

The laws would be more severe on the island of Tinian, where access to the China market constitutes nearly 70 to 80 percent of the entire tourism industry on the island. If the Commonwealth is required to abandon these two markets for a period of 12 to 24 months as suggested by Department officials, it would be extremely

difficult to regain market share momentum after such an interruption. We recommend that the effective date of Public Law 110-229 be extended 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 important tourist markets.

Is the Department of Homeland Security ready to implement Public Law 110-229? The Commonwealth is seriously concerned the Department of Homeland Security will not be prepared on November 28, 2009 to enforce this law. On that date the immigration laws of the Commonwealth will be preempted. Any failure by the Department to assume its enforcement duties on that date will present a national security risk to the people of the Commonwealth and the United States.

Our information about the Department's actual plans for implementing Public Law 110-229 is obviously limited. We are aware of the letter you mentioned submitted by the last Administration to Chairman Rahall on January 12, 2009. At that time the Department estimated that the funds in the total amount of $97 million would be needed to create, equip, and staff the six ports of entry planned for the Commonwealth. I might point out that this amount is at least 10 times greater than the estimates provided Congress when it was considering this legislation in 2007.

We hope your Subcommittee will obtain current and detailed information regarding the Department's implementation plans, the funds already expended, the additional funds needed, and the projected timetable for their expenditure. The Fiscal Year 2010 budget for the Department seeks $55.1 billion. We hope the Subcommittee will be directed to the specific locations for the Commonwealth in this proposed budget.

Even if the necessary funds will be available sometime during Fiscal Year 2010, there is the question as to when the funds can be spent. Unless the Department plans to fund virtually all the necessary expenditures during Fiscal Year 2009, it seems unlikely the Department will be fully prepared by November 28 this year to assume its duties in the Commonwealth. In that event, a deferral of the effective date of the law may be required.

Madam Chairman, I have focused on the two major matters of immediate concern to the Commonwealth. There are many other issues relating to the implementation of Public Law 110-229, and I have touched on some of them in my formal statement. I am prepared now to answer any questions which the Members of the Subcommittee wish to address to me. But before I do that, I would like to say that on behalf of the people of the Commonwealth, I humbly ask for your consideration to allow your people, your neighbors, to live as Americans in prosperity and not in poverty. Thank you.

[The prepared statement of Governor Fitial follows:]

Statement of Benigno R. Fitial, Governor of the Commonwealth of the Northern Mariana Islands

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 P.L. 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 U.S. 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 U.S. 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:

> "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 U.S. 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

[1] [Comway/McPhee Study?]

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 in 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.

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 P.L. 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 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 pub-

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

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

[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.

lic 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 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 U.S. 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 U.S. 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.

HOTEL ASSOCIATION OF THE NORTHERN MARIANA ISLANDS

SUMMARY STATISTICAL REPORT FOR APRIL 30, 2009
UPDATED RELEASED MAY 14, 2009

Number of Hotels in HANMI	13	**Number of Rooms under Construction**	None
Number of Existing Hotel Rooms		**Capacity in Room Nights**	
Number of rooms under Renovation	None	**Employee-Room Ratio 1.45** 13 Rms to 1 Employee	

	April 2008 YTD	April 2009 YTD	Apr-08	Apr-09
NUMBER OF HOTELS REPORTING	14	13	14	13
Room Nights Available for Sale	343,637	330,000	85,170	82,500
Room Nights Sold	229,326	225,270	47,137	44,553
HOTEL OCCUPANCY RATES				
Weighted Average	66.79%	68.43%	55.34%	54.00%
HOTEL ROOM RATES				
Weighted Average	$ 99.00	$ 99.19	$ 92.68	$ 91.02
GROSS RECEIPTS TAX PAID	$ 1,144,265.19	$ 1,117,249.03	$ 218,422.37	$ 202,760.85
ROOM OCCUPANCY TAX PAID	$ 2,288,530.39	$ 2,234,498.06	$ 436,844.75	$ 405,521.70
PAX ARRIVAL COUNT - JAPAN	72,842	77,643	15,743	14,214
PAX ARRIVAL COUNT - KOREA	38,255	29,089	8,743	6,576
PAX ARRIVAL COUNT - CHINA	13,308	10,630	1,641	1,883
PAX ARRIVAL COUNT - GUAM	6,473	5,710	1,531	1,669
PAX ARRIVAL COUNT - UNITED STATES	5,432	4,647	1,572	743
PAX ARRIVAL COUNT - PHILLIPINES	559	484	189	162
PAX ARRIVAL COUNT - RUSSIA	2,151	2,783	403	431
PAX ARRIVAL COUNT - TAIWAN	96	113	9	7
AX ARRIVAL COUNT - OTHER COUNTRIES	3,377	4,168	1,969	2,148
HANMI TOTAL ARRIVAL COUNT	142,493	135,267	31,800	27,833

Weighted Average Occupancy = Sum of Room Nights Sold divided by total number of Room Nights Available for sale by reporting hotels.

Weighted Average Room Rate = Sum of all Room Sales divided by sum of all Room Nights Sold by Reporting Hotels.

Employee to Room Ratio = (Total Hotel Rooms Nights Available for Sale /Number of Days in the Month)/by Number of Employees from Reporting Hotels.

Note: One Hotel was closed since October 2008 due to renovation.

Ms. BORDALLO. Thank you very much, Governor Fitial, for your very thoughtful input regarding the implementation of Public Law 110-229.

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[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.

And I would now like to recognize our Vice Speaker of the Guam Legislature, my good friend, The Honorable B. J. Cruz.

STATEMENT OF THE HONORABLE BENJAMIN J. F. CRUZ, VICE SPEAKER OF THE GUAM LEGISLATURE

Mr. CRUZ. Madam Chairwoman and Members of the Committee, thank you for affording me this opportunity to testify before this Committee.

As the Guam-CNMI Visa Waiver Program implementation date nears, it is critical that we maintain open lines of communication and make use of them frequently. On February 27, 2009, the 30th Guam Legislature passed Resolution Number 15 relative to presenting an agenda of priority concerns for Guam on the Federal territorial issues for proposed action by President Barack Obama and to the Congress of the United States.

Among the priorities within the Resolution is the establishment of secure Guam-CNMI Visa Waiver Program for visitors from The People's Republic of China and Russia in order to foster growth and tourism of the economies on Guam and the Commonwealth of the Northern Marianas. The Department of Homeland Security extended the implementation date of the Guam-CNMI Visa Waiver Program from June, 2009 to November, 2009.

As Chairman of the Guam Legislature's Committee on Tourism, I must emphasize my opposition to the implementation if China and Russia are not included in the Guam-CNMI Visa Waiver Program. The passage of Public Law 110-229 clearly demonstrated the intent of Congress to allow additional countries into Guam-CNMI Visa Waiver Program, and list provided, one, that they would represent a significant economic benefit, and two, that adequate safeguards are provided with regard to our national security.

The addition of China and Russia would expand tourism opportunities for our destinations. This move would also help offset the decline in visitor numbers from our primary market of Japan due to aging demographic and other social and economic issues. The Guam Legislature supported the delay of the implementation date in order for adequate security measures to be developed and allow the inclusion of China and Russia under the Guam-CNMI Visa Waiver Program.

According to the U.S. marketing research from Global Insight, tourism expenditures represent $1.2 billion in Guam's economy, or 40 percent of Guam's island product. Visitor spending is 95 percent of this total, producing $148.9 million in combined payroll, hotel lodging, and gross receipts taxes. Each Japanese visitor creates $120 in tax receipts, adds $340 to Guam's gross island product, and generates $170 in direct wages to Guam's workforce.

Unfortunately, Japan's arrival have declined by 27 percent between Fiscal Years 2000 and 2008. Based on CNMI figures, China and Russia provide compelling market viability for Guam. Spending by Chinese and Russian tourists in the CNMI in 2008 reached $58 million with per person spending for Chinese visitors averaging $967 and for Russian visitors $4,323. Overall, Chinese and Russian tourists contribute approximately 20 percent of the CNMI tourism revenues.

Based on research conducted by the Guam Visitors Bureau, China and Russia may potentially generate $212.2 million in combined payroll, hotel lodging, and gross receipt taxes by 2018. The exclusion of China and Russia could result in our tourist industry dwindling by 32 percent in the next five years. An expanded visa waiver program allows for preservation of a large segment of Guam's economy while creating a projected growth for Guam's most important industry to $1.5 billion in five years.

This definition meets the criterion for significant economic benefit, thereby providing a strong rationale for the expeditious inclusion of The People's Republic of China and Russia in the Guam-CNMI Visa Waiver Program. Customs and border patrol and DHS must rebuild the infrastructure at the airports and seaports in Saipan, Tinian, and Rota. Capital costs include power generation, circuit cabling, equipment, construction, the physical improvement in security and access control.

In addition CBP must relocate offices and staff to operate the six CNMI ports. It is worrisome that completion of this work may not happen by November 28, 2009. Therefore an extension of additional 180 days past the November 28 deadline may be necessary. In the interim it is important to address Guam's needs regarding the two things the Governor mentioned, H2 labor and Hong Kong. Public Law 110-229 recognizes important source markets for economic significance from China and Russia and allows for the continued expansion of tourism and economic development, including adding prospective tourists in gaining access to memorials, beaches, parks, dive sites, and other points of interest.

Public Law 110-229 recognizes Guam's strategic importance to U.S. force realignment and the crucial balance between security concerns and the economic survival of Guam and the CNMI. I realize that this House Subcommittee on Insular Affairs, Oceans, and Wildlife is committed to fostering economic development in Guam and the CNMI. I respectfully request that the Members take my testimony into consideration and seriously consider the economic consequences of your decision. Si Yu'os ma'ase', Madam Chair.

[The prepared statement of Vice Speaker Cruz follows:]

Statement of The Honorable Benjamin J.F. Cruz,
Vice Speaker, 30th Guam Legislature

Congresswoman Bordallo and members of the Committee, thank you for affording me the opportunity to testify before the House Subcommittee on Insular Affairs, Oceans and Wildlife, on the implementation of Public Law 110-229. As the Guam-CNMI Visa Waiver Program date of implementation nears, it remains critical that we maintain open lines of communication and make use of them frequently.

On February 27, 2009, the Guam Legislature passed Resolution No. 15 "Relative to presenting an Agenda of Priority Concerns for Guam on federal-territorial issues for proposed action to President Barack Obama, and to the Congress of the United States." Among the priorities within the resolution is the establishment of a secure Guam-CNMI Visa Waiver program for visitors from the People's Republic of China and Russia, in order to foster growth in the tourism economies of Guam and the Commonwealth of the Northern Marianas Islands.

The Department of Homeland Security extended the implementation date of the Guam-CNMI Visa Waiver Program, stipulated within the Immigration and Nationality Act and mandated by the Consolidated Natural Resources Act of 2008, from June 1, 2009 to November 28, 2009. As Chairman of the Guam Legislature's Committee on Tourism, I must emphasize my opposition to the implementation if China and Russia are not included in the Guam-CNMI Visa Waiver Program.

The passage of Public Law 110-229 clearly demonstrated the intent of Congress to allow additional countries onto the Guam-CNMI visa waiver program list provided:

1. That they represent a significant economic benefit; and
2. That adequate safeguards are provided with regard to our national security.

The addition of China and Russia would expand tourism opportunities for our destinations. This move would also help offset the decline in visitor numbers from our primary market of Japan due to an aging demographic, and to other social and economic issues. The Guam Legislature supported the delay in the implementation date in order for adequate security measures to be developed and allow the inclusion of China and Russia under the Guam-CNMI Visa Waiver Program.

Tourism Market Repercussions

According to U.S. marketing research firm Global Insight, tourism expenditures currently represent $1.2 billion in Guam's economy, or 40% of Guam's Gross Island Product. Visitor spending is 95% of this total, producing $148.9 million in combined payroll, hotel lodging, and gross receipts taxes. Each Japanese visitor creates $120 in tax receipts, adds $340 to Guam's gross island product, and generates $170 in direct wages to Guam's workforce. Unfortunately, Japan arrivals have declined by 27% between Fiscal Years 2000 and 2008.

Based on CNMI figures, China and Russia provide compelling market viability for Guam. Spending by Chinese and Russian tourists in the CNMI in 2008 reached $58 million, with per-person spending for Chinese visitors averaging $967 and for Russian visitors, $4,323. Overall, Chinese and Russian tourists contribute approximately 20% to the CNMI's tourism revenues. Based on research conducted by the Guam Visitors Bureau, China and Russia may potentially generate $212.2 million in combined payroll, hotel lodging, and gross receipts taxes by 2018.

Japanese and Korean travelers account for 90% of the 1.2 million visitors annually arriving on Guam. Yet, their numbers declined considerably in 2008 while the number of Chinese travelers grew by 29% over 2007, although they only represent a small fraction of the Guam market. The total number of outbound travelers from the People's Republic of China numbered some 45 million in 2008, growing nearly 10% over 2007. Of that figure, 18% or 8 million Chinese travelers will potentially travel to non-Asian destinations. Just 2% of those visitors would be 160,000 more tourists for Guam. An average 4-day stay could produce an economic benefit of $62.7 million for Guam.

By comparison, the exclusion of China and Russia could result in our tourism industry dwindling by 32% in the next 5 years. An expanded visa waiver program allows for preservation of a large segment of Guam's economy while creating a projected growth for Guam's most important industry to $1.5 billion in 5 years. This definitely meets the criterion for significant economic benefit, thereby providing a strong rationale for the expeditious inclusion of the People's Republic of China and Russia in the Guam-CNMI Visa Waiver Program.

Security Concerns

National Security is of paramount concern. Therefore, working with DHS, China, and airlines serving Guam to create and implement a visitors program that allows Chinese nationals expeditious entry into Guam while integrating security features to minimize overstays and asylum seekers is at the forefront of consideration. An additional concern is that tourists from China would no longer be required to apply for approval to travel to Guam through the costly and time-consuming visa issuance process to screen and approve potential travelers. Consequently, establishment of a system to conduct this process of screening and approval of potential tourists from China within 72-hours to a week is of great interest. Safeguards to include within the DHS program are:

1. Drawing from the model established under China's Approved Destination Status (ADS) system, only tourists traveling in groups organized by approved travel agents would be eligible. This system minimizes the risk that Chinese visitors might lose or destroy their travel documents.
2. As under the ADS system, the approved travel agents would be trained to identify and exclude potential immigrants and asylum seekers.
3. The travel agents would be required to post a $500,000 bond to cover the costs of dealing with immigrants or asylum-seekers brought to Guam in a group organized by the agent.
4. The travel agents would be further required to abide by a "code of conduct" similar to that in effect under the current Visitor Entry Permit program, and any agents that violate that code would forfeit their approved status.

5. The Electronic System for Travel Authorization could be used to screen and approve potential visitors.
6. We would work with the airlines serving Guam to arrange for the collection of biometric data and photographs of Chinese visitors upon their arrival in Guam, and again upon their departure. In collecting this data from departing visitors, we would be implementing DHS's proposed "US Exit" program for the first time on a demonstration basis in Guam. Guam can be used to test where improvements to the "US Exit" program can be made before final implementation. The program would be established on a two-year trial basis, and could be terminated at any time by DHS if problems emerge.

Customs and Border Patrol (CBP) and DHS must rebuild the infrastructure at airports and seaports in Saipan, Tinian, and Rota. Capital costs include power generation, circuitry, cabling, equipment, construction and physical improvement, and security and access control. In addition, CBP must relocate officers and staff to operate the six CNMI ports. It is worrisome that completion of this work may not happen by November 28, 2009. Therefore, an extension of an additional 180 days past the November 28, 2009 deadline may be necessary. In the interim, it is important to address Guam needs regarding:

1. H-2 Labor—Delinkage of the H-2 cap so as not to impede the construction buildup of national defense projects associated with force restructure agreements of military personnel from Okinawa, Japan.
2. Hong Kong—The inclusion of Hong Kong residents in our current visa waiver program for both British National and Special Administrative Region passport holders.

Public Law 110-229 recognizes important source markets of economic significance from China and Russia, and allows for the continued expansion of tourism and economic development including aiding prospective tourists in gaining access to memorials, beaches, parks, dive sites, and other points of interest. Public Law 110-229 recognizes Guam's strategic importance, the U.S. force realignment, and the crucial balance between security concerns and the economic survival of Guam and the CNMI.

I realize that the House Subcommittee on Insular Affairs, Oceans and Wildlife is committed to fostering economic development in Guam and the CNMI. I respectfully request that the members take my testimony into consideration and seriously consider the economic consequences of your decision.

Ms. BORDALLO. Thank you, Vice Speaker Cruz, for your testimony in this very important matter.

I will now recognize the Members of the Committee for any questions they may wish to ask the Governors and the Vice Speaker, alternating between the majority and the minority and allowing five minutes for each Member.

And I will begin with myself. My first question is to you, Governor Camacho. Do you believe, Governor, that an expanded visa waiver program is incompatible with the military buildup on Guam?

Governor CAMACHO. I don't believe that it is incompatible. We have had tourism again as our primary economic baseline for well over 30 plus years. And with this we had of course transformed from what was an economy that was insular and subject to military control to one that expanded and at one time reached up to 60 percent of our revenues that were based on tourism. If we are going to continue to provide the quality of life that we need, we must expand our tourism base and the countries that would be allowed into it.

As you know, Japan continues to decline as it has been the primary source market representing roughly 80 percent of all tourists into Guam. Combined with Korea and Taiwan, it represents roughly 95 percent altogether. But with an aging population and consistent decline in outbound Japanese tourists worldwide, we can

see that if we continue to depend on them as a primary source, we will not be able to maintain our market share.

On the other hand, China as you well know has expanded by plus 12 percent. They currently have about 46 million outbound tourists, and competition throughout our region is fierce. If we do not and are not allowed to tap into this, then we simply missed the boat. This is the trend that all countries are pursuing in our region, and if we are going to maintain our viability as a competitive destination we must expand.

And it is balance that we seek. Certainly we know that the military expansion on Guam and the military buildup that will come is evident and will occur. But certainly that should not prohibit our island and our economy from expanding the markets. If there are security concerns, they can be addressed. Remember, Guam is insular, we are separate, we are an island, the borders are controlled in and out of it. Any threat, perhaps any tourists that may overstay is extremely limited as there is no possible way they could transit through Honolulu and then onto the U.S. mainland. So, it is a secure border, and these are the considerations that we must take into account.

Ms. BORDALLO. Thank you, thank you very much, Governor. Governor Fitial, has the CNMI ever encountered problems with overstays of Chinese or Russian visitors?

Governor FITIAL. Frankly, we did experience problems of overstay, but they were very, very temporary. We managed to find them and deport them back.

Ms. BORDALLO. Were these mainly Chinese or the Russians?

Governor FITIAL. Mainly Chinese.

Ms. BORDALLO. All right, thank you, Governor. And I have a question here for Governor Fitial. How do you believe the implementation of Public Law 110-229 is going so far?

Governor FITIAL. Well, it is not helping our economy at all. It is creating uncertainties that drive away potential investors, and it is really not working well.

Ms. BORDALLO. Thank you, Governor, and Vice Speaker Cruz, has the Legislature passed a resolution or made a common stand on the regional visa waiver?

Mr. CRUZ. Madam Chair, yes. In Resolution number 15 we included the Guam-CNMI Visa Waiver Program as one of them. I did introduce separate resolution but because it didn't have a public hearing and we thought this hearing was going to be earlier in the year we just immediately amended Resolution 15. But the Guam Legislature is in full support of the inclusion of The People's Republic and Russia in the Guam-CNMI Visa Waiver Program. And that is in Resolution 15. I have a copy of it if the Committee has not received it.

Ms. BORDALLO. If you could give it to the Committee, we will have it on record here. Thank you, Vice Speaker.

[NOTE: The resolution has been retained in the Committee's official files.]

Ms. BORDALLO. And now I would like to recognize our Ranking Member, the gentleman from South Carolina, Mr. Brown.

Mr. BROWN. Thank you, Madam Chair.

Is there a reciprocating agreement with Russia and China if somebody from Guam, if they went to Russia would they have to have a visa or they went to China would they have to have a visa?

Governor CAMACHO. If any resident of Guam, and we are all U.S. citizens, were to have a desire to travel to Russia or China, there is a requirement for a visa.

Mr. BROWN. If, in fact, you required China and Russia to have a visa, would that curtail the number of visitors coming?

Governor CAMACHO. I am sorry, would you repeat that question?

Mr. BROWN. If Russia and China were required, I guess under this statute they would be required to have a visa to come, right? And if they were required, what percent do you think would not come?

Governor CAMACHO. Well, we believe that that would be the attractiveness of coming to both Guam and the Northern Marianas is the ease of travel. There are many other countries right now that the ability for Chinese tourists or Russian tourists to visit, the requirements are relaxed. The advantage that we would have in the form of visa waiver for these tourists into our respective territories is part of the attraction. To require them to go through the current visa application process is restrictive. Right now those that are allowed into Guam for example must be affiliated with an educational institution or some other, but to come as a tourist currently is not allowed.

So, there is an extreme restriction. The visa waiver, or at least a form of that, for Chinese into Guam would be extremely helpful. As far as percentages, I don't know what it would be, but certainly this is the advantage, we have had the experience of a Visa Waiver Program in Guam and the Northern Marianas for many years now. And for the many countries that have that, it has been extremely helpful.

As mentioned, we have close to 1.2 million tourists coming into Guam. A majority of them are again 80 percent Japanese. The next largest group is Korea, and the third being Taiwan. These three countries alone represent 95 percent of our visitors, and part of the attraction is a 15-day visa waiver. So, experience shows that if there is an ease or at least a relaxation on the requirements to visit our territory, that is a major part of the attraction in addition to all that we have to offer.

Mr. BROWN. What percent would you think came from China and what percent came from Russia?

Governor CAMACHO. Into Guam, currently none.

Mr. BROWN. How about CNMI?

Governor FITIAL. Well, let me just add to what Governor Camacho has so far said. You know, to require Chinese tourists to come to the CNMI with a U.S. visa is a burden. Right now we have a visitor's entry permit, it is a visa program.

Mr. BROWN. But my question was, what percent of the tourists, I know they said Guam had 1.2 million, how many tourists do you have a year?

Governor FITIAL. Less then 400,000 a year.

Mr. BROWN. And what is your major, is Japan?

Governor FITIAL. Japan is still the major source.

Mr. BROWN. But you have seen some decline in that traffic?

Governor FITIAL. Right, Japan is declining.

Mr. BROWN. Why do you think that?

Governor FITIAL. China is stable.

Mr. BROWN. No but why do you think Japan's market is declining?

Governor FITIAL. Many factors. You know, cost, and also the Japanese economic prices.

Mr. BROWN. So, what percent then is your tourists from China and what percent is from Russia?

Governor FITIAL. Japan is more than 50 percent, Russia I would say about 25 percent.

Mr. BROWN. Really?

Governor FITIAL. I am sorry, China about 25 percent, and Russia is less.

Mr. BROWN. And back to that same question, do you think you would have a decline in the number of visitors if they required to have a visa?

Governor FITIAL. It would be a burden to require them to have a U.S. visa to visit the CNMI.

Mr. BROWN. OK, the Governor of Guam. Thank you, sir.

Governor CAMACHO. Sir, in answer to your previous question, the number of tourists from China or Russia into Guam despite any marketing efforts by our Visitors Bureau is less than one half of one percent.

Mr. BROWN. So, the visa program wouldn't concern you much then?

Governor CAMACHO. Oh, it would be a tremendous boost. Your question about why is there a decline in Japanese outbound, part of it is an aging population, and they see a steady decline of those outbound economic factors and the Governor had mentioned earlier. And one most recent example is with the swine flu threat we anticipate a 23 percent drop as compared to last year for the month of May and June. And so they are very sensitive to any events that may occur in the region or globally.

Mr. BROWN. Well, you know, I don't know whether you are familiar with my Congressional District or not, but I represent the coast of South Carolina.

Governor CAMACHO. Yes.

Mr. BROWN. Charleston and Myrtle Beach, and all of those are tourist attractions. In fact Myrtle Beach along attracts some 14 million visitors a year, and I guess Charleston about 4 million, so we are certainly tuned in to creating some excitement about coming to our region, and I certainly appreciate your effort too and I appreciate you all coming today and sharing this information.

But one last question, Madam Chair, if I be allowed. you mentioned the need for another delay in implementation date, how long would you recommend?

Governor FITIAL. Well, my oral testimony clearly indicated that I am asking for a full year extension of the implementation.

Mr. BROWN. OK, a full year after the scheduled deadline?

Governor FITIAL. After November 28.

Mr. BROWN. OK. All right, thank you so very much.

Ms. BORDALLO. Thank you very much to our Ranking Member. Also joining us is another Member of our Subcommittee, a very ac-

tive Member and a veteran legislator, The Honorable Neil Abercrombie from the State of Hawaii.

Right now, I would like to recognize The Honorable Eni Faleomavaega from American Samoa.

Mr. FALEOMAVAEGA. Thank you, Madam Chair. I would like to commend you and my good friend and colleague from the CNMI, Mr. Sablan, for putting this hearing together. And also, always a welcome to have our distinguished Ranking Member of our Subcommittee joining us for this hearing.

Madam Chair, I would like to ask unanimous consent to the statement presented by the young lady from the Virgin Islands be made part of the record.

Ms. BORDALLO. No objections. So ordered.

[The prepared statement of Mrs. Christensen follows:]

Statement of The Honorable Donna M. Christensen, a Delegate in Congress from the Virgin Islands

Good morning. Thank you, Chairwoman Bordallo and Ranking Member Brown for your leadership in ensuring that the issues concerning the people of the Commonwealth of the Northern Mariana Islands and Guam remain on our legislative agenda.

I look forward to the testimony of our invited witnesses so that we may hear their perspectives on the progress and status of the implementation of Title VII of Public Law 110-229.

While there are certainly some changes that need to be made to the statute, it is my hope that this legislation serves as the impetus needed to permanently rectify immigration in this region.

I am aware of the contention towards Public Law 110-229, but it is my hope that those in opposition come to see it as an attempt by Congress to address a variety of labor and human rights issues. To do this however, we must be sure that CNMI government officials are doing their part to uphold mandated regulations and communicate the expressed interest of Congress to its people.

Public Law 110-229 provides for federal immigration law to "flexibly" apply to the CNMI under the Immigration and Nationality Act. It realizes the necessity of guest workers to CNMI's economy and does not encourage exclusion of this integral part of the labor force.

I also understand that many are concerned that federalization will result in long time permanent residents losing their status as well as the separation of families. I am sure that I speak in unison with many of my colleagues here when I say that we will do whatever it takes to keep families together and ensure that long-established guest workers are protected.

I look forward to working with my colleagues to address many of the issues that will be raised today.

Thank you.

Mr. FALEOMAVAEGA. For the sake of time, I also have a statement that I would like to submit to be made part of the record.

Ms. BORDALLO. No objection. So ordered.

[The prepared statement of Mr. Faleomavaega follows:]

Statement of The Honorable Eni F.H. Faleomavaega, a Delegate in Congress from American Samoa

Madam Chairwoman:

First and foremost, I want to commend you for your leadership in holding this very important oversight hearing this morning on the federalization of immigration laws in the Commonwealth of the Northern Mariana Islands (CNMI) as provided by Public Law 110-229 that was passed by the Congress in April 2008. I want to recognize the efforts of my good friend, Mr. "Kilili" Sablan, for his hard work on behalf of the people of CNMI. I also want to take this opportunity to thank our distinguished panel of witnesses who are here to testify on this very critical matter. I

want to express my personal welcome to Governor Camacho of Guam and Governor Fitial of CNMI and the rest of their delegation for being here this morning.

Today, we will be discussing the current status of the ongoing implementation of the federalization of the immigration laws of CNMI, thus impacting the existing status of many residents of CNMI and, importantly, the economies of both CNMI and Guam. Since the enactment of this law, the Department of Homeland Security has yet to address many of the specific issues that are vital in coordinating with the local governments whose efforts are at a standstill because no information on policy changes or the necessary funding has been provided.

Although the intent of the Congress was to strengthen border control and to provide for a judicious immigration system we have, in fact, impacted the economies and the people of these territories that have been heavily reliant on tourism given the relocation of specialized industries to other parts of Asia and the looming financial crisis that haunts our global economies.

I understand that the Department of Homeland Security has excluded Russia and the People's Republic of China from the Guam-CNMI Visa Waiver Program which foremost part has been an avenue of tourism for both Territories. According to the Marianas Visitors Authority, an estimated tourism from these two countries alone provides for direct spending at almost $67 million and an economic indirect impact at almost $186 million. As a territory, this is very troubling given that it is remote, has limited resources, and lacks the infrastructure for further economic development. I find it necessary that we must address immediately the Department of Homeland Security's concerns for reasons of excluding Russia and China who have been part of the original visa waiver program in previous years.

Also, it is important that we must consider with compassion the many residents of CNMI who prior to this law have made it their permanent home for many years and especially those who have established families that may have immediate relatives who are U.S. citizens. We should never create an immigration law or policy that will displace and separate families as we have done so in the past. We have U.S. Citizens in CNMI that may now are required to petition for their immediate relatives because of this law. This will create a new financial burden and given the process times and waitlist for specific immigrant visas to be available, families have to wait many years before they are reunited. I hope we are able to clarify these many concerns today.

I look forward to your testimonies and I'm very hopeful that we are able to find solutions and address many of the questions that have yet been unanswered since the enactment of this law. This is a great opportunity for our subcommittee to hear from the delegations from CNMI and Guam as well as representatives of the federal government in order to better inform the Congress of the drastic impact this may have on the economies and the people of our Territories.

Thank you.

Mr. FALEOMAVAEGA. And deeply it is a pleasure and an honor to have our distinguished visitors and leaders coming from the islands, our good friends Governor Camacho from Guam and Governor Fitial from CNMI. And coming down the hallway I had a hard time noticing if this was not the B. J. Cruz that I had known for years, and I must be getting old, Madam Chair, to realize that my dear friend I haven't seen in a while, and certainly would like to offer him my personal welcome.

Good to see you. I guess the decided to leave the judiciary and become part of the politics there in Guam, but I do want to personally welcome Judge Cruz here in our hearing. Madam Chair, thank you for this hearing.

And I would like to ask my good friend Governor Fitial if this was not one of the serious issues and points that he had indicated when we conducted a series of hearings about whether or not to implement the proposed bill which is now Public Law 110-229, how this would impact negatively some of the economic aspects of what CNMI was hoping to achieve. And I would like to ask Governor Fitial if I am not right on this thing that we are discussing this morning.

Governor FITIAL. Yes, Congressman, these were the very issues that we discussed during the Congressional hearings before the Natural Resources Committee, both House and Senate. So, I was hoping that the Committees would give GAO the time to come up with the studies that would, percent, the facts about the impact of the proposed law at that time, which now becomes Public Law 110-229. Right now we have the economist's report from Malcolm & McPhee. Also the two GAO reports and a report from the First Hawaiian Bank. And now the Moody's investor service report all indicated that the economy of the CNMI would be adversely impacted by implementation of this new Federal immigration law.

Mr. FALEOMAVAEGA. And with this understanding, and of course we have now the expressed will of the Congress that the U.S. immigration do apply be made applicable to the CNMI under the provisions of P.L. 110-229. And there was also a legislative understanding by the Congress that we had discussed the very issue of a visa waiver program, not just for CNMI but also for Guam. But one of the aspects of the law is that it gave discretionary authority to the Department of Homeland Security to consider the possibility that a visa waiver be granted to CNMI, and now six or seven months later you are not given that opportunity and this has now impacted negatively your tourism industry. Am I correct on this, both Governors?

Governor FITIAL. Well, that is very true, Congressman.

Mr. FALEOMAVAEGA. Governor Camacho, was that your understanding as well?

Governor CAMACHO. Yes, it certainly is. We had high hopes that should we be granted the authority to go ahead and seek Chinese visitors into Guam it would make up for any slack that we have begun to experience out of both Japan and Korea. So, in order for us to sustain a viable economy, especially in light of the fact that there is going to be a military buildup, our capacity to finance growth in the future will depend on Section 30 monies that are coming through, if we are not able to grow our economic base that is based on tourism.

So, we seek balance, and we certainly seek to remain competitive. As neighbors and brothers in the Mariana Islands, what happens in Saipan does directly and also indirectly affect Guam, and what happens on Guam does affect them. We are all in this together, and I believe that is the promise that was presented in this Public Law as it was put forward. I remember comments coming out that said, what Saipan and the Northern Marianas has Guam will have, and what Guam has in visa waiver they will have, it will be mutually beneficial, only to see that the discretion granted in the proposed rules that are let out are in fact contrary to that.

And it is quite frustrating for leaders such as us that as we continue to try to work this through the system and working every possible angle and everyone involved, all the stakeholders and decision makers at the administrative level, we end up like this. However well intentioned the law may have been, from my point of view to see what is happening in the Northern Marianas with really substantial economic deterioration and a crumbling situation for their residents, I think it is very evident, as the Governor said, the

people must be allowed to live a life of prosperity and not one of poverty.

And we look to Congress and we look to the Federal Government to allow us and give us the opportunity to pursue and go down that path of creating a situation where our economies do thrive. As you know, island economies are very insular, where we are so much confined by resource, by distance, and the size of our populations and land mass. It is extremely fragile, and any imposition by Federal law upon our situations that change that course of action, the impacts are substantial, and it has become quite evidence especially in the Northern Marianas.

The benefit that Guam has had is that we have a stable presence of military and DOD and Federal presence on Guam and personnel. That has always been a stabilizing economic factor. And we have had to ride the ups and downs of tourism and transportation, whether it be SARS, whether it be a war, whether it be the avian flu, whether it be the swine flu, tourists in that market is very, very sensitive to all that happens.

Mr. FALEOMAVAEGA. I am sorry, Governor, my time is up. But I do want to note for the record that this was the very issue that the Chairlady had advocated and made sure that both the Federal Government as well as us in Congress would understand about the Visa Waiver Program, and unfortunately the very agency that we had depended upon for that decision did not come through with their efforts. With that, Madam Chair, I will wait for the second round. Thank you.

Ms. BORDALLO. I thank the gentleman from American Samoa.

I would like now to recognize the gentleman from the CNMI, Mr. Sablan.

Mr. SABLAN. Thank you, Madam Chair.

Many of my questions are actually going to be referring to the other panels, but, Governor Camacho, thank you for consenting to the 180-day delay, I know that Guam had to make some adjustments for that. We appreciate it I am sure. Governor Fitial has already expressed his appreciation.

I do have some questions, Governor Fitial, here we are 8,000 miles away from home, trying to make meaning out of this situation where if we don't get answers it would make a very complicated issue more complex. And I join you, Governor, in your request for a visa waiver. I also think that the Agency's task of extending this would be required to show the reasons why they are not going to include Russia and China in the Visa Waiver Program.

I have been reading some of the testimonies by the different panels, and I am a little concerned that also there is this mention that with requirement for workers in the Northern Mariana Islands sort of has some more permanence to it. And you mentioned, Governor, in your statement that human costs are being overlooked by Homeland Security. What exactly are the human costs here and how would you like to see them addressed?

Governor FITIAL. Well, Congressman, I have a feeling that in implementing Public Law 110-229, the Department of Homeland Security, in my view and opinion, seems to want to start everything from scratch, and they want to do it by themselves and they don't want us to get involved. For example, we have a Division of Immi-

gration, OK? Because the anticipated implementation date of this Public Law 110-229 was set originally for June 1, 2009, that particular Division was not budgeted after June 1st.

And like I said in my oral statement, up to now none of those employees in the Immigration Division are considered for employment by the Department of Homeland Security. I really hope the this Subcommittee will look into the plans of the Department of Homeland Security—whether they plan to employ some of our Immigration employees. That is the human cost that I am referring to.

Mr. SABLAN. OK, thank you. I agree with you, Governor, actually. You mentioned that they are doing this all by themselves. The law requires that several Federal agencies need to start, you need to be talking together, set procedures and parameters on how to address this. And I am also concerned, I am not sure, I think they had one meeting and that was it. And I agree with you, sir, that this thing, if done in the way it is being proposed right now and the uncertainties, it would be devastating to the point where it would cripple a somewhat already crippled economy. And it is very sad, I am very sad too.

But at the same time, Governor, the Commonwealth government also needs to cooperate with the Federal Government, and there are issues here, foreign investors, we have issues on visa caps now, the Visa Waiver Program. But, Governor, I sent you a letter, I have been trying to get this because I need to address some of these issues, I sent you a letter on April 21st asking you for specific records and numbers on the several people living on the Northern Mariana Islands, foreign workers, IRs, immediate relatives of freely associated states.

And I would really appreciate getting a response from you, sir, at some point soon, so that I could continue to look at this. Eventually, in theory, I would have to put together also a report on this, and they are supposed to consult with you before making its recommendation. So, not only am I asking for some numbers from you, sir, I am going to also ask you if DOI, since they are supposed to consult with you before making its recommendations, what would you recommend in terms of say freely associated states?

IRs are, I think, decreasing in number, but still a number of CNMI permanent residents, in terms of investors, because we have different kind of investors, there are short-term and long-term permanent investors, immediate relatives, Governor. And what about workers who have been in the Northern Mariana Islands for say 10 years, who are part of the workforce and we need them for a long time, another 10 years or more. Can you please share your thoughts with us on this? Thank you.

Governor FITIAL. Congressman, you and I served together in the third Legislature when I authored the Nonresident Workers Act, and the intent of that was to bring in foreign workers to help us develop an economy. So, I still maintain that that Act is working. The only problem now is that another Act by U.S. Congress is preventing that Act from continuing to work effectively for us and for our local economy. With respect to long-term nonresident workers, I think there is a place for them, and I think we should allow the

present Administration of President Obama come together a national policy for immigrants.

Ms. BORDALLO. We will have another round, and I would like to this time recognize the gentleman from Hawaii, The Honorable Neil Abercrombie.

Mr. ABERCROMBIE. Madam Chairman, I will yield my time to Delegate Sablan.

Mr. SABLAN. Thank you, Congressman Abercrombie. Thank you.

Governor, thanks to my colleague from Hawaii, let me get this straight. We need the workers in the Northern Marianas. We want these people to remain there—but just as workers?

Governor FITIAL. If they come in to work, then they should be allowed to work.

Mr. SABLAN. Yes, but if they are there 20 years, we need them for another 20, we keep them there just as workers, nothing else, I mean no full status?

Governor FITIAL. Well, they are supposed to be there only as temporary guest workers. But if they happen to be immediate relatives then they should be given due consideration.

Mr. SABLAN. Right, go through the process. I agree with you so they should go through the present list.

Governor FITIAL. I don't think we should give citizenship to anybody who comes in and works for the long term.

Mr. SABLAN. OK, Governor, how many workers do we need today? In the Northern Marianas, how many do we need?

Governor FITIAL. Well, we have 16,000 foreign workers.

Mr. SABLAN. And we are capped at 16,000, right?

Governor FITIAL. That is right, that is the law.

Mr. SABLAN. Now let me get a little bit into the visa waiver, Governor. Regarding visa waivers, do you agree with me that the Department of Homeland Security has the discretion to actually include China and Russia?

Governor FITIAL. Yes.

Mr. SABLAN. And actually do you agree with me that the expressed intent of the present law to include China and Russia?

Governor FITIAL. Well, the expressed intent of the law is to allow flexibility to the Islands to develop the economy by allowing existing businesses to continue to exist and also allow the foreign workers to continue to work.

Mr. SABLAN. But on visa waiver, China and Russia, unless they don't overreach the authority, it should be continued in the Northern Marianas?

Governor FITIAL. Well, there are criteria in the law for Russia and China and any other country that would like to visit the CNMI and Guam.

Mr. SABLAN. OK, and one final question, Governor. You are asking for a full year delay of 110-229, the transition period another delay for another 12 months.

Governor FITIAL. After November 28.

Mr. SABLAN. After November 28. What do you think we can expect from Homeland Security to happen in that one year that they won't be able to do in the next six months?

Governor FITIAL. Well, I seriously doubt that they can be ready by November 28 to put all the things that they plan to instal in

the CNMI as far as securing the borders, you know, the six ports that they plan to staff, equip, and run. So, that is due in 2010, but I doubt whether they have the funds. As you pointed out, they only have $5 million and they need $97 million.

Mr. SABLAN. If there is no objection, Madam Chair, I would like to insert my April 21st letter to Governor Fitial.

Ms. BORDALLO. No objection. So ordered.

[The information follows:]

********** COMMITTEE INSERT **********

Mr. SABLAN. Thank you. I yield back my time.

Ms. BORDALLO. I thank the gentleman from the Northern Marianas. And I do thank the witnesses of our first panel, Governor Camacho, Governor Fitial, and Vice Speaker Cruz for traveling all the way to Washington, D.C., to testify. And I want to assure you that the Subcommittee will continue to work with all of you. Thank you very much.

And I am calling now on the second panel. Our witnesses on the second panel will include Dr. David Gootnick, the Director of the Office of International Affairs and Trade, Government Accountability Office; Mr. Nik Pula, Acting Deputy Assistant Secretary in the Office of Insular Affairs, Department of the Interior; and The Honorable Richard C. Barth, Acting Principal Deputy Assistant Secretary for Policy, Department of Homeland Security.

And I would like now to welcome Dr. Gootnick and thank him for appearing before the Subcommittee. As I mentioned for the previous panel, I would advise that the red timing light on the table will indicate when your time has concluded, so be assured that your full written statement will be submitted for the hearing record. And I would remind the second panel to please try to watch the red light because we do have a third panel to hear from.

I will begin with you, Dr. Gootnick. Please proceed.

STATEMENT OF DR. DAVID GOOTNICK, DIRECTOR, INTERNATIONAL AFFAIRS AND TRADE, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. GOOTNICK. Thank you, Madam Chair.

Madam Chair and Members of the Subcommittee, thank you for inviting GAO to participate in this hearing. My remarks today will summarize findings from our earlier work on the legislation's potential impact on the CNMI labor market, tourism, and foreign investment. Our work and my statement highlighted here highlight how key Federal agency decisions in each of these areas will be major factors in the legislation's impact on the CNMI economy.

First on the labor market. The impact of the legislation on the CNMI labor market will depend on decisions that Homeland Security and the Department of Labor make in implementing the CNMI-only worker permit program during the transition period. During the transition, DHS will decide the number of permits, their distribution, and the terms, conditions, and fees associated with the permits. Labor will decide whether and when to extend the transition worker permit program past 2014.

Importantly, the interaction of these two decisions, the DHS reductions in the number of permits and the timing of any Labor Department extensions, will be key to the availability of foreign work-

ers. Federal agencies have visited the CNMI, met with officials, and DHS has identified worker permit rulemaking in its regulatory plan. However, there is no formal inter-agency process that coordinates these or other key decisions. Also in this context we have reported that Federal data on wages, occupations, and employment status of CNMI workers is lacking.

Next on tourism. The impact on tourism as has been stated will depend largely on DHS determinations of which countries will be included in the joint waiver program. Currently, as has also been stated, Japan and South Korea with at least 80 percent of the Commonwealth's tourists, are waived in the DHS Interim Final Rule for the program. On the other hand, the rule excludes Russia and China, citing political, security, and law enforcement concerns, including high visitor visa refusal rates.

State Department in recent data showed that China had about a 25 percent refusal rate and Russia about a 15 percent refusal rate after individuals had had interviews and paid fees. And this compares to about a 4 percent refusal rate for, for example, South Korea. Although Russia and China account for a little over 10 percent of CNMI tourists, they are nonetheless an important market, and DHS has acknowledged this in its rule.

Over the past decade, visitors from China have been the most rapidly growing share of the CNMI market, and Russian tourists stay longer and spend more than others. With China and Russia excluded from the program, tourists to CNMI from these countries would face increased fees, more time consuming procedures and uncertainty. The projected impact on CNMI tourism varies considerably. The DHS commissioned report projects reductions from Russia and China respectively in the range of 4 and 13 percent, whereas the Marianas Visitors Authority are close to 95 percent.

In other words, DHS assumes that potential visitors are very insensitive to cost, time, and uncertainty, whereas the Marianas Visitors Authority projects that visitors are very sensitive to time, cost, and uncertainty. Not surprising that the projections differ, surprising that they differ quite to the extent that they do.

Third on foreign investment. The legislation's impact on foreign investment will depend on DHS decisions on which current investors in the CNMI will receive a grandfathered status as U.S. nonimmigrant investors and the duration of this grandfathered status. Last November in its regulatory plan, DHS indicated that it intends to grandfather three categories of investors, perpetual, long-term business, and retiree investors, into this program. In doing so, DHS stated that it believes this action is in keeping with the goal of limiting adverse economic impact.

However, last year GAO reported that data on overall foreign investment and foreign investment associated with each type of investor permit is also lacking. In closing, Madam Chair, DHS has begun to establish its program for the transition period, it is setting up its physical presence and has hired some staff. We maintain our recommendation that Homeland Security working with other Federal agencies establish an interagency process to jointly implement this legislation. And also because data to support key decisions for this program is lacking, we have recommended that Homeland Security and Labor jointly develop strategies for obtain-

ing critical data on the labor market and foreign investment in the CNMI.

Madam Chair, this concludes my remarks. I am happy to answer your questions.

[The prepared statement of Mr. Gootnick follows:]

Statement of David Gootnick, Director,
International Affairs and Trade, Government Accountability Office

Madame Chairwoman and Members of the Subcommittee:

Thank you for the opportunity to discuss our work on factors that will affect the potential economic impact of implementing the legislation applying U.S. immigration law to the Commonwealth of the Northern Mariana Islands (CNMI).[1]

Although subject to most U.S. laws, the CNMI has administered its own immigration system since 1978, under the terms of its 1976 Covenant with the United States. The CNMI has applied this flexibility to admit substantial numbers of foreign workers[2] through a permit program for non-U.S. citizens (noncitizens) entering the CNMI. In 2005, these workers represented a majority of the CNMI labor force and outnumbered U.S. citizens in most industries, including garment manufacturing and tourism, which have been central to the CNMI's economy. The CNMI also has admitted tourists under its own entry permit and entry permit waiver programs and has provided various types of admission to foreign investors. As we have reported previously, the CNMI faces serious economic challenges, including the decline of garment manufacturing and fluctuations in tourism.[3]

The recent immigration legislation amends the U.S.-CNMI Covenant to establish federal control of CNMI immigration and includes several provisions affecting foreign workers and investors in the CNMI during a transition period that ends in 2014. The Secretary of Homeland Security decided to delay the start of the transition period for 180 days, from June 1, 2009, to November 28, 2009, as allowed under the law in consultation with the Secretaries of the Interior, Labor, and State, the Attorney General, and the CNMI Governor.[4] Unless otherwise noted, "transition period" refers to the period beginning November 28, 2009, and ending on December 31, 2014. During the transition period, the Secretary of Homeland Security, in consultation with the Secretaries of the Interior, Labor, and State, as well as the Attorney General, are responsible for establishing, administering, and enforcing a transition program to regulate immigration in the CNMI.[5] This program will provide foreign workers temporary permits to work in the CNMI (CNMI-only work permits); the number of these permits must be reduced to zero by the end of the transition period or the end of any extensions of the CNMI-only work permit program. The legislation also establishes a joint visa waiver program by adding the CNMI to an existing visa waiver program for Guam visitors. The legislation's stated intent is to ensure effective border control procedures and protect national and homeland security, while minimizing the potential adverse economic and fiscal effects of phasing out the CNMI's own foreign worker permit program and while maximizing the CNMI's potential for economic and business growth. (See attachment I for a sum-

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[1] Consolidated Natural Resources Act of 2008, Pub. L. No. 110-229, Title VII, 122 Stat. 754, 853 (May 8, 2008).

[2] In this testimony, "foreign workers" refers to workers in the CNMI who are not U.S. citizens or U.S. lawful permanent residents. Other sources sometimes call these workers "nonresident workers," "guest workers," "noncitizen workers," "alien workers," or "nonimmigrant workers." We do not use the term to refer to workers from the Freely Associated States—the Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau—who are permitted to work in the United States, including the CNMI, under the Compacts of Free Association (48 U.S.C. § 1901 note, 1921 note, and 1931 note).

[3] For a list of related products, see GAO, Commonwealth of the Northern Mariana Islands: Managing Potential Economic Impact of Applying U.S. Immigration Law Requires Coordinated Federal Decisions and Additional Data, GAO-08-791 (Washington, D.C.: Aug. 4, 2008).

[4] The Secretary of Homeland Security announced the delay of the transition period on March 31, 2009.

[5] The legislation requires the Secretary of Homeland Security, in consultation with the Secretaries of the Interior, Labor, and State, and the Attorney General, to negotiate and implement interagency agreements to identify and assign their respective duties for timely implementation of the transition program. The agreements must address procedures to ensure that CNMI employers have access to adequate labor and that tourists, students, retirees, and other visitors have access to the CNMI without unnecessary obstacles. Some federal decisions require consultation with the CNMI Governor. In addition, the legislation requires the CNMI government to provide the Secretary of Homeland Security all immigration records or other information that the Secretary deems necessary to assist its implementation.

mary of the legislation's provisions with regard to foreign workers, tourists, and investors in the CNMI.)

My remarks today will summarize findings from our report, issued in August 2008, examining factors that will affect the potential impact of the legislation's implementation on the CNMI's labor market, particularly foreign workers; on its tourism sector; and on foreign investment in the CNMI.[6] Our report also included recommendations to the heads of the agencies responsible for implementing the legislation. We conducted the performance audit for our August 2008 report from June 2007 to August 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.[7]

Summary

The potential impact of the legislation's implementation on the CNMI's labor market, and therefore on its economy, will largely depend on decisions that the U.S. Departments of Homeland Security (DHS) and Labor (DOL) make in implementing the CNMI-only work permit program. DHS will decide on the number of permits to allocate each year, the distribution of the permits, their terms and conditions, and the permit fees; DOL will decide whether and when to extend the CNMI-only permit program past 2014. The interaction of the rate and timing with which DHS reduces the available number of permits and the timing of any DOL extensions of the program will significantly impact the availability of foreign workers; however, we reported in August 2008 that federal agencies had not yet identified an interagency process to coordinate these decisions. Although modest reductions in CNMI-only permits for foreign workers would cause minimal impact, any substantial and rapid decline in the availability of CNMI-only work permits would have a negative effect on the economy, given foreign workers' prominence in key CNMI industries. However, because key federal sources of labor market data do not cover the CNMI, the agencies may have difficulty obtaining the data needed to make decisions. At the same time, the decline in the garment industry, challenges to the tourism industry, and the scheduled increases in the minimum wage may reduce demand for foreign workers, lessening any potential adverse impact of the legislation on the CNMI's economy.

Any impact of the legislation on the CNMI's tourism sector will depend largely on DHS decisions about the countries to be included in the joint CNMI-Guam visa waiver program. The legislation's impact will be minimal for tourists from countries included in the joint visa waiver program. However, increases in costs and time associated with obtaining visitor visas, likely for countries not included in the joint program, could influence tourists from those countries to choose destinations other than the CNMI. At present, most CNMI tourists are from Japan and South Korea, both of which will probably be included in the joint visa waiver program because they currently are included in the Guam visa waiver program. China and Russia are currently not included in the Guam visa waiver program and are excluded under a DHS interim final rule for the joint visa waiver program; they are therefore most likely to be affected by the legislation. They account, respectively, for about 10 percent and less than 1 percent of CNMI tourist arrivals but are nevertheless considered important markets. If China and Russia are not included in the joint visa waiver program, tourists from these countries will face increased visa fees, more time-consuming procedures, and uncertainties related to possible visa refusal.

The legislation's potential impact on CNMI foreign investment will depend, in part, on key DHS decisions regarding foreign investor entry permits; however, lack of data makes it difficult to assess the likely impact of these decisions and may hamper federal decisions. In implementing the legislation, DHS will decide whether to grant holders of several types of CNMI foreign investor permits "grandfathered" status as U.S. nonimmigrant treaty investors during the transition period. DHS also will decide how long the grandfathered status will be valid. Although available CNMI data suggest that DHS's decision regarding the application of grandfathered

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[6] GAO, Commonwealth of the Northern Mariana Islands: Managing Potential Economic Impact of Applying U.S. Immigration Law Requires Coordinated Federal Decisions and Additional Data, GAO-08-791 (Washington, D.C.: Aug. 4, 2008). This report was based on our March 2008 review of the then pending legislation, which was signed into law on May 8, 2008. See GAO, Commonwealth of the Northern Mariana Islands: Pending Legislation Would Apply U.S. Immigration Law to the CNMI with a Transition Period, GAO-08-466 (Washington, D.C.: Mar. 28, 2008).

[7] See GAO-08-791, appendix I, for a full description of our report's scope and methodology.

status will partly determine the impact of the legislation, critical data—showing, for instance, current overall foreign investment and amounts associated with each type of permit—are not available. This lack of critical data makes it difficult to estimate the legislation's likely impact and limits DHS's ability to make informed decisions regarding the grandfathered status.

In our August 2008 report, we recommended that the Secretary of Homeland Security lead other relevant federal agencies, including the Departments of the Interior, Labor, and State, in identifying the interagency process that they will use to coordinate their decisions—and consult with the CNMI government as required [8]—in jointly implementing the legislation. We also recommended that the Secretaries of Homeland Security and Labor jointly develop strategies for obtaining critical data on the CNMI labor market and on CNMI foreign investment.

Prior to our August 2008 issuance, we provided a draft of our report to officials in DHS, DOI, DOL, and in the CNMI government for review and comment and received written comments on the draft report from DHS and DOI and from the CNMI government. [9] At that time, DHS agreed with our findings and recommendations, and DOI generally agreed with our findings. The CNMI government raised concerns or issues about some aspects of our report methodology and analysis and expressed concern that the report's discussion of possible consequences to the CNMI economy could itself harm the CNMI. We believe our methodology is a sound approach for analyzing the potential impact of federal implementation decisions on the CNMI economy. Moreover, we believe that reporting the key decisions facing federal agencies and illustrating the range of those decisions' potential impacts on the CNMI economy is essential to effective implementation of the legislation.

Legislation's Potential Impact on CNMI Labor Market

Decisions that DHS and DOL must make in implementing the CNMI-only work permit program will largely determine the legislation's potential impact on the availability of foreign workers and, as a result, on the CNMI labor market and economy. Under the legislation, DHS is to decide on the number of CNMI-only work permits to allocate each year, the distribution of the permits, the terms and conditions of the permit program, and the fee for the permit. [10] DOL will decide whether to extend the CNMI-only work permit program, based on the unemployment rates of foreign workers and U.S. citizens, as well as other CNMI-specific data. [11] (See attachment II for a summary of the agencies' key implementation decisions.)

- **Number of permits.** The number of CNMI-only work permits that will be available each year of the initial transition period will depend on the strategy that DHS adopts for reducing CNMI-only permits to zero. For example, if DHS uses a linear strategy—reducing the permits by the same number each year—the number of permits will decline by about half by the midpoint of the initial transition period. In contrast, DHS may apply a strategy that reduces the number of permits modestly or even minimally by the midpoint of the initial transition period. (See attachment III for illustrations of alternative DHS decisions regarding the annual reduction in CNMI-only work permits.)
- **Distribution of permits.** The method that DHS chooses to distribute the CNMI-only work permits will also affect employers' access to workers, particu-

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[8] Decisions requiring consultation with the CNMI Governor include, among others, whether to delay the start date of the transition period by up to 180 days and which countries to include in the CNMI-Guam visa waiver program.

[9] See GAO-08-791 for a fuller description of the agencies' and the CNMI's written comments and our response; reproductions of DHS's, DOI's, and the CNMI government's comments appear in appendixes X, XI, and XII, respectively. DHS, DOI, and the CNMI government also provided technical comments regarding our August 2008 report, which we incorporated in the report as appropriate.

[10] The legislation instructs DHS to reduce annual allocation of CNMI-only permits to zero by the end of the transition period or any extensions of the CNMI-only permit program; attempt to promote the maximum use of U.S. citizens and, if needed, lawful permanent residents and citizens of the Freely Associated States, and attempt to prevent adverse effects on the wages and working conditions of those workers; and set fees for the permits so as to recover the full cost of providing services, including administrative costs, by charging employers an annual supplemental fee of $150 per permit to fund CNMI vocational education.

[11] According to the legislation, DOL may extend the program indefinitely for up to 5 years at a time. DOL may issue the extension as early as desired within the transition period and up to 180 days before the end of the transition period or any extensions of the CNMI-only permit program. The legislation instructs DOL to base its decision on the labor needs of legitimate businesses in the CNMI. To determine these needs, DOL may consider (1) workforce studies on the need for foreign workers, (2) the unemployment rate of U.S. citizen workers in the CNMI, and (3) the number of unemployed foreign workers in the CNMI, as well as other information related to foreign worker trends. In addition, DOL is to consult with DHS, DOI, the Department of Defense, and the Governor of the CNMI.

larly if demand for the permits exceeds the supply. For example, DHS could decide to distribute the permits through a lottery or to distribute the permits among certain industries according to some measure of those industries' importance to the CNMI economy.

- **Terms and conditions of the permit program.** The terms and conditions that DHS sets for the CNMI-only work permit program will affect employers' access to foreign workers. For example, any requirements regarding workers' skill levels or qualifications could limit the pool of available workers.
- **Permit fee.** The fee that DHS sets for the CNMI-only work permit may affect access to foreign workers. If DHS sets a higher fee for the CNMI-only permit than the annual fee of $250 that employers currently pay for CNMI foreign worker permits, this will increase employers' costs and reduce employers' ability or incentive to hire foreign workers.
- **Extension of the permit program.** A decision by the Secretary of Labor to extend the CNMI-only work permit program past 2014 would maintain access to the permits for up to 5 years at a time. Alternately, the Secretary may decide not to extend the program, thus ending access to CNMI-only work permits after 2014.

The legislation requires DHS and DOL to coordinate their implementation of the legislation, including the CNMI-only work permit program, with one another and with other relevant agencies. However, we reported in August 2008 that although DOI convened an interagency meeting to discuss coordination of the legislation's implementation, the agencies had not yet identified the interagency process that they will use.

In addition, to minimize any potential adverse economic effects of implementing the legislation, DHS and DOL will need to consider up-to-date information about the CNMI labor market, such as data on the wages, occupations, and employment status of CNMI residents and foreign workers. However, the agencies may have difficulty in obtaining these data because the federal sources generally used to generate such data for the United States, including the Current Population Survey and the Current Employment Statistics program, do not cover the CNMI. [12]

The interaction of the rate and timing with which DHS lowers the available number of permits with the timing of any DOL extensions of the program will significantly affect the permits' availability. For example, if DHS lowers the annual allocation of CNMI-only permits by the same number each year (a linear decline) and DOL extends the program every 2 years, the number of permits will decline less rapidly than if DOL extends the program every 4.5 years. [13] Alternatively, if DHS decides not to substantially decrease the number of CNMI-only permits until the last month of the 5-year period and DOL extends the program every 2 years, the number of permits will never rapidly decline, and by 2028, will not have substantially declined. (See attachment IV for illustrations of the potential joint effects of alternative DHS and DOL decisions regarding the CNMI-only work permit program.)

The rate at which the availability of CNMI-only work permits for foreign workers declines as a result of DHS's and DOL's decisions will partly determine the legislation's impact on the CNMI labor market and, therefore, on the CNMI's economy. Because of foreign workers' prominence in the CNMI labor market, any substantial and rapid reduction in the number of CNMI-only permits for foreign workers would have a negative effect on the size of the CNMI economy. However, federal agencies may make more modest reductions in CNMI-only permits, resulting in minimal effects on the economy. To illustrate a range of possible impacts on the CNMI economy given varying rates of reduction in the number of available CNMI-only work permits, we generated simulations that estimate the impact on the CNMI's economy. Attachment V presents the results of these simulations, based on several of the scenarios shown in attachment IV. [14]

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[12] U.S. Department of Labor, Office of the Assistant Secretary for Policy, Impact of Increased Minimum Wages on the Economies of American Samoa and the Commonwealth of the Northern Mariana Islands (Washington, D.C., 2008). DOI's Office of Insular Affairs has provided technical assistance to the CNMI to help with data collection, including funding for the 2005 Household, Income, and Expenditures Survey (HIES) and past surveys of the CNMI. However, this assistance has not generated the scope of data collected by federal sources for the United States more generally.

[13] We selected the frequency of DOL extensions to be 4.5 years in order to reflect an extension just before permits would have been reduced to zero at the end of the 5-year period.

[14] Because these simulations do not allow for other changes in the CNMI over the coming years, they should not be considered as predictive of future GDP. Rather, these simulations are intended to illustrate a range of potential impacts on the CNMI's GDP that could result from some of the joint U.S. agency decisions depicted in attachment IV.

Although U.S. agencies' implementation of the legislation may reduce the availability of foreign workers, possible lower demand for these workers may lessen the economic impact of any such reduction. The decline of the garment industry and challenges to the tourism industry have contributed to a drop in the number of foreign workers in the CNMI;[15] since the elimination of textile quotas in 2005, all garment factories in the CNMI have closed, with the last factory closed as of February 2009. In addition, the tourism sector has faced challenges as visitor arrivals have declined from historic levels. Any further declines in these sectors would likely result in reduced demand for foreign workers. Moreover, ongoing scheduled increases in the CNMI's minimum wage are likely to further reduce the demand for foreign workers.[16]

The CNMI has begun efforts to prepare CNMI residents to replace foreign workers, which, if successful, could lessen any impact of the legislation's implementation on access to foreign workers. In addition, the federal legislation requires the U.S. government to provide funding for vocational education, as well as technical assistance, to the CNMI.[17] Although it is too early to assess the CNMI's efforts to replace foreign workers with CNMI residents, a number of factors may limit the effectiveness of these efforts. For instance, according to CNMI government representatives, some CNMI residents are leaving the CNMI for opportunities in the United States. Moreover, the number of nonworking residents who might accept a job is less than the total number of foreign workers.

Legislation's Potential Impact on CNMI Tourism Sector

Any impact of the legislation on the CNMI's tourism sector will depend largely on federal regulations specifying the countries to be included in the joint CNMI-Guam visa waiver program.[18] DHS, in consultation with the Department of State, DOI, and the Governors of the CNMI and Guam, will decide on the countries to be included in the joint CNMI-Guam visa waiver program.[19] We reported in August 2008 that because both Japan and South Korea were part of the Guam visa waiver program, they will likely be included in the joint CNMI-Guam program. Currently, approximately 80 percent of tourists visiting the CNMI come from Japan (55 percent) and South Korea (25 percent). We also reported that a key DHS decision would be whether to include China and Russia, which are not part of the existing Guam visa waiver program, in the joint CNMI-Guam visa waiver program. Tourists from China and Russia account for a smaller proportion of the overall CNMI tourist arrivals—approximately 10 percent and less than 1 percent of CNMI tourist arrivals, respectively. However, according to representatives of the CNMI tourism sector, China and Russia are considered important markets because of their recent and potential future growth. On January 16, 2009, DHS issued an interim final rule for the CNMI-Guam joint visa waiver program that includes Japan and South Korea and excludes Russia and China, citing political, security, and law enforcement con-

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[15] From 2000 to 2005, the number of noncitizen workers, many of whom are foreign workers, dropped from about 35,000 in 2000 to about 28,000 in 2005, and we reported in August 2008 that CNMI data showed that the number of foreign workers had continued to fall.

[16] Until 2007, the CNMI's workforce was subject to a minimum wage set by the CNMI government. At the beginning of 2007, the CNMI's minimum wage was $3.05 per hour, substantially lower than the U.S. federal minimum wage of $5.15 per hour but higher than wages for comparable positions in China, the Philippines, Vietnam, and other Asian countries. In 2007, Congress enacted the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, gradually increasing the CNMI minimum wage until it meets federal minimum wage requirements, Pub. L. No. 110-28, § 8103, 121 Stat. 188 (May 25, 2007). The American Recovery and Reinvestment Act of 2009 mandates that GAO issue a study in April 2010 of past and future minimum wage increases in the CNMI and American Samoa, and in each year thereafter, until the minimum wages in the insular areas reach $7.25 per hour.

[17] For example, the $150 fee charged to employers obtaining a CNMI-only work permit is to be used to fund ongoing vocational education curricula and program development by CNMI educational entities. Moreover, the legislation requires the Secretary of the Interior to provide technical assistance to the CNMI to promote economic growth; to assist employers in recruiting, training, and hiring U.S. citizens and, if necessary, lawful permanent residents in the CNMI; and to develop CNMI job skills as needed.

[18] The joint visa waiver program exempts tourism and business visitors from certain countries who are traveling to the CNMI and Guam for up to 45 days from the standard U.S. visa documentation requirements. One stated intent of the legislation is to expand tourism and economic development in the CNMI, including aiding prospective tourists in gaining access to the CNMI's tourist attractions, such as memorials, beaches, parks, and dive sites.

[19] The legislation required DHS to identify countries within 180 days of enactment of the legislation, by November 4, 2008. The countries shall include any country from which the CNMI has received a significant economic benefit from the number of visitors for pleasure for the prior year, unless the country's inclusion would pose a security threat. Governors of the CNMI and Guam may petition to have countries added.

cerns, including high nonimmigrant visa refusal rates. DHS has not yet issued a final rule.[20]

For tourists from countries not included in the joint CNMI-Guam visa waiver program, the legislation will likely increase the costs and time associated with obtaining visitor visas. For example, if China is not included in the program, visa fees could add close to 20 percent to tour package costs for Chinese tourists, and in-person visa interviews will impose additional inconvenience and cost. To the extent that increased costs and time in obtaining a visa may influence tourists to choose destinations other than the CNMI, the legislation could have a negative impact on CNMI tourism. However, the likely impact on the CNMI of sharing the joint program with Guam is unclear.

Legislation's Potential Impact on CNMI Foreign Investment

The impact of the legislation on CNMI foreign investment will depend, in part, on DHS decisions regarding foreign investor entry permits. In implementing the legislation, DHS will make two key decisions that will affect foreign investors' access to the CNMI (see attachment II). First, DHS will determine which current CNMI foreign investors will receive the grandfathered CNMI-only U.S. treaty investor status during the transition period. In particular, DHS will determine whether the grandfathered status applies only to investors holding the CNMI perpetual foreign investor entry permit or also to investors holding the CNMI long-term business entry permit.[21] Second, DHS will determine the validity period of the grandfathered treaty investor status and decide whether to extend it past the initial transition period.[22]

If DHS restricts the grandfathering of foreign investors to perpetual foreign investor entry permit holders, available CNMI data suggest that a small number of investors will qualify for grandfathering under the new legislation. However, if DHS extends the grandfathering provision to long-term business entry permit holders, many more investors will qualify. CNMI data show that of 562 long-term business and perpetual foreign investor entry permits active and valid in July 2008, perpetual foreign investor entry permits accounted for about 10 percent (56 permits) and were associated with 30 businesses, and long-term business entry permits accounted for 90 percent (506) and were associated with 448 businesses.

A lack of key data on foreign investment in the CNMI makes it difficult to determine any economic impact of this and other implementation decisions and limits DHS's ability to make informed decisions regarding the grandfathering of foreign investors. Neither the CNMI government nor the federal government has complete data on the overall level of foreign investment in the CNMI, which are needed as a baseline for assessing the impact of key agency decisions on foreign investment.[23] In addition, the CNMI government lacks readily accessible and compiled data on the sizes and types of permit holders' investments, which DHS needs to determine the relative importance of each type of entry permit and the likely impact of possible implementation decisions. Also unavailable are data showing the extent to which

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[20] 74 Fed. Reg. 2824-02 (2009). The rule also states that DHS will determine whether nationals of China and Russia can participate in the CNMI-Guam visa waiver program after additional layered security measures, which may include, but are not limited to, electronic travel authorization to screen and approve potential visitors to Guam and the CNMI, and other border security infrastructure measures.

[21] The CNMI offers a perpetual foreign investor entry permit, valid for an indefinite period of time, to individuals who maintain certain levels of investment in the CNMI, among other requirements. In addition, the CNMI offers a long-term business entry permit (valid for 2 years at a time) with specified investment requirements, as well as a regular-term business entry permit (valid for up to 90 days) with no investment requirements. The CNMI also offers a retiree foreign investor entry permit requiring a minimum investment in residential property by an applicant 55 years or older; however, because the retiree foreign investor entry permit does not require investment in a CNMI business, we assume that investors holding this permit will not be grandfathered.

[22] Although the status can be awarded only during the transition period, the legislation imposes no limit on the grandfathered status's length of validity. If and when the grandfathered status expires, and for new CNMI foreign investors, DHS will adjudicate applications under the regular treaty investor status and under the other immigrant or nonimmigrant categories generally available under U.S. immigration law. See GAO-08-466 for more information about the legislation's requirements related to foreign investment in the CNMI.

[23] The U.S. Department of Commerce's Bureau of Economic Analysis collects information on foreign direct investments in states and other territories, but data for the CNMI are combined with data for other territories such as Guam, American Samoa, and the U.S. Virgin Islands. In addition, the 2002 Economic Census of the Northern Mariana Islands includes information on CNMI businesses by owner citizenship status; however, these data are incomplete.

foreign investors' decisions are currently affected by their access to particular entry permits.

Concluding Remarks and Prior Recommendations

Given the serious challenges already facing the CNMI economy, it is critical that federal agencies implement the legislation in ways that minimize potential adverse effects to the CNMI economy and maximize the CNMI's potential for economic and business growth, following the legislation's stated intent. Because the interaction of key federal decisions involving different departments will have a significant impact on the CNMI economy, coordination of these decisions is critical and necessitates an established interagency process, which did not exist as of our August 2008 report. In addition, developing strategies for obtaining critical data that are unavailable on the CNMI labor market and foreign investment is essential to federal agencies' ability to make appropriate and effective decisions in implementing the legislation and fulfilling its goals.

Because of the importance of federal agencies' key implementation decisions and the interaction of those decisions, our August 2008 report recommended that the Secretary of Homeland Security lead other relevant federal agencies, including the Departments of the Interior, Labor, and State, in identifying the interagency process that will be used to collaborate with one another—and consult with the CNMI government, as required—to jointly implement the legislation.

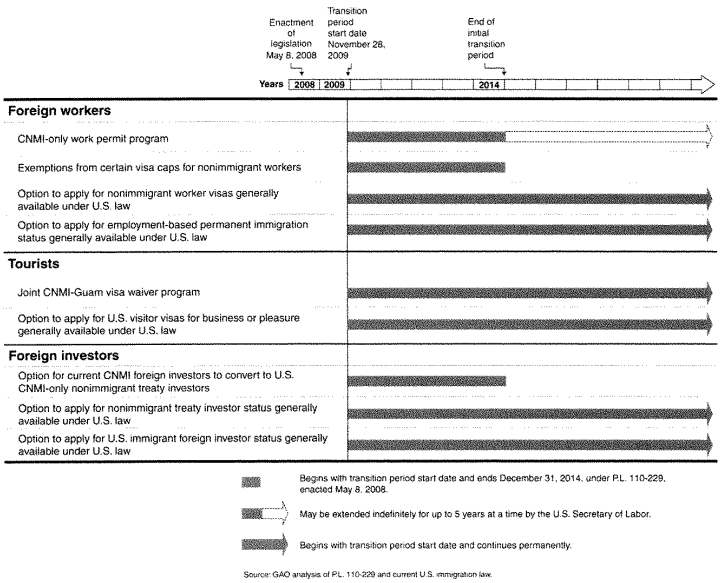
In addition, because current data gaps limit federal agencies' ability to make key implementation decisions to best meet the goals of the legislation, we recommended that the Secretary of Homeland Security and the Secretary of Labor

- develop a strategy for obtaining critical data on the CNMI labor market that are not currently available on an ongoing basis, such as data on the wages, occupations, and employment status of CNMI residents and foreign workers; and
- develop a strategy for obtaining critical data on CNMI foreign investment, such as overall levels of foreign investment and the investment amounts associated with various types of foreign investor entry permits.

DHS agreed with our recommendations in its written comments, and DOL had no comments.

Madame Chairwoman, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

Attachment I: Federal Immigration Legislation's Provisions for Foreign Workers, Tourists, and Foreign Investors in the Commonwealth of the Northern Mariana Islands (CNMI)



Source: GAO analysis of P.L. 110-229 and current U.S. immigration law.

Attachment II: Key Federal Implementation Decisions Related to CNMI Foreign Workers, Tourism, and Foreign Investors

Key federal implementation decisions	Legislative requirements and authorizations
Key federal implementation decisions related to CNMI foreign workers	
Secretary of Homeland Security	
• Determine the number of permits to provide under the CNMI-only work permit program. • Determine the way the permits are distributed. • Determine the terms and conditions for the permits.	• Reduce annual allocation of CNMI-only permits to zero by the end of the transition period or any extensions of the CNMI-only permit program. • Attempt to promote the maximum use of U.S. citizens and, if needed, lawful permanent residents and citizens of the Freely Associated States, and to prevent adverse effects on the wages and working conditions of those workers.
• Determine fees to charge employers and workers for CNMI-only work permits.	• Set fees for the permits so as to recover the full cost of providing services, including administrative costs. • Charge employers an annual supplemental fee of $150 per permit to fund CNMI vocational education.
Secretary of Labor	
• Decide whether and when to extend the CNMI-only permit program past 2014 (indefinitely, for up to 5 years at a time).	• Base decision on the labor needs of legitimate businesses in the CNMI. • May consider (1) workforce studies on the need for foreign workers, (2) the unemployment rate of U.S. citizen workers in the CNMI, and (3) the number of unemployed foreign workers in the CNMI, as well as other information related to foreign worker trends. • Consult with DHS, DOI, Department of Defense, and the Governor of the CNMI.
Key federal implementation decisions related to CNMI tourism	
Secretary of Homeland Security	
• Determine countries to include in the CNMI-Guam visa waiver program, in consultation with the Department of State, DOI, and the Governors of the CNMI and Guam.	• Shall include any country from which the CNMI has received a significant economic benefit from the number of visitors for pleasure for the prior year, unless the country's inclusion would pose a security threat. • Governors of the CNMI and Guam may petition to have countries added.
Key federal implementation decisions related to CNMI foreign investors	
Secretary of Homeland Security	
• Determine which current CNMI foreign investors will be "grandfathered" as U.S. E-2 treaty investors when the transition period begins.	• May provide grandfathered status to those who were admitted to the CNMI in long-term investor status under CNMI immigration laws before the transition program start date, who maintain the investment(s) that formed the basis for such status, and who meet other requirements.
• Decide the validity period for the grandfathered treaty investor status.	

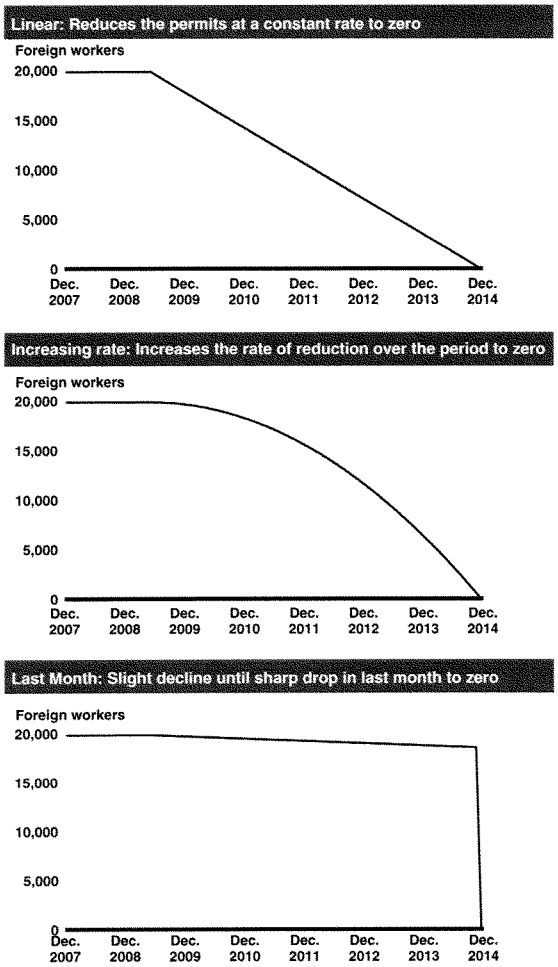
Source: GAO analysis of P.L. 110-229, Consolidated Natural Resources Act of 2008, May 8, 2008.

Notes: During the transition period, the Secretary of Homeland Security, in consultation with the Secretaries of the Interior, Labor, and State, and the Attorney General, has the responsibility to establish, administer, and enforce a transition program to regulate immigration in the CNMI.

On January 16, 2009, DHS issued an interim final rule for the CNMI-Guam joint visa waiver program. DHS has not yet issued a final rule.

The legislation does not clearly define what constitutes a "significant economic benefit."

Attachment III: Illustrations of Alternative Department of Homeland Security Decisions Regarding Annual Reductions in CNMI-Only Work Permits for Foreign Workers



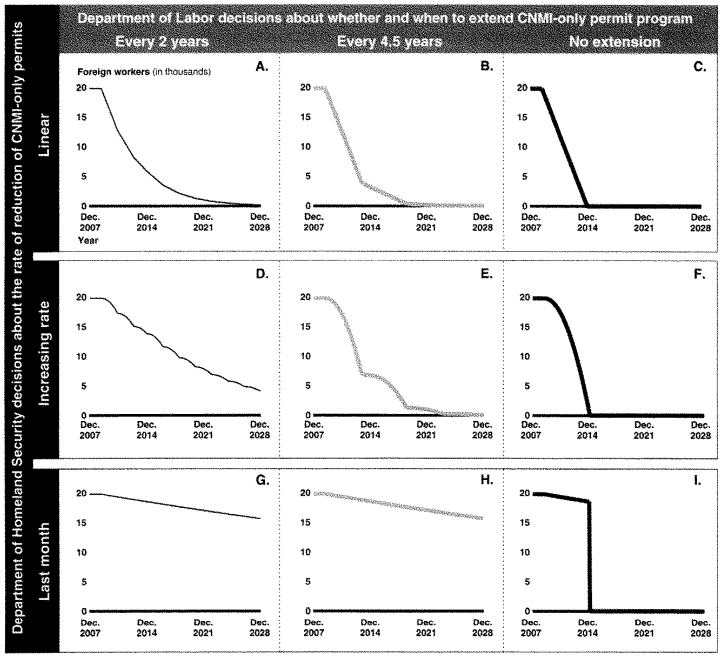
Source: GAO analysis of CNMI Labor and Immigration Identification and Documentation System (LIIDS) data.

Notes: Figures show numbers of CNMI-only work permits for foreign workers after the beginning of the transition period, assuming that the transition period begins on June 1, 2009, and that the number of available CNMI-only work permits never increases. Our analysis does not address the duration of the permits' validity, which DHS will determine. Although our analysis assumed that the transition period begins on June 1, 2009, the delay of the start date to November 28, 2009, does not affect the general findings of our analysis.

For the number of foreign workers before and at the beginning of the transition period, we relied on CNMI Labor and Immigration Identification and Documentation System (LIIDS) data showing 19,823 706K foreign worker permits active as of December 31, 2007; commenting on a draft of our August 2008 report, the CNMI government stated that the number of 706K permits as of June 30, 2008, was 18,942.

In this analysis, foreign workers shown after the beginning of the transition period on June 1, 2009, are those with CNMI-only work permits; this analysis does not include any foreign workers allowed to remain in the CNMI without a CNMI-only work permit. The legislation specifies that foreign workers legally present in the CNMI as of the transition program effective date, but who do not obtain U.S. immigration status, may continue residing and working in the CNMI for a limited time—2 years after the effective date of the transition program or when the CNMI-issued permit expires, whichever is earlier.

Attachment IV: Illustrations of Potential Department of Homeland Security and Department of Labor Decisions' Joint Effects on Access to CNMI-Only Work Permits for Foreign Workers



Source: GAO analysis of P.L. 110-229 and CNMI Labor and Immigration Identification and Documentation System (LIIDS) data.

Notes: The thin lines represent DOL's decision to extend the CNMI-only permit program every 2 years, the heavy gray lines represent DOL's decision to extend the program every 4.5 years, and the heavy black lines represent DOL's decision not to extend the program. We selected the frequency of DOL extensions to be 4.5 years in order to reflect an extension just before permits would have been reduced to zero at the end of the 5-year period.

Figures show numbers of CNMI-only work permits, based on the assumptions that the transition period begins on June 1, 2009, and the number of permits never increases. Our analysis does not address the length of the permits' validity. Although our analysis assumed that the transition period begins on June 1, 2009, the delay of the start date to November 28, 2009, does not affect the general findings of our analysis.

For the number of foreign workers before and at the beginning of the transition period, we relied on CNMI LIIDS data showing 19,823 706K foreign worker permits active as of December 31, 2007; commenting on a draft of our August 2008 report, the CNMI government stated that the number of 706K permits as of June 30, 2008, was 18,942.

In this analysis, foreign workers shown after the beginning of the transition period on June 1, 2009, are those with CNMI-only work permits; this analysis does not include any foreign workers allowed to remain in the CNMI without a CNMI-only work permit. The legislation specifies that foreign workers legally present in the CNMI as of the transition program effective date, but who do not obtain U.S. immigration status, may continue residing and working in the CNMI for a limited

time—2 years after the effective date of the transition program or when the CNMI-issued permit expires, whichever is earlier.

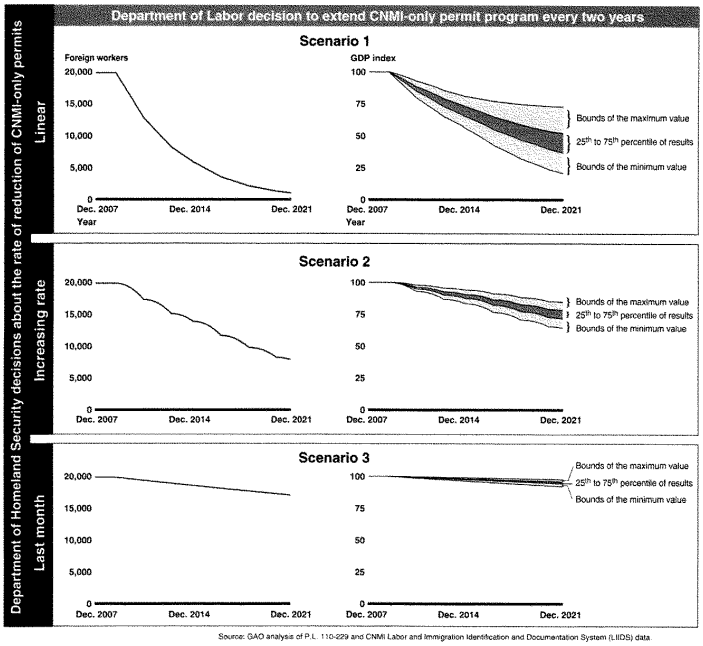
Although DOL may extend the program for 5 years or less at a time, our analysis assumes a 5-year duration for any extensions occurring after the transition period. Our analysis also assumes that if the program is extended after the end of the initial transition period, the timing for frequency of extensions will begin in January 2015.

The figures extend through 2028 to show the year in which CNMI-only work permits approach zero for the majority of the joint decisions.

Attachment V: Examples of Scenarios Illustrating U.S. Agency Decisions' Potential Joint Impact on Access to CNMI-Only Work Permits for Foreign Workers and CNMI Gross Domestic Product

As the scenarios in the figure below demonstrate, a greater decline in permits for foreign workers leads to a larger drop in gross domestic product (GDP), as well as a greater range of possible effects across the simulations.

- Scenario 1 shows that a steep decline in CNMI-only permits for foreign workers, from about 20,000 to about 1,000 by 2021[24]—caused by a linear reduction in the number of CNMI-only work permits and a renewal of the permit program every 2 years—would lower the CNMI's GDP to a range of about 21 percent, or to 73 percent of its current value, by 2021.
- Scenario 2 shows that a less precipitous decline in CNMI-only permits for foreign workers, from about 20,000 to about 8,000 by 2021—caused by an increasing reduction in the number of CNMI-only work permits and a renewal of the permit program every 2 years (before the years with the steepest decline in foreign workers)—would lower the CNMI's GDP to a range of about 64 percent, or to 85 percent of its current value, by 2021.
- Scenario 3 shows that a much smaller decline in CNMI-only permits for foreign workers, from about 20,000 to about 17,000 by 2021—caused by a rapid reduction in the number of CNMI-only permits in the last month of the program and a renewal of the permit program every 2 years (before the month when the greatest reduction in permits occurs)—would lower the CNMI's GDP to a range of about 98 percent, or to no less than about 92 percent of its current value, by 2021.



Source: GAO analysis of P.L. 110-229 and CNMI Labor and Immigration Identification and Documentation System (LIIDS) data.

[24] Because foreign workers comprise 60 percent of the CNMI labor market, the decline in these workers shown in scenario 1 would reduce total CNMI employment by almost 60 percent.

Notes: This analysis is based on some of the possible joint effects of DHS and DOL decisions illustrated in attachment IV (A), (D), and (G). Because this analysis does not allow for other changes in the CNMI over the coming years, it should not be considered as predictive of future GDP.

In the graphs on the left-hand side of each scenario, the lines represent the reduction in the numbers of CNMI-only work permits for foreign workers. The graphs on the right-hand side of each scenario represent 10,000 simulations of the CNMI GDP (indexed to be 100 in 2007) under various assumptions. The darker area represents the middle 50 percent of results, specifically the 25th to 75th percentile, while the lighter area represents the bounds of the minimum and maximum value.

This analysis assumes that technology, capital, and the total number of employed CNMI residents remain constant. In addition, this analysis treats all foreign workers as being employed in full-time positions. Further, this analysis does not reflect potential changes in demand for foreign workers absent the legislation. Finally, this analysis does not account for the role of foreign workers under programs other than the CNMI-only permit program. See appendix VI of GAO-08-791 for more details.

In this analysis, foreign workers shown after the beginning of the transition period on June 1, 2009, are those with CNMI-only work permits; this analysis does not include any foreign workers allowed to remain in the CNMI without a CNMI-only work permit. The legislation specifies that foreign workers legally present in the CNMI as of the transition program effective date, but who do not obtain U.S. immigration status, may continue residing and working in the CNMI for a limited time—2 years after the effective date of the transition program or when the CNMI-issued permit expires, whichever is earlier. Although our analysis assumed that the transition period begins on June 1, 2009, the delay of the start date to November 28, 2009, does not affect the general findings of our analysis.

Because of the nature of the functional form used, we could not use it to evaluate the portion of those scenarios in which the number of CNMI-only work permits is equal to zero. Attachment VI: GAO Contacts and Staff Acknowledgments

Contacts

For more information regarding this testimony, please contact David Gootnick at (202) 512-3149 or gootnickd@gao.gov, or Tom McCool at (202) 512-2642 or mccoolt@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs are provided below.

Staff Acknowledgments

In addition to the contacts named above, Emil Friberg (Assistant Director); Mark Speight (Assistant General Counsel); Ashley Alley; Diana Blumenfeld; Benjamin Bolitzer; Ming Chen; Keesha Egebrecht; Marissa Jones; Reid Lowe; Mary Moutsos; and Eddie Uyekawa made key contributions to this testimony. Technical assistance was provided by Shirley Brothwell, Holly Dye, Etana Finkler, Michael Hoffman, Michael Kendix, Rhiannon Patterson, Nina Pfeiffer, Diahanna Post, Jeremy Sebest, Berel Spivack, and Seyda Wentworth.

Congressional Relations

Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400 U.S. Government Accountability Office, 441 G Street NW, Room 7125 Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548

Ms. BORDALLO. Thank you very much, Dr. Gootnick.

And now we welcome back to the Subcommittee hearing a very familiar face, Mr. Pula, you can begin.

STATEMENT OF NIKOLAO PULA, ACTING DEPUTY ASSISTANT SECRETARY, OFFICE OF INSULAR AFFAIRS, U.S. DEPARTMENT OF INTERIOR

Mr. PULA. Thank you very much, Chairwoman Bordallo and Members of the Subcommittee. I appreciate the opportunity to discuss the implementation of the immigration law affecting the CNMI and Guam.

In reference to Guam, two provisions in Title 7 of the law affect Guam. One would allow most H visas to be granted for employment in Guam or the CNMI without limitation for five years. The second provision affecting Guam replaces the Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program. With regards to the CNMI and its economy, beginning in 1980 and until recently, the CNMI economy was growing. The two underpinnings of the economy were tourism and a thriving garment industry. More recently, the CNMI economy has suffered greatly.

A few indicators of this economic contraction are illustrative. Between 1997 and 2007, a span of 10 years, tourist arrivals were down 46.6 percent, garment sales down 43.3 percent, garment taxes down 51.3 percent, total local revenues down 33.8 percent, wage and salaries down 22.6 percent, and gross business receipts down 53.2 percent. For the first quarter of this calendar year, gross business receipts are down another 1.2 percent, and tourist arrivals are down 3 percent. The last of the government's factories closed in March, which brings garment sales and taxation to zero.

With such indicators, we must be concerned with the CNMI economy. Tourism must be nurtured. As the Federal Government considers immigration policy, an important consideration is that part of the attractiveness of the CNMI has been its visa-free entry tourists, such as the Chinese and Russian, who accounted for 22 percent of CNMI tourists last year.

United States visa requirements will apply to foreign tourists to the CNMI beginning November 28 of this year, except that Title 7 creates a new Guam-CNMI Visa Waiver Program that includes visitors from 12 countries and geographic areas. At this time China and Russia are not participating in the program. Public Law 110-229 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.

Federal and local officials must work to not only avoid actions that may harm the tourism market, but must also consider actions to promote increased tourism. Public Law 110-229 calls for a report and recommendations on the status of long-term foreign workers by the Secretary of the Interior by May 8, 2010. Specifically the report will include the number of aliens in the CNMI, their legal status, the length of the alien stays in the CNMI, the CNMI economy's need for foreign workers, and recommendations.

Before recommendations are made, however, we will need information and statistics in the CNMI's foreign workers. Title 7 provides authority for the Secretary of Homeland Security to establish a registration program. Should DHS implement a registration program, sharing of such data would be a useful source of information for the required report. When Title 7 was enacted, the transition period effective date was expected to be June 1, 2009, and Interior's long-term foreign worker report was scheduled for a year later on May 8, 2010.

It was believed that maybe after a year of experience, we would see how things would unfold for the long-term foreign workers. Some may leave of their own accord, some may qualify for DHS's five-year foreign worker transition program, and some may qualify for adjustment to an immigration status under provisions of the

INA. It would be prudent to give time for these events and adjustments to take place before passing judgment on the overall long-term worker issue.

Recently, the Secretary of DHS utilized legislative authority to delay the transition period effective date by 180 days. There is, however, no equivalent statutory authority to delay Interior's report on long-term foreign workers. If there are only five months of administration before the report is due, as the current timeframe would require, insufficient data and other factors may make the completion of a meaningful report difficult.

The Department of the Interior therefore requests that the Congress extend the statutory date for the report on long-term foreign workers for one year to May 8, 2011. Madam Chair, the Department of the Interior is hopeful that the implementation of Title 7 in the CNMI can take place with short term dislocations that are minimal and long-term employment prospect that are beneficial for United States citizens. Thank you.

[The prepared statement of Mr. Pula follows:]

Statement of Nikolao I. Pula, Jr., Acting Deputy Assistant Secretary of the Interior for Insular Affairs, U.S. Department of the Interior

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, which affect the Commonwealth of the Northern Mariana Islands (CNMI) and Guam.

Title VII of Public Law 110-229 provides for the Federal Government to administer immigration in the CNMI. Several Federal agencies are involved. The lion's share of the work falls to the Department of Homeland Security (DHS), which must establish and staff facilities at ports of entry and administer a five-year CNMI transitional foreign labor program, an investors' program, and a Guam-CNMI visa waiver program. The Departments of the Interior, Labor, State, and Justice are also involved in other immigration matters important to the CNMI, but less intensely so.

Guam

Two provisions in Title VII affect Guam. One would allow most H visas to be granted for employment in Guam or the CNMI without limitation for five years beginning November 28, 2009. As the construction phase of the Guam military build-up gets underway, and if United States-eligible labor is exhausted, this H visa cap exemption will ensure that sufficient foreign labor is eligible for entry into Guam to meet residual labor needs.

The second provision affecting Guam replaces the Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program. In so doing, Guam and the CNMI would be made eligible to accept citizens from the same visa waiver countries.

The CNMI Economy

Besides consulting with other agencies regarding aspects of implementing Title VII immigration provisions, the Department of the Interior is greatly concerned with the CNMI economy and the status of foreign workers who have lived in the CNMI for substantial periods of time.

Beginning in 1980 and until recently, the CNMI economy was growing. The two underpinnings of the economy were tourism and a thriving garment industry.

More recently, the CNMI economy has significantly suffered. Since the imposition of World Trade Organization rules in 2005, the garment industry has been in a downward spiral. A few indicators of this economic and financial contraction are illustrative:

	1997	2007	percentage change
Tourist Arrivals	726,690	389,345	-46.4
Garment Sales ($M)	800.0	454.0	-43.3
Gr. Bus. Rev Taxes	74.6	50.0	-33.0
Income Taxes	46.6	35.5	-23.8
Excise Taxes	29.2	17.9	-38.7
Garment Taxes	27.7	13.5	-51.3
Total Taxes	200.9	128.8	-35.9
Total Local Revenues	242.6	160.5	-33.8
Total General Fund	248.0	168.2	-32.2
Wages & Salaries	114.2	88.4	-22.6
Gr. Bus. Reciepts	2,500.0	1,170.0	-53.2

The CNMI Department of Commerce Economic Indicator Quarterly Report shows a continuing decline in economic indicators from a year ago for the first quarter of this calendar year. Gross business receipts are down another 1.2 percent from the same quarter from the previous year. In addition, tourist arrivals are down approximately three percent. The last of the garment factories closed in March, which brings garment sales and taxation to zero.

With such indicators, we must be concerned with the CNMI economy. Tourism, as the mainstay of the economy now and into the foreseeable future, must be nurtured. As the federal government considers immigration policy on Guam and CNMI, an important consideration is that previously, part of the attractiveness of the CNMI has been its visa-free entry for tourists. For instance, in the last year, Chinese and Russian tourists accounted for 22 percent of CNMI tourists.

United States visa requirements will apply to foreign tourists to the CNMI beginning November 28, 2009, except that Title VII creates a new Guam-CNMI Visa Waiver Program that will include the CNMI. For this new Guam-CNMI Visa Waiver Program, the DHS has issued an interim final rule that waive visa requirements for eligible visitors from 12 countries and geographic areas. At this time, China and Russia are not among the countries participating in the program

P.L. 110-229 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 work to not only avoid actions that may harm various sectors of the tourism market, but also must also consider actions that promote increased tourism.

Report on Long-term Legal Foreign Workers

When originally introduced in the Congress, the CNMI immigration legislation included a provision granting long-term foreign workers a non-immigrant 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 (Public Law 110-229), however, did not resolve the immigration status of long-term workers in the CNMI. Instead, Public Law 110-229 calls 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 will include——

- the number of aliens in the CNMI,
- their legal status,
- the length of the aliens' stays 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.

Before recommendations are made, however, we will need information and statistics on the CNMI's foreign workers. The Department of the Interior, in conjunction with our interagency partners, is considering how best to collect the data and information necessary to complete this report. Title VII of Public Law 110-229 provides discretionary authority for the Secretary of Homeland Security to establish a registration program. It is our understanding that DHS is presently considering

whether to implement such a program. Should DHS implement a registration program, sharing of such data would be a useful source of information for the required report.

On May 8, 2008, when Title VII was enacted the transition period effective date was expected to be June 1, 2009, and Interior's long-term foreign worker report was scheduled for a year later on May 8, 2010. It was believed that after nearly a year of experience with DHS's administration, we could see how things would unfold for the long-term foreign workers. For example, some may leave of their own accord, some may qualify for DHS's five-year foreign worker transition program, and some may qualify for adjustment to an immigration status under provisions of the Immigration and Nationality Act. It would be prudent to give time for these events and adjustments to take place, before passing judgment on the overall long-term worker issue.

Recently, the Secretary of DHS utilized legislative authority to delay the transition period effective date by 180 days to November 28, 2009. There is, however, no equivalent statutory authority to delay Interior's report on long-term foreign workers. If there is only five months of administration before the report is due, as the current timeframe would require, insufficient data and other factors may make the completion of a meaningful report difficult. In addition, we are anticipating that status adjustments of some foreign workers will need to be made, potentially increasing the time it will take to complete the report beyond the one year originally allowed for in Public Law 110-229. These factors may make it difficult for Interior and its partners to parse desirable immigration policy and long-term foreign worker issues in an abbreviated timeframe.

The Department of the Interior, therefore, requests that the Congress extend the statutory date for the report on long-term foreign workers by one year to May 8, 2011.

Madam Chair, the Department of the Interior is hopeful that the implementation of Title VII of Public Law 110-229 in the CNMI can take place with short-term dislocations that are minimal and long-term employment prospects that are beneficial for United States citizens.

Ms. BORDALLO. Mr. Pula, thank you very much for your testimony.

And again I would like to remind those standing in the back of the room you can come forward and take these chairs around the table please. Thank you.

And now I would like to recognize The Honorable Richard Barth. He is here to testify on behalf of the Department of Homeland Security. You can begin now, sir.

STATEMENT OF THE HONORABLE RICHARD C. BARTH, ACTING PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR POLICY, DEPARTMENT OF HOMELAND SECURITY

Mr. BARTH. Chairwoman Bordallo, distinguished Members of the Subcommittee, thank you for the opportunity to testify today on the efforts DHS is making to implement Title 7 of the Consolidated Natural Resources Act of 2008.

DHS recognizes the importance of this implementation and how important it is to the people of Guam and the Commonwealth of the Northern Mariana Islands. Since the enactment of this historically significant legislation, DHS and its components have been working very hard to ensure that the implementation of the statute is done to minimize any adverse effects on the people of Guam and the CNMI. The testimony I have formally submitted to the Committee makes note of all the immigration provisions of this legislation.

I would like to take this opportunity to address the major provisions in more general terms. First, as everyone is aware, the CNRA originally established June 1, 2009 as the commencement of the

five-year transition period unless delayed by the Secretary of Homeland Security. On March 31, 2009, after consultation with Secretaries of the Interior, Labor, and State, the Attorney General and the Governors of Guam and CNMI, DHS notified the appropriate House and Senate Committees and the Delegates from Guam and the CNMI that the start of the transition period would be delayed for the full 180 days until November 28, 2009.

In doing so, DHS recognized the longer preparation this delay allowed would enable the U.S. Government to more effectively implement the law and address outstanding CNMI and Guam issues. I would like to emphasize that DHS has been committed throughout the implementation planning process to ensure that the voices of all affected entities both public and private were heard. Representatives of DHS including those of Customs and Border Protection, Immigration and Customs Enforcement, and Citizen and Immigration Services have all participated in meetings both here in Washington and in the CNMI with representatives of the Interior, Labor, Justice, and State Departments.

DHS intends to continue this open door process to the extent permitted while regulations are concluded during this transition period. The CNRA replaced the existing Guam Visa Waiver Program with a combined Guam CNMI VWP that allows admission to Guam, the CNMI, or both for a period of up to 45 days. As with the current Guam VWP, the program does not provide for onward travel to the United States.

While the Guam VWP allowed travel to Guam for citizens of 15 participating countries, the new combined program allows citizens of 12 participating countries and geographic areas. This change was decided after careful review of the current participating countries and the requirements of the new program under law. DHS issued an Interim Final Rule on the Guam CNMI VWP on January 16, 2009, and the public comment period expired on March 17, 2009.

While we are currently analyzing the comments received, at this time I am not at liberty to discuss what if any changes might result from the analysis. Certain provisions of the CNRA affect the CNMI only, and DHS has worked hard to include its Federal and local partners and stakeholders in developing our approach to implementing the CNRA in the CNMI. Through working with the community, both private and public parties, DHS has identified groups of individuals who may not easily fall within the INA classifications and for whom the CNMI classifications may not be appropriate.

DHS is actively pursuing policy decisions that will, it is hoped, when announced, reduce the fear and uncertainty of what will happen when the transition takes place. In doing so, DHS is quite aware of the challenges facing the CNMI economy and considers it a priority and goal to support the existing businesses when developing policies and regulations to implement the legislation. By stabilizing immigration laws and regulations in the CNMI, DHS believes that implementation of the CNRA will support new investment and result in an improved economy.

The rules on the CNMI E2 non-immigrant investor and transition worker are still in development and I am not able to go into

the detail on the specifics. As noted though, DHS plans to minimize adverse impacts and discharge its responsibilities under the CNRA. DHS is currently giving a high priority to the development and publication of these rules.

In closing, DHS has given the implementation of the CNRA the appropriate priority and DHS is working to ensure that its responsibilities under the CNRA will be executed in a manner that minimizes any adverse impacts in the transition to the INA. We are working to make sure that we have the best information available and that we take into account the unique and special circumstances of this legislation and of the circumstances that exist in CNMI at this time, especially the economic challenges faced by the CNMI in restoring its economy, implementing minimum wage increases, and increasing tourism and other investments in the CNMI.

Thank you again for this opportunity to testify, and I will be happy to answer any of your questions.

[The prepared statement of Assistant Secretary Barth follows:]

Statement of Richard Barth, Acting Principal Deputy Assistant Secretary for Policy, U.S. Department of Homeland Security

Chairwoman Bordallo, Ranking Member Brown, 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) is making to implement Title VII of the Consolidated Natural Resources Act of 2008 (CNRA). DHS recognizes the importance of the implementation of Title VII of the CNRA to the people of Guam and the Commonwealth of the Northern Mariana Islands (CNMI). Since the enactment of this historically significant legislation, DHS and its components have been working very hard to ensure that we implement the statute in a manner that will minimize any adverse effects on the people of Guam and the CNMI.

Transition Program Date

The CNRA originally established June 1, 2009, as the commencement of a five-year transition period toward full federalization of immigration law in the CNMI unless delayed by the Secretary of Homeland Security. Under the CNRA, the Secretary, in consultation with the Secretaries of the Interior, Labor, and State, the Attorney General, and the Governor of the CNMI can delay the effective date of the transition program up to 180 days beyond the June 1 date. In accordance with this provision, on March 31, 2009, DHS notified the appropriate House and Senate Committees and the Delegates from Guam and the CNMI that the start of the transition would be delayed for 180 days, until November 28, 2009.

Immigration Provisions of the CNRA

I would like to begin with an overview of the key immigration provisions of the CNRA. The CNRA

- Includes the CNMI in the definition of "United States" under the Immigration and Nationality Act (INA), thus extending all U.S. immigration laws to the CNMI as of the transition program effective date, except as otherwise specifically provided by the CNRA. This is the first expansion of the definition since the inclusion of Guam more than 50 years ago.
- Establishes a transition period that will last initially until December 31, 2014. The law allows for extensions of the provision relating to transitional workers if determined necessary by the Secretary of Labor.
- Provides for DHS, through U.S. Citizenship and Immigration Services (USCIS), to immediately resume its role as a protection consultant with regard to refugee protection, followed by full federal assumption of responsibility for this function on the transition program effective date. The INA section on asylum, however, continues to be inapplicable to the CNMI during the transition period.
- Amends the Guam Visa Waiver Program statute to create a Guam-CNMI Visa Waiver Program and extends the authorized period of stay from 15 days to 45 days, as of the beginning of the transition period.
- Creates a nonimmigrant transitional worker immigration status in the CNMI during the transition period.

- Provides for investor nonimmigrant status for aliens with certain CNMI-authorized long-term investor status.
- Exempts the CNMI and Guam from the statutory caps on the number of H-1B and H-2B nonimmigrant temporary workers during the transition period. This exemption does not apply to any employment to be performed outside Guam or the CNMI.
- Continues lawful presence and employment authorization for aliens lawfully admitted and authorized to be employed by the CNMI as of the transition program effective date. Such lawful presence and employment authorization will remain valid until the end of the CNMI authorization or at the end of two years—whichever is earlier.
- Limits the removal of aliens lawfully present in the CNMI as of the start of the transition period on the basis of presence without admission or parole during the initial two years of the transition period or until that lawful status expires, whichever occurs first.
- Specifies that prior residence in the CNMI will count as residence in the United States for an alien lawfully admitted for permanent residence who may otherwise have been considered to have abandoned residence in the United States by residing in the CNMI.
- Provides for immigration-related fees to be paid to the Federal Government, given its assumption of immigration responsibilities in the CNMI.
- Imposes an annual supplemental fee of $150 per nonimmigrant transitional worker to fund vocational educational curricula and program development by CNMI educational entities.
- Authorizes DHS to establish operations in the CNMI prior to the beginning of the transition period.
- Limits the number of foreign workers in the CNMI during the period between enactment of the CNRA and the start of the transition period. Specifically, the number of temporary workers is capped at the number present in the CNMI as of the date of enactment (May 8, 2008).
- Requires the Departments of Homeland Security, Labor, and Justice to recruit and hire personnel from among qualified local applicants, to the maximum extent practicable.

Because the CNRA has provisions that affect Guam and the CNMI to differing extents, I would like to first address those provisions which affect both territories.

The Guam-CNMI Visa Waiver Program

The CNRA replaced the existing Guam Visa Waiver Program (VWP) with a combined Guam-CNMI VWP that allows admission to Guam, the CNMI, or both for a period up to 45 days. As with the current Guam VWP, the program does not provide for onward travel to the rest of the United States.

While the Guam VWP allowed travel to Guam for citizens of 15 participating countries, the new combined program allows citizens of 12 participating countries / geographic areas. These are Australia, Brunei, Hong Kong, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Taiwan, and the United Kingdom. Citizens of Indonesia, the Solomon Islands, Vanuatu, and Western Samoa will not be able to travel under the new, combined program. This change was decided after careful review of the current participating countries and the requirements of the new program. DHS issued an interim final rule on the Guam-CNMI Visa Waiver Program on January 16, 2009. The public comment period expired on March 17, 2009, and DHS is currently analyzing the comments received.

As with the Guam VWP, the Guam-CNMI VWP is a separate program under Section 212 of the INA, as distinct from the Visa Waiver Program authorized by Section 217 of the INA. Some countries are eligible to participate in both programs. A visitor from one of those countries may choose to travel under either of the programs but must comply with all the conditions of whichever program is chosen.

Numerical Limitations on H-Nonimmigrant Workers

The INA provides for a statutory limitation on the number of nonimmigrant workers classified under INA section 101(a)(15)(H), which includes the H-1B, H-2A, and H-2B classifications. The CNRA provides for an exemption to these numerical limitations for the duration of the transition program in Guam and the CNMI.

Provisions Affecting the CNMI Only

Certain provisions of the CNRA affect the CNMI only. DHS has worked hard to include its federal and local partners and stakeholders in developing our approach to implementing the CNRA in the CNMI.

DHS has designated experienced officers within its relevant components to serve as points of contact and to lead teams composed of Headquarters and Field office

staff to prepare for the CNMI's transition to federal immigration law. With the assistance of the Department of the Interior, meetings were held to ensure that other affected federal agencies were included in this effort. U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and 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, and with the U.S. Departments of the Interior, Labor, Justice and State. 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.

Through working with the community and both private and public parties, DHS has identified groups of individuals who may not easily fall within the INA classifications and for whom the CNMI classifications in the CNRA may not be appropriate. DHS is actively pursuing policy decisions that will, it is hoped when announced, reduce the fear and uncertainty of what will happen when the transition takes place. In doing so DHS is quite 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. By stabilizing immigration laws and regulations in the CNMI, DHS believes that implementation of the CNRA will support new investment and result in an improved economy.

The rules on the CNMI E-2 Nonimmigrant Investor and the Transitional Worker are still in development and I am not able at this time to go into detail on the specifics. As noted, though, DHS plans to minimize adverse impacts and to discharge its responsibilities under the CNRA. DHS is currently giving high priority to the development and publication of these rules. DHS also is working with the Department of Justice and its Executive Office for Immigration Review to develop a rule that will update the current regulations to ensure they reflect the changes in immigration law and definitions made by the CNRA. Lastly, a decision on a registration program and whether and how it would be done is still in process.

Implementation Planning

DHS has met with the Delegates from Guam and the CNMI, the Governors of both territories and their staff, as well as other elected officials and interested parties. Here are some significant dates and meetings that have taken place with regard to the CNMI in support of implementation of the CNRA.

July 2008. A DHS team composed of DHS Office of Policy, CBP, ICE, and USCIS visited the CNMI. Meetings were held with the Legislature, the Governor and members of the CNMI Agencies, the Saipan Chamber of Commerce (with members from Tinian and Rota present), Marianas Community College administration, Karidat Social Services—an organization providing support to victims of abuse and trafficking, and with law enforcement organizations in Saipan. Representatives of workers organizations and foreign diplomatic officials were also provided an opportunity to discuss issues with the members of DHS team.

Both ICE and CBP personnel have made numerous visits to the CNMI in support of determining resource requirements and in preparation of the start of the transition period. USCIS has determined the resources necessary to process the applications and petitions that are projected to occur and, as noted below, opened an Application Support Center in support of the implementation.

December 2008: The USCIS 1-800 National Customer Service Center toll free information becomes available to residents of the CNMI.

January 2009: Representative of DHS held a public forum on the Guam-CNMI Visa Waiver Program rule in Garapan, Saipan, CNMI. Meetings with the Chamber of Commerce, the Executive Branch, and Legislature were held.

January 2009: Representatives of USCIS visited the CNMI to establish contacts and to prepare plans for outreach to the community and the population in the CNMI on transition and to identify issues that will need resolution when the Transition takes place.

March 2009: Because USCIS currently has jurisdiction to grant permanent resident status and naturalize immediate relatives of U.S. citizens residing in the CNMI and in anticipation of the increased workload for biometric collection, an early decision was made in June 2008 to open an Application Support Center in the CNMI. On March 10, 2009, Acting Deputy Director of USCIS Michael Aytes opened the Application Support Center in the CNMI. His participation in this opening clearly shows, I believe, the importance that the Department places on the CNRA and its implementation. This Application Support Center is an expanded version of the Application Support Centers in the rest of the United States in that it provides information services and interviews for those residents who are currently eligible under the current Covenant, as well as processing requests for biometric services.

Also in March, the USCIS Protection Consultant to the CNMI trained new Administrative Protection Judges and a CNMI Assistant Attorney General for Immigration in CNMI Refugee Law and Procedures. The Protection Consultant also worked to ensure that USCIS is ready to conduct credible fear and reasonable fear interviews in the CNMI beginning on November 28, 2009.

In addition to the regulations that are required to properly implement the CNRA, DHS has identified several groups of individuals with CNMI status who are of special concern to DHS and its efforts to implement the INA in the CNMI. At present, we do not believe that it is in the interest of the United States and the CNMI to take precipitous actions which would force law-abiding aliens residing in the CNMI with legal immigration status at the time of transition to depart the CNMI. DHS recognizes that some residents of the CNMI have a CNMI immigration status that cannot fall within one of the nonimmigrant classifications of the INA, yet their CNMI immigration status supports the favorable exercise of discretion to be allowed to remain in the CNMI after the start of the transition period. These CNMI classifications are not those which are normally referred to as "guest workers" and were not in the population DHS believes that the Congress envisioned as becoming transitional workers under the CNRA. An example of this are those aliens who were granted "permanent resident" status in the CNMI by the former Trust Territory of the Pacific Islands government prior to 1982. Another example is spouses of aliens from the Freely Associated States who are not nationals of those Freely Associated States and would not ordinarily be allowed to be in the United States under the terms of the Compacts of Free Association.

DHS is still reviewing other issues and circumstances such as widows of U.S. citizens who could have applied for status many years ago but did not because they resided in the CNMI, alien parents of disabled U.S. citizen children, the income level required for affidavits of support to obtain U.S. permanent residence and the requirements for travel and reentry by aliens with lawful CNMI employment authorization during the first two years of the transition period. DHS also believes that communicating the decisions made on these issues will be essential to a successful transition and DHS has begun and continues to plan for the outreach efforts that will be needed. As with the Guam-CNMI VWP rule, representatives of DHS and USCIS will conduct an extensive outreach effort when the rules are published.

In closing, I hope that you will be reassured that DHS has given the implementation of the CNRA the appropriate priority and that DHS is working to ensure that its responsibilities under the CNRA will be executed in such a manner that minimizes any adverse impacts of the transition to the INA. We are working to ensure that we have the best information available and that we take into account the unique and special circumstances of this legislation and of the circumstances that exist in the CNMI at this time—especially the economic challenges faced by the CNMI in restoring its economy, implementing minimum wage increases, and increasing tourism and other investments in the CNMI.

Thank you again for this opportunity to testify, we will be happy to answer any of your questions.

Ms. BORDALLO. Thank you very much, Mr. Barth. And I will now recognize Members of the Subcommittee for questions. I will begin with myself.

I have one for Dr. Gootnick. You mentioned the use of the visa refusal rate as a measure of risk that travelers from a particular country would overstay or violate the terms of the visa waiver. Now the CNMI has addressed this risk by using approved travel agents that use bonding of visitors as a means to ensure their return. Have you taken a look at the CNMI model and have you noted that they have had no overstays in recent years of visitors from China and Russia?

Mr. GOOTNICK. I don't question, your observation about the CNMI overstay issue. The only point I was looking to make was that the DHS in establishing the rationale, where they are expected to balance both the tourism benefit and the security concerns, did have issues on the security side, that the State Department's U.S. visa refusal rate is a relevant piece of information that they appear to have considered in making their determination.

The only other thing I would say in this regard is that the risk to the CNMI and the risk to Guam are somewhat different. Guam has of course $13 billion worth of DOD investments, 25,000 U.S. servicemen and dependents who will be arriving over the course of the next period of time with the Guam buildup. So, the risk they face may be somewhat different than the CNMI's.

Ms. BORDALLO. I guess, Mr. Gootnick, what I really wanted was a clear answer to, have they had no overstays in recent years of visitors from Russia and China?

Mr. GOOTNICK. In the CNMI you are saying?

Ms. BORDALLO. Yes.

Mr. GOOTNICK. OK, I honestly don't have that information. The Governor testified for you not long ago just in the prior panel that they had had some minor problems which they have fixed, and I have no reason to question that.

Ms. BORDALLO. Would you have any information on that, any numbers?

Mr. GOOTNICK. No, I honestly don't.

Ms. BORDALLO. You wouldn't have that?

Mr. GOOTNICK. We have not looked at that.

Ms. BORDALLO. All right, thank you.

I have one question for Assistant Secretary Barth. According to a January 12, 2009 letter from Lee Morris to Chairman Rahall, to fully comply with Public Law 110-229, the Department is in need of approximately $120 million for increased operations in Guam and $97 million for establishing operations in the CNMI.

I ask unanimous consent that the letter be made part of the record first. However, I am concerned to learn that when details of the Fiscal Year 2010 President's Budget Request were made available two weeks ago, it did not appear that funding was specifically set aside for implementation. Is this correct?

Mr. BARTH. Yes, Madam Chairwoman, that is correct. The 2010 President's Budget Request does not include any special funding for implementing the law.

Ms. BORDALLO. Well, if funding was indeed not included in the budget, how does the Department plan to comply with the Act? Do you plan to reprogram existing resources in your budget to fund these efforts?

Mr. BARTH. Yes. The preliminary data that we provided to Congress that was due pursuant to the law was budget data for a multi-year period. In 2009, the current fiscal year, we are experiencing very low costs, particularly with the extension of the deadline to November 28, 2009. In Fiscal Year 2010, it is my understanding from our component agencies in DHS that we will have sufficient funding from our base to be able to do what we need to do to implement the law. And to the extent that will require reprogramming, we will of course come to the Congress and request such reprogramming.

Ms. BORDALLO. Well, that was my next question, Mr. Barth, do you plan to submit a supplemental budget request to fulfill the obligations under that Public Law?

Mr. BARTH. We currently believe that we can reprogram funds from the base for 2010, and I fully expect, of course it is hard to anticipate next fiscal year, but by Fiscal Year 2011 we are pro-

jecting that we will need to identify specific money up and above our base to complete the implementation of the law.

Ms. BORDALLO. Thank you. And as you know, the stated goal of P.L. 110-229 was to expand tourism in the Northern Mariana Islands. After enhanced security measures are implemented, it is my understanding according to the regulation that the Department will admit countries found to have a significant economic benefit to the CNMI. What are these enhanced security measures and what can we do to ensure that these measures are in place by November 29?

Mr. BARTH. 28th.

Ms. BORDALLO. 28th.

Mr. BARTH. The rule as drafted identifies additional layered security measures, which may include but are not limited to, things such as an electronic travel authorization system, biometric exit capabilities, and I think it is very clear in the regulation as we have drafted it that we have given the Secretary of Homeland Security in that rule the flexibility to determine what requirements will be needed to ensure the security of our country.

In addition to giving the Secretary the authority to, by notice rather than a full regulatory process, expand or shrink the number of countries that will have access to the CNMI and Guam for this special VWP program. At this point in time I cannot anticipate what the final list will look like this coming November, but it of course will be subject to review by the new Administration.

Ms. BORDALLO. I have another followup question, Dr. Gootnick. Is it GAO's interpretation that DHS was and is required to list countries in significant economic impact findings as program eligible so long as it is not determined that they are security risks? And is it your view then that DHS has complied with this or met the full intent of the CNRA in this respect?

Mr. GOOTNICK. Yes, I agree. It is my understanding that DHS is expected to look at both security concerns and the benefit to the economy and determine that for a country that is a benefit to the economy, if there are not sufficient security concerns to exclude them that they would be included. It is my assessment of the rule and the study commissioned associated with the rule that they have taken both of those issues into consideration citing CNMI and Guam as having significant economic benefit from China and Russia, but also determining that there were security concerns that need to be addressed.

Ms. BORDALLO. Thank you very much. If there is a second round, I have a few more questions.

But at this time I would like to recognize a very distinguished Member of our Subcommittee, and that is The Honorable Dale Kildee from the State of Michigan. Thank you, Mr. Kildee.

Mr. KILDEE. I regret for not having been here. I have another hearing in the Education and Labor Committee, and I had to be there for that. But I am glad I am here now, and thank you very much, Madam Chairwoman.

Ms. BORDALLO. Thank you, and I understand the conflicts here on the Hill, we have them every day.

And now I would like to recognize The Honorable Eni Faleomavaega for any questions he may have.

Mr. FALEOMAVAEGA. Thank you, Madam Chair. I noted with interest Mr. Gootnick's response to the extent that Guam currently has somewhat of a military presence of about $13 billion or more as far as DOD. You know, the military presence in Guam, and I come to think, and I am just hazarding a guess here, that Hawaii has probably a $150 billion presence in the Department of Defense, and knowing that tourism is probably the number one industry in the State of Hawaii. Does the Visa Waiver Program currently allow Russians and Chinese to come to Hawaii to visit? Mr. Barth or Mr. Gootnick, can you answer?

Mr. BARTH. The current Visa Waiver Program, which was expanded last year to an additional eight countries, does not permit Russian nor Chinese citizens, nor several of the other countries on the currently approved list for Guam and CNMI such as Taiwan and Hong Kong to participate in the primary U.S. Visa Waiver Program.

Mr. FALEOMAVAEGA. Which leads me to my next question to Mr. Barth, what were the factors that went into the Department of Homeland Security's decision not to grant the Visa Waiver Program for Guam and CNMI?

Mr. BARTH. All the rules of the current primary Visa Waiver Program for the United States of America apply to Guam and CNMI. So, for example, a citizen of the U.K., France, Malta, Slovak Republic, Czech Republic—I could go on to 35 countries—can all travel visa-free to the entire United States of America, including the Territories of Guam and CNMI. In addition, there is a separate list of countries and a separate program approved by separate statute and authority granted by Congress for the unique combined VWP program for Guam and CNMI. So, the tourist industries of Guam and CNMI can benefit from both programs.

Mr. FALEOMAVAEGA. Would you say that the principle that got into DHS's decision though, not just for the CNMI and Guam, is security, strategic, or military related?

Mr. BARTH. I would suggest that we did what Dr. Gootnick suggested which is that we balanced as the law provides. We balanced both the economic impact, which we recognized in our rulemaking process, and the security situation as we made up the list of countries for the special VWP program.

Mr. FALEOMAVAEGA. So, your sense of balance is more toward the security interests more so than economic development for Guam and the CNMI?

Mr. BARTH. I would not agree to that, sir, respectfully. I believe that a balance in this case for those two countries that I think you are leading toward, Russia and China, is what it is. It takes a number of factors into effect, including a visa refusal rate, which is in other Committees of this Congress that look at the primary Visa Waiver Program is very significant factor in the security of the overall visa waiver program as it is applied to tourism and business travel.

Mr. FALEOMAVAEGA. So, basically, it is not just for Guam and the CNMI, the whole United States does not provide a visa waiver program in that extent for Russia and for the PRC?

Mr. BARTH. That is absolutely the case, sir, and there is no contemplation of there being one for those two countries. And pursu-

ant to current law, there is no provision for the Administration to even consider it due to those high visa refusal rates.

Mr. FALEOMAVAEGA. And what would be the factors then that will eventually come about in changing those basic policy considerations for Russia and China to allow their people to visit as tourists to our country?

Mr. BARTH. For the primary Visa Waiver Program into the U.S., I do not foresee at any time in the immediate future years that Russia and China would be actively considered for the Visa Waiver Program. On the other hand, with respect to Guam and CNMI, the special legislation providing for this Visa Waiver Program for those two territories does, because of the economic impact, I believe require us to constantly reevaluate the security situation.

As the regulation spells out today, if we can improve our border security controls within the two island territories to the point where we feel comfortable that there would be no onward leakage, if you will, through Hawaii or any other port into the other parts of the 50 U.S. states, then I think the Secretary of Homeland Security would proactively reconsider the decision made by the last Administration.

Mr. FALEOMAVAEGA. And of course what makes it even more complicated is the fact that the whole presence of Homeland Security in the CNMI takes $97 million and you are only allowed $5 million to implement the provision. So, it is almost a "Catch-22" situation. There is just no way that this is going to be fulfilled.

Mr. BARTH. Again I would respectfully disagree because we do have a team of senior members of the Department of Homeland Security looking at that cost structure and how we might meet all of the layered security requirements that we listed in the regulation within current budgets, and if that is possible we will certainly inform the Congress of any reprogramming that is necessary to do that.

Mr. FALEOMAVAEGA. And I respectfully thank you for your responses.

Ms. BORDALLO. Thank you, Congressman Faleomavaega.

And now I would like to recognize the gentleman from the CNMI, Mr. Sablan.

Mr. SABLAN. Thank you, Madam Chair. Let me give Mr. Barth a breather.

Mr. Pula, I understand that you called one meeting to encourage coordination of Federalization, and thank you. What was the result of that meeting, sir?

Mr. PULA. Are you talking about the meeting we had in February?

Mr. SABLAN. Yes, the one thing that Dr. Gootnick was referring to in his statement. There was one meeting, inter-agency.

Mr. PULA. I just want to be clear. Is your question based on the meeting that we had in February of the IGIA?

Mr. SABLAN. Mr. Gootnick referred to one inter-agency meeting.

Mr. GOOTNICK. No, I had indicated that the requirement for consultation on the implementation of the transition period and other consultations had taken place. I had also observed that there was no formal inter-agency process; however, there has been as I understand it a series of meetings and an ongoing dialogue between DHS

in particular and other agencies and the affected territories regarding implementation.

Mr. SABLAN. OK, so we will go to then the IGIA, Mr. Pula. What happened there?

Mr. PULA. Well, let me answer your question on the IGIA. Right now we are going through the process, as you know we are sort of waiting for our political people to get confirmed and all that, so we are moving toward that. And also I am about to issue out the report of the IGIA meeting, the report for 2008 and then also the issues that were brought up in 2009. It will probably sent out this week to all the inter-agencies.

But going back to perhaps your original question now that I understand what Mr. Gootnick said, when the bill was passed, the Agencies, Homeland Security, Department of the Interior, Labor, and State, we had meetings over at the Department of the Interior. And then we had several meetings after that to continue to discuss the issues even before the legislation was passed. And primarily right now, as Homeland Security is sort of working on the requirements or some of the procedures that they have to do, we haven't had a big meeting, but we have been in touch with each other in issues relevant to the legislation.

Mr. SABLAN. Thank you. Is there one person in charge in Department of the Interior to work on the Federalization issue for the Northern Marianas and Guam?

Mr. PULA. It is within our Office of Insular Affairs. And we have staff that deals with, myself and some of the folks in OA.

Mr. SABLAN. OK. Mr. Barth, is there one person in DHS that is working on coordinating all these efforts toward this complex, complicated issue?

Mr. BARTH. The policy office has taken the lead in coordinating among the multiple components in DHS that have responsibility for implementing the law. And in this case, as Acting Assistant Secretary for Policy, I have been effectively in the lead for that coordination process.

Mr. SABLAN. And again, I will go back to my earlier statement and I will continue on with any questioning is, you said that the $97 million for the Northern Mariana Islands, the implementation of the borders of the CNMI is for a multi-year requirement and for Fiscal Year 2009 you have sufficient funding for that. Can you tell me how much you need for 2010?

Mr. BARTH. At this point actually I can't give you an accurate answer to that. I expect that within the next several months we will know the answer to that and we will also have a better fix on what it looks like our overall budget for DHS will be so that we will know what the opportunities may or may not be for reprogramming once that fiscal year budget is approved.

Mr. SABLAN. But at the moment you don't know what it is going to cost come November 28?

Mr. BARTH. Come the beginning of Fiscal 2010 and throughout that fiscal year, no I do not have an answer to that.

Mr. SABLAN. And if the extension wasn't granted, you still wouldn't know what on July 1st?

Mr. BARTH. If the extension wasn't granted, we expected the costs to be minimal because we would have been talking about ap-

proximately one quarter of the fiscal year, and the costs would have basically amounted to TDY, travel, and housing expenses for people going into the CNMI to start performing the duties required by law for the last quarter of the fiscal year. That turns out now to be toward the second quarter.

Mr. SABLAN. For six points of entry, it is just TDY and personnel and travel? What about equipment? What about the infrastructure?

Mr. BARTH. We discovered after our initial budget estimates were provided, for example that a T-1 line is available in the CNMI that we can hook into and provide our data links between the CNMI and the mainland so that we can use our terrorist watch list and similar capabilities to screen passengers coming into the island.

Mr. SABLAN. I don't have too much time, Mr. Barth. How many people do you expect to hire in the Northern Marianas?

Mr. BARTH. We expect to hire a total of about 53 people for customs for the CNMI, 17 for ICE, total of 87 individuals over the next several years to staff up and implement the law.

Mr. SABLAN. And do you have an expectation to hire some of the people from the CNMI Immigration Office?

Mr. BARTH. Yes. We actually ran a pretty extensive hiring program. We had over 500 people register for taking the tests for the jobs that we were advertising in the CNMI. We had quite a few not show for the tests, but then the screening process continued until we identified about 60 people in the CNMI Guam area who were likely candidates to hire into the program. We have identified 10 of those who might be early hires as we move closer to the November 28th deadline.

Mr. SABLAN. My question was, do you expect to hire anyone who is presently working for the Division of Immigration in the Northern Mariana Islands?

Mr. BARTH. Yes.

Ms. BORDALLO. Mr. Sablan, we will come back to you in another round. All right, your time is up.

I have a couple of questions here for Mr. Pula, and I would like direct answers to these questions. The DHS extension was for only six months. Why do you need one year for the DOI report on long-term foreign workers?

Mr. PULA. We basically wanted to give it some time so that DHS goes through its process so that we will be able to know and use their data that they will be providing because it would be helpful for the report. So, we just wanted more time. I think it would provide a better report.

Ms. BORDALLO. Would you say this is a priority in the Department?

Mr. PULA. For our report?

Ms. BORDALLO. Yes.

Mr. PULA. It is required by the law for us.

Ms. BORDALLO. I just wonder why the one-year extension is needed. Or they are asking for one year, and would take that long.

Mr. PULA. Well, basically the idea is, as Homeland Security does its registration if it decides to do that, that would also help us with the information that they are going to be providing. That is basically why.

Ms. BORDALLO. And Governor Fitial is seeking a one-year delay as he mentioned in implementing this Federalization so that Chinese and Russians can qualify for a visa waiver. What is the position of DOI?

Mr. PULA. Well, I think our position will be based again on the economy of CNMI and balancing with the security as Secretary Barth has mentioned. That is kind of basically the two areas that we would rely on.

Ms. BORDALLO. Is it possible then that you would support it?

Mr. PULA. Well, I think perhaps the Administration will have to have a position and DOI is just one part of the Administration.

Ms. BORDALLO. All right, Mr. Pula. You were just in the CNMI. Please give us an update on conditions there.

Mr. PULA. Thank you for the question, Chairwoman. I basically went to visit CNMI to follow up on the power situation, they had some problems in the back, and also follow up on the capital improvement projects in the CNMI. I also took the opportunity to visit just with folks in general, went out to visit some families, just kind of dropped in, talked to people in the street. I think my take back from the visit was there is a lot of uncertainty and fear regarding to what is going to happen. The economic situation has been bad for a few years now, so there is that sense of wondering what is going to happen to all these folks.

I was able to talk to a couple of hotel folks there. It was sad to see these beautiful hotels with about 20, 30 percent capacity of visitors. So, it is pretty obvious that the economic situation is bad. The positive side of it, I was glad the last six months we hardly heard any complaints about the power situation, so that has improved tremendously, so I commend Governor Fitial and his folks for helping out with that.

There is some more bad news I had to deliver, for example the compact impact monies for the CNMI went from $5 million now to less than $2 million, so it was the kind of message I didn't want to deliver. Things are pretty bad in the CNMI, so my heart goes out to the folks there. And anything that our Agency as well as the Federal Government in general and Congress can do to help CNMI, it would be great for them.

Ms. BORDALLO. Thank you very much, Mr. Pula.

I have another followup question for the Assistant Secretary Barth. I wanted to clarify for the record the position of the Department as a criterion for determining eligibility for participation in the joint Visa Waiver Program. Now earlier you mentioned extraordinarily high visa refusal rates of China and Russia. My question then is, what is the baseline refusal rate for determining eligibility under the Guam program both currently and historically. I believe it is 16 percent or thereabouts. Am I correct on that?

Mr. BARTH. To the best of my recollection, you are correct.

Ms. BORDALLO. All right, and what about the current refusal rates for both China and Russia, and how do they compare to the historic Guam program baseline? The information the Committee has indicates that China's refusal rate is about 20 percent and Russia is about 12 percent under the Guam baseline. How do you explain this? It doesn't seem to compare with the intent of the law or add up.

Mr. BARTH. The refusal rate was merely one factor among a number of factors that led the Department in the previous Administration to leave Russia and China off of the list published on January 16th of this year. And indeed as your numbers are indicating, China under that scenario, even under the historic rate of 16 percent on average, China would not be permitted into the system as defined previously. We have a situation, however, where we believe in DHS, and I think the law supports this, that border security for the U.S., which includes CNMI, is a key factor to help us make a decision on something like visa waiver.

As the Chairwoman said, strengthen border controls is part of our effort. As the Representative from the CNMI said, we want to protect the U.S. borders. As the Governor of Guam said, adequate safeguards must be involved. I mean this is part of the theme. It is not just about the tourist dollars for better or worse, and we recognize that in this case with respect to China and Russia, it is worse.

Ms. BORDALLO. Let me follow up again. Wouldn't the military buildup that is currently occurring in Guam and possibly with training in the CNMI, wouldn't that take care of some of those concerns?

Mr. BARTH. Actually, I think it is the view of certainly some in the Department of Defense that was expressed previously as we were developing the VWP program that the significant presence of the military caused concerns depending on what countries we allowed into the Visa Waiver Program. That wasn't a universal theme from DOD, but it was something they expressed in the interagency process leading to the regulation.

Ms. BORDALLO. All right, thank you.

Do you have a followup question, Mr. Sablan?

Mr. SABLAN. Yes.

Ms. BORDALLO. All right, go ahead.

Mr. SABLAN. Thank you, Madam Chair.

Dr. Barth, you say that tourists from Russia and China could enter the CNMI and Guam after additional layered security measures, what exactly are these layered security measures?

Mr. BARTH. One of the most critical is actually the first one listed in the regulation, and that is an electronic travel authorization system. The primary Visa Waiver Program for the rest of the U.S. has implemented an electronic system for travel authorization that we in DHS and the rest of the Administration believe has significantly improved the amount of information we have prior to travelers arriving in the U.S. More information allows us to screen people earlier against various watch lists, terrorism watch lists, criminal, alien watch lists, and thereby prevent those individuals from coming into our country.

Mr. SABLAN. And all of those countries included in the visa waiver have met these electronic travel documents?

Mr. BARTH. Citizens of 35 countries are currently experience a better than 80 percent compliance rate with seeking and getting this electronic.

Mr. SABLAN. Their countries issue passports that comply with this requirement?

Mr. BARTH. There are also passports that are electronically enabled is one of the requirements.

Mr. SABLAN. All right, OK. You also said earlier that you won't complete implementation of the borders until Fiscal Year 2011. That means for the six points of entry in the Northern Marianas?

Mr. BARTH. Completion I would say is not just border inspections, which will start on November 28. It includes expanded detention facilities, it includes better physical facilities for the examination of the arriving passengers, et cetera.

Mr. SABLAN. By law DHS is required to coordinate with Department of Labor and the Attorney General and other agencies. Do you foresee getting together as recommended by GAO to put together a working group, set the process, set the parameters of what this working group are supposed to set timelines and when they are supposed to do it and keep Department of Homeland Security in check on when they are supposed to do what and how?

Mr. BARTH. Yes. The new Administration has begun to regularize the process of policy decision making at the National Security Counsel, Homeland Security level, and this set of topics, coordination with Labor, revisiting the VWP list of accepted countries, those should be rolled into a normal decision making process within those bodies.

Mr. SABLAN. Dr. Barth, let me venture, and you are probably going to tell me the underdevelopment, when do you expect to issue the regulations for foreign investors?

Mr. BARTH. I appreciate that question, sir. We expect those regulations to go to OMB for full inter-agency review sometime within the next several weeks. They are very near to finalization from the Department's viewpoint, but then there is up to a 90-day OMB review cycle that will bring in all the other Departments and agencies in a formal way. We have been coordinating with them informally as the Acting Deputy Assistant Secretary from Interior said, but now this would be the formal review process. At that time, OMB will list these rules as within their process, and that will be publicly known.

Mr. SABLAN. And when would you have a draft of regulations governing CNMI-only workers?

Mr. BARTH. That should be I would anticipate published in the Federal Register for comment certainly within about 90 to 120 days from now.

Mr. SABLAN. The Interim Final Rule on the Visa Waiver Program, do you see any potential change to what has been out there after the comments are submitted?

Mr. BARTH. We have received a fair number of comments.

Mr. SABLAN. Including Russia and China?

Mr. BARTH. I am quite certain there have been comments on that subject. Most of the comments actually were with respect to extending the deadline from June 1st to November 28th. We have effectively taken the vast number of comments on that subject and implemented them in advance of revisiting the rule.

Mr. SABLAN. Well, I will be very honest with you, Dr. Barth, we have talked many times before. The extension of the 180-day is, your Department was just not ready to do its work. So, don't thank us for something that you needed to do anyway. Let us be very sin-

cere here. There are other comments on the Visa Waiver Program. Do you see the Department taking those comments into serious consideration and changing some of the approaches or the policies you set in the Interim Final Rule on the Visa Waiver Program? That is my question.

Mr. BARTH. I can assure you the comments will be taken very seriously. CBP is the lead agency for evaluating them preliminarily, and as and when they provide up to the Department level for review those comments, my office will take a very serious look at them.

Mr. SABLAN. I see a red light.

Ms. BORDALLO. Thank you. Thank you, gentleman from CNMI, Mr. Sablan. You can submit for the record any further questions you have for this particular panel.

Mr. SABLAN. Thank you, Chair, I will.

Ms. BORDALLO. And I would like to thank Dr. Gootnick, Mr. Pula, and The Honorable Richard Barth for their participation.

And we will call on the third panel now. This will be our last panel of witnesses. Mr. Jim Beighley, Director, Duty Free Pacific Division; Mr. David Cohen, Attorney, Former Department of the Interior OIA Deputy Assistant Secretary; and Mr., Jim Arenovski, President, Saipan Chamber of Commerce.

I would now like to welcome Mr. Beighley and thank him for appearing before the Subcommittee. As I mentioned for the previous panel, the red timing light on the table will indicate when your time is concluded, but be assured, gentlemen, that your full written statement will be included in the record.

Thank you, Mr. Beighley, and please proceed.

STATEMENT OF JIM BEIGHLEY, DIRECTOR, DFS PACIFIC DIVISION

Mr. BEIGHLEY. Thank you, Chairman Bordallo and other esteemed Members of the Committee. My name is Jim Beighley and it is a pleasure to appear before you today on behalf of the Marianas Integrated Immigration Task Force representing both the Guam Visitors Bureau and the Marianas Visitors Authority. I plan to focus my comments today on the implementation of the CNRA and specifically its impact on the tourism economies of the islands.

Chairman Bordallo, as you and other Members of this Committee are aware, Guam and the CNMI have a special and unique relationship with the United States. Nearly 7,000 miles away from Washington, D.C., these islands are closer in proximity to Asia than to the United States. In fact it is so far away that when I am traveling to the mainland I am treated as a foreigner, having to pass through Customs and Immigration despite having originated on and never leaving U.S. soil.

As island territories in the Pacific, the economies of Guam and the CNMI are critically dependent on tourism. Visa access, convenience, and price competitiveness of air service, and the ability to compete with other regional beach destinations are several factors that are continually monitored by island officials and tourism industry leaders. Tourism is by far the most important industry on both islands. The intention of Congress in enacting the CNRA with respect to tourism is clear.

The statement of Congressional intent reads that the statutes should be implemented wherever possible to expand tourism and economic development in the Commonwealth. The statement leaves no doubt that Congress expected DHS to develop a Guam CNMI-Visa Waiver Program that would expand tourism to the islands. In January, CBP published an Interim Final Rule establishing the Guam-CNMI Visa Waiver Program. Unfortunately, Madam Chairman, the Interim Final Rule will not expand tourism but will drastically decrease tourist access to the islands when it takes effect.

The People's Republic of China and Russia are not included in the program despite conferring a significant economic benefit to the CNMI. In addition, DHS has actually made the new Guam CNMI program in some ways more rigorous than both the existing Guam and the U.S. mainland Visa Waiver Programs. As you know, the CNRA establishes two alternative ways for a country to be included on the list of countries that can participate in the Guam-CNMI Visa Waiver Program.

First, the CNRA mandates that a country shall be included on the list if its nationals conferred a significant economic benefit on the CNMI as long as the country's inclusion on the list would not represent a threat to the welfare, safety, or security of the United States. Second, the CNRA states that the Secretary of Homeland Security in consultation with the Secretary of the Interior and State shall have considered all factors that the Secretary deems relevant.

By mandating the listing of countries whose tourism provides a significant economic benefit unless they present a threat to the U.S., the statute provides a more direct path to listing in the Guam CNMI program for these countries. This statutory language is consistent with Congress' explicit intent in enacting the CNRA, and indeed the Department ultimately concluded that both the PRC and Russia satisfy the significant economic benefit test.

However, instead of implementing the two alternative criteria as set our in the statute, the Interim Final Rule requires countries to meet both CNRA tests instead of just one. The regulation first lists four general eligibility criteria that apply to all countries. The regulation then describes what is referred to as significant economic benefit criteria. That section of the DHS regulation says that in addition to the general criteria, DHS must determine that a country that provided a significant economic benefit to the CNMI would not represent a threat to the welfare, safety and security of the United States.

Thus, the regulation establishes two cumulative tests that a country that provides economic benefit to the CNMI must meet to participate in the Visa Waiver Program. The regulation as written establishes a counter-intuitive system under which countries whose citizens confer an economic benefit on the CNMI have a more difficult time being listed in the Visa Waiver Program. By doing so, the regulation contravenes the language of and the expressed Congressional intent stated in the CNRA.

Madam Chairman and Members of the Committee, it is very important to note that for the first time in history, these island territories halfway around the globe, nearly solely dependent on tourism for survival, whose citizens and travelers are treated by CBP

as foreigners when entering the United States, will in some ways have a more difficult time obtaining access to new tourist markets than the mainland. This is a monumental departure from well settled U.S. policy dating back to 1986 when the Guam Visa Waiver Program was first established.

At that time Congress recognized the "unique conditions prevailing on Guam and its isolated location, which justify a broad application of the visa waiver system." The Interim Final Rule turns that broad application on its head, making the new Guam-CNMI Visa Waiver Program more onerous than the mainland program. Due to the reasons set forth above, on behalf of the Task Force, I specifically recommend that Congress take the following actions.

Number one, urge the Department of Homeland Security to carefully examine the Interim Final Rule and issue a Final Rule consistent with the stated Congressional intent of the CNRA of expanding tourism opportunities. Two, delay implementation of the new Guam-CNMI Visa Waiver Program until such time when ports of entry and security procedures can be put in place to allow for a smooth transition of the tourism economy. And three, require DHS to specify to Congress, local officials in Guam and the CNMI, and private sector interests exactly what additional security measures if any will be needed to fully comply with the CNRA stated Congressional intent. We are committed to working with the Department in this respect, but we are only able to do so if we know how to help.

Madam Chairman and other Members of the Committee, thank you again for allowing me to appear before you today. Thank you for your interest and leadership on this important issue. It is my hope that the Committee will carefully consider the issues that I have brought forward today, and I look forward to any questions you may have. Thank you.

[The prepared statement of Mr. Beighley follows:]

Statement of Lamonte J. (Jim) Beighley,
Marianas Integrated Immigration Task Force

Chairman Bordallo, Ranking Member Brown, and other esteemed members of the Committee. My name is Jim Beighley, and it is a pleasure to appear before you today. I am here today on behalf of the Marianas Integrated Immigration Task Force (Task Force). I plan to focus my comments today on the implementation of the Consolidated Natural Resources Act of 2008 (CNRA), and specifically its impact on the tourism economies of Guam and the Commonwealth of the Northern Mariana Islands (CNMI).

The Mariana Islands Immigration Task Force

The Task Force is a coordinated effort between the governments and private sector of Guam and the Northern Mariana Islands, and its mission is to work cooperatively with federal officials to ensure a smooth transition during implementation of the CNRA. The Task Force is comprised of representatives from the offices of the Governors of the CNMI and Guam; the Marianas Visitors Authority; the Guam Visitors Bureau; the Hotel Association of the Northern Mariana Islands; the Guam Hotel & Restaurant Association; the Guam Chamber of Commerce; the A.B. Won Pat International Airport, Guam; the Guam Legislature; and local immigration officials.

The Uniqueness of Guam and the CNMI

Chairman Bordallo, as you and other members of this Committee are aware, Guam and the Northern Mariana Islands have a special and unique relationship with the United States. Nearly seven thousand miles away from Washington, DC, the territory of Guam and the Commonwealth to the north are closer in proximity to Asia than to the United States. In fact, it is so far away, that when traveling

to the mainland, I am treated as a foreigner—having to pass through customs and immigration—despite having originated on U.S. soil. Finally, the Northern Marianas has historically operated its own immigration program and will continue to do so until the CNRA is implemented.

The Consolidated Natural Resources Act

As you are aware, in 2008, Congress passed the CNRA to federalize the immigration program of the Northern Mariana Islands and expand tourism opportunities for the islands. Section 702 of this legislation directed the Department of Homeland Security (DHS) to issue regulations implementing a visa waiver program for Guam and the CNMI. On January 16, 2009, Customs and Border Protection published an Interim Final Rule establishing the Guam-CNMI visa waiver program. The intention of Congress in enacting this legislation with respect to tourism is clear. As the legislation's Statement of Congressional Intent states, the statute "should be implemented wherever possible to expand tourism and economic development in the Commonwealth, including aiding prospective tourists in gaining access to the Commonwealth's memorials, beaches, parks, dive sites, and other points of interest." This language leaves no doubt that Congress expected DHS to develop a Guam-CNMI visa waiver program that would expand tourism for the islands.

In fact, the Task Force's primary task has been to work with federal officials towards a smooth transition during the implementation of a joint Guam-CNMI visa waiver program under the CNRA that preserves access to Chinese and Russian tourists for the CNMI and extends the same access to Guam. In a July 10, 2008 joint report, the Task Force substantiated that Chinese and Russian source markets represent significant economic benefit and proposed a regulatory framework through which this access could be accomplished in compliance with the statutory provisions of the CNRA. Ten months following that joint report, the Task Force finds the significance of these source markets to the CNMI and Guam's tourism sector continues to increase, while others, including primary source markets such as Japanese and Korean travelers, continue to decline as had been forecasted.

Unfortunately, Madame Chairman, we have found that the Interim Final Rule issued by DHS will not expand tourism, but will drastically decrease tourist access to the islands when it takes effect on November 29, 2009. Unfortunately, under this Interim Final Rule, the Department actually made the newly revised Guam-CNMI visa waiver program in some ways more rigorous than the mainland Visa Waiver Program.

More specifically, as you know, the CNRA establishes two alternative ways for a country to be included on the list of countries that can participate in the Guam-CNMI visa waiver program. First, the CNRA mandates that a country "shall" be included on the list if its nationals conferred a "significant economic benefit" on the CNMI based on "the number of visitors for pleasure" during the past year, as long as the country's inclusion on the list would not "represent a threat to the welfare, safety, or security of the United States." Second, the CNRA states that "the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State, shall consider all factors that the Secretary deems relevant, including electronic travel authorizations, procedures for reporting lost and stolen passports, repatriation of aliens, rates of refusal for nonimmigrant visitor visas, overstays, exit systems and information exchange."

By mandating the listing of countries whose tourism provides a "significant economic benefit" to the CNMI unless they present a threat to the U.S., the statute clearly provides a more direct path to listing in the Guam-CNMI visa waiver program for those countries. This statutory language is consistent with Congress' explicit intent in enacting the CNRA, and the Department ultimately concluded that certain tourist markets in the CNMI satisfy the significant economic benefit test.

However, instead of implementing the alternative criteria as set out in the statute, the Interim Final Rule requires countries to meet both CNRA tests instead of just one. The regulation first lists four "General Eligibility Criteria" that apply to all countries.6 The regulation then describes what is referred to as "Significant Economic Benefit Criteria." That section says that "in addition to" the general criteria, DHS must determine that a country that provided a significant economic benefit to the CNMI would not represent a threat to the welfare, safety, or security of the United States.

Thus, the regulation establishes two cumulative tests that a country that provides significant economic benefit to the CNMI must meet to participate in the visa waiver program. **The regulation as written establishes a counterintuitive system under which countries whose citizens confer an economic benefit on the CNMI have a more difficult time being listed in the visa waiver program.**

By doing so, the regulation contravenes the language of and the express. Congressional intent stated in the CNRA.

Madame Chairman, and members of the committee, these facts are important to note. For the first time in history, these island territories halfway around the globe, nearly solely dependent on tourism for survival, whose citizens (and travelers) are treated by Customs and Border Protection as foreigners when entering the United States, will in some ways have a more difficult time obtaining access to new tourist markets than the mainland. This is a monumental departure from well-settled U.S. policy dating back to 1986 when the Guam visa waiver program was first established. In 1986, Congress emphasized the "unique conditions prevailing on Guam and its isolated location" which "justify a broad application of the visa waiver system." The Interim Final Rule turns that "broad application" on its head.

Tourism in the Marianas

As island territories in the Pacific, the economies of Guam and the CNMI are critically dependent on tourism. Visa access, the health of the economies in neighboring Asian countries, convenience and price competitiveness of air service, and the ability to compete with other nearby beach destinations are several factors which are continually monitored by island officials and tourism industry leaders.

The CNMI first began marketing to Russian tourists in 1996 and Chinese tourists in 1998. This initially began with private sector investment by several hotels and was later expanded to include investments by the Marianas Visitors Authority, regional tourism businesses and others. The CNMI was also able to get Approved Destination Status (ADS), which allowed it to market tourism legally in China at the end of 2005. Tourists from Russia and China are currently not allowed on Guam under the Visa Waiver Program.

Economic Significance of Chinese and Russian Tourists

While DHS found in the Interim Final Rule that visitors from the PRC and Russia conferred a "significant economic benefit" to the economy of the CNMI, the Task Force believes that the Interim Final Rule grossly underestimates the true economic impact that the exclusion of PRC and Russian visitors will have on our economy. In Fiscal Year 2008, tourist arrivals from 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. Accounting for approximately 10% of the total visitor arrivals, visitors from PRC and Russia contributed $56,790,108 in direct economic impact and $185,659,450 in indirect economic impact. The combined tourism revenues from these four source countries are $289,464,728 in direct impact and $948,205,151 in indirect impact. Considering the significant economic benefit of visitors from PRC and Russia, any interruption in their access to the CNMI would have a detrimental and long-standing effect on the economy and the livelihood of the people.

We project an even larger adverse effect for Fiscal Year 2009. With respect to our four major markets, we make the following assumptions: (1) the absence of federalization of CNMI's immigration; (2) the reinstatement of the Guangzhou air service twice weekly; and (3) a growth of 1.5% of our visitor arrivals from Russia. With these assumptions, Marianas Visitors Authority estimates that PRC and Russia would have a direct economic impact of $70,311,378 and an indirect impact of $229,864,919—an increase of 23.8% over the previous fiscal year. Considering the adverse impact the global economic crisis is having on arrivals from South Korea—where we expect that visitor arrivals will shrink by as much as 26%—PRC and Russia are estimated to account for 24.5% of the total tourism revenue from the four source countries in FY 2009. Again, our expectation of the significant economic impact is underscored by the Interim Final Rule which "recognize that there are significant limitations and uncertainties in [its] analysis."

We, however, strongly disagree with the assertion that these tourists will continue to travel to the CNMI without the visa waiver access that currently exists. The Interim Final Rule estimates that the CNMI will lose only 16% of the PRC and 3% of the Russian markets. To the contrary, the Marianas Visitors Authority found in discussions with travel industry partners that requiring PRC and Russian visitors to first obtain a U.S. visa to enter the CNMI under the Guam-CNMI visa waiver program would have a significant and negative impact on their decision to travel to the CNMI. Why would a family of four choose to incur the added expense and effort of making a U.S. visa appointment, filling out U.S. visa applications, paying hundreds of dollars in visa fees, traveling to a U.S. consulate, being subjected to a visa interview, and waiting for days to receive U.S. visa when they can travel to one of the many destinations that do not require a visa, such as Thailand? The answer is simple; they would choose to go elsewhere, as they do now with Guam. De-

spite Guam's best efforts to attract and increase tourists from the PRC and Russia, those markets continue to represent less than one-half of one percent of all tourists traveling to Guam. Therefore, we estimate that requiring a visa would negatively impact both source markets of the PRC and Russia by approximately 95%. For islands that are dependent on a single industry—tourism—it is not difficult to imagine what effect this economic loss will have on the businesses and the people of the CNMI.

Impact on Employment

The Northern Mariana Islands Strategic Initiatives for 2006—2010 was prepared for the Office of Governor Benigno R. Fitial in May 2006 by the Ad Hoc Tourism Committee of the Strategic Economic Development Council. The plan provides a proposed set of strategic initiatives to guide the industry in achieving goals to bring our tourism industry back to good health. In its findings, the initiative noted that for every 85 tourists, one person is employed in the private sector and for every 95 tourists, one person is employed in the public sector.

As Russian visitors stay much longer than packaged tourists from the other source markets, it takes approximately 3.7 packaged tourists to equal the length of stay of a single Russian visitor. In other words, each Russian visitor is equal to an average of 3.7 visitors from other source markets. Taking this into consideration, the estimated FY 2009 arrivals for Russia of 9,267 tourists is the economic equivalent of 34,288 packaged tourists. The estimated FY 2009 arrivals for PRC is 31,267. With a projected 95% negative impact on visitor arrivals from PRC and Russia through their exclusion in the visa waiver program, the CNMI stands to lose 62,278 visitors combined from PRC and Russia. Using the visitor to public/private employment ratio from the Strategic Initiatives, 733 private and 656 public sector jobs will be immediately lost.

Recommendations

Due to the reasons set forth above, on behalf of the Task Force, I specifically recommend that Congress take the following actions:

1. Urge the Department of Homeland Security to carefully examine the Interim Final Rule and issue a Final Rule consistent with the stated Congressional Intent in the CNRA of expanding tourism opportunities on the islands.
2. Delay implementation of the transition period until federal immigration ports of entry and security procedures can be put into place to allow for a smooth transition for the tourism economy. DHS must be allowed the time—and given the proper resources—to establish the security measures as outlined in the statute and regulation. If the CNRA implementation date comes before DHS has fully operational ports of entry on CNMI, there would be a catastrophic halt in all tourism to the CNMI.
3. Require DHS to specify to Congress, local officials in Guam and the CNMI, and private sector interests, exactly what additional security measures, if any, will be needed to fully comply with the CNRA's stated congressional intent of expanding tourism on the islands.

Conclusion

Taking everything into consideration—the exclusion of PRC and Russia in the Guam-CNMI visa waiver program, reduction of air service from Japan, and continued decline in visitor arrivals from South Korea—the estimated $950 million in revenue from the travel industry in FY 2008 could be reduced by as much as 35.2% to approximately $614 million annually. Given this forecast, the economic revenue that PRC and Russian visitors bring to the CNMI is very much needed by the CNMI people, now more than ever.

Madame Chairman, Ranking Member Brown, and other members of the Committee, thank you again for allowing me to appear before you today. Thank you for your interest and leadership on this important issue. It is my hope that this Committee will carefully consider the issues that I have brought forward today. The Task Force is committed to working with you and the Department to ensure a smooth transition to federal immigration in the CNMI, but also to expand tourism opportunities in the island territories. Thank you, and I look forward to answering any questions that you may have.

Ms. BORDALLO. Thank you very much, Mr. Beighley for appearing before the Committee.

And a warm welcome to Mr. Cohen. I am glad to see you back. You came before this Committee on numerous times when you were here in Washington. And you are now recognized to testify.

STATEMENT OF DAVID COHEN, ATTORNEY, FORMER OIA DEPUTY ASSISTANT SECRETARY

Mr. COHEN. Thank you, Madam Chairman, Members of the Committee. Thank you for the opportunity to testify.

In 2007 the Republican Administration and the Democratic Congress both came to the conclusion that we could not support continued CNMI control over immigration. But we recognized that applying Federal immigration law to the CNMI in a blind and abrupt fashion would be ruinous to the economic and social fabric of the CNMI. We therefore fashioned a policy of flexible Federalization whereby the CNMI would be granted immigration flexibility offered to no other U.S. jurisdiction under Federal law.

I visited the CNMI again two weeks ago. As I saw with my own eyes, the economic decline that was already in full swing when we were drafting this law in 2007 has continued to the present day. People are leaving in droves, the garment industry is completely gone. Vacant hotels and commercial properties blight the islands, and businesses of all types are closing. We are at a critical point in the CNMI's history. If this law is implemented in accordance with the stated intent of Congress, the CNMI will have a chance to rebuild its economy into one that is stronger, more sustainable, and more just than ever before.

If not, then an economic and humanitarian disaster is likely to occur. If that happens, then flexible Federalization will have become an empty slogan and a broken promise. The Federal Government has three choices. First, it can tolerate the intolerable conditions I have just described, accepting the damage to our conscience and prestige. Second, it can force taxpayers to pay for a costly bailout, recognizing that such a bailout would likely morph into permanent dependence because it would not give the CNMI the tools to develop a viable economy. Third, it could implement flexible Federalization in the way that Congress intended and ensure that the people of the CNMI do have the tools to support themselves.

I will offer suggestions for implementation. First, the expressed intent of Congress must be taken seriously. Congress has clearly stated its intent "to minimize to the greatest extent practicable potential adverse economic and fiscal effects and to maximize the Commonwealth's potential for future economic and business growth." Congress further stated its intent "that the Commonwealth be given as much flexibility as possible in maintaining existing businesses and developing new economic opportunities. The law should be implemented whenever possible to expand tourism and economic development."

These were not intended to be empty words. These words were intended to guide every action taken by the Executive Branch to implement this law and hence to protect the people of the CNMI from the great harm that would almost surely result if the law were not implemented with careful attention to their unique and precarious situation. Congress should hold the Executive Branch accountable to this language and require the Executive Branch to

demonstrate how ever action that it takes or fails to take to implement the Marianas immigration legislation is consistent with the letter and spirit of Congress' clearly stated intent.

Second, China and Russia clearly meet the test to presumptively be included on the initial visa waiver list. In order to keep China and Russia off the initial list, the Secretary of Homeland Security would have to reasonably determine that their inclusion would represent a threat to the welfare, safety, or security of the United States or its territories. In order to be consistent with the intent of Congress, the Secretary of Homeland Security must make every effort to enable China and Russia to be included in the program, including using all tools at her disposal such as bonding requirements to mitigate any threat that might be posed by including these countries.

It is not permissible under this statute to keep China or Russia off the list simply because they do things from time to time that we find objectionable. That would not in any way punish China or Russia whose tourists could spend their money in foreign countries rather than in our own U.S. territories. It would punish the CNMI and Guam. The Marianas Visa Waiver Program is a special program. The standards applicable to the national Visa Waiver Program should not be applied to the Marianas Visa Waiver Program. To do so would violate the letter and spirit of this law.

If we were simply going to apply to the Marianas the same standards that we apply to the rest of the country, then there would be no reason to create a separate program. Congress did create a separate program because it recognized that these islands necessarily have a disproportionate dependence on foreign tourism and that the remote location of these small islands allows us to be much more flexible with visa waivers than we could afford to be with the rest of the country.

Third, the CNMI should be permanently from caps on H visas. Guam should be exempted from such caps at least long enough to ensure that it has the labor required for the military and civilian infrastructure planned for the coming years. Many of the disadvantages that the CNMI faces in attracting new industry are permanent. This law provides the CNMI with some temporary competitive advantages in immigration, but it does not make sense to try to offset permanent disadvantages with temporary advantages.

A permanent H cap exemption could give the CNMI a competitive advantage that might help it bridge the gap in standard of living with the 50 states. It could use such an exemption to attract software engineers, research scientists, professors, doctors and others who could in turn form the basis of a 21st century economy to replace the 19th century economy from which the CNMI is just now emerging. This would be a cost effective way to help the CNMI to help itself rather than promoting dependence on Federal grants.

Fourth, we should recognize that it would be counterproductive to rapidly reduce the number of guest workers in the CNMI. The worst approach would be for the Executive Branch to adopt an arbitrarily linear five-year phase-out schedule only to have the Secretary of Labor determine at the last minute that the CNMI continues to need workers who would by then have already been sent home.

Fifth, we should make sure that the law does not break up families. Finally, we must do right by the long-term guest workers who have become an integral part of CNMI society. A number of guest workers have devoted most of their working lives to the CNMI. Many are raising children in the CNMI and their children are U.S. citizens. These workers were invited to come to the CNMI because they were needed, they came and they have stayed legally, and they have contributed much to the community. The value of their work skills has been confirmed again and again by the repeated renewal of their employment contracts.

These workers would be a benefit, not a burden, to any community in America. Congress should make legal guest workers who have lived in the CNMI for at least five years eligible to apply on a one-time basis for lawful permanent residence in the U.S. Making long-term workers eligible for green cards would be the best way to stabilize the CNMI's workforce short of returning to the system that Congress was determined to eradicate.

Can the United States of America, a nation of over 300 million strong, absorb a few thousand guest workers who have contributed so much to an American community? I don't want to put words in the mouth of our new President, Madam Chairman, but I believe that he along with reasonable and fair minded people across the country would answer that question with a resounding, yes we can. Si yu'os ma'ase' and olom wei. Thank you very much.

[The prepared statement of Mr. Cohen follows:]

Statement of David B. Cohen, Former Deputy Assistant Secretary of the Interior for Insular Affairs

Madam Chairman and members of the Committee, thank you for the opportunity to testify on the implementation of Public Law 110-229 to the Commonwealth of the Northern Mariana Islands (CNMI) and Guam. I come before you today as a private citizen. However, as you know, I served until January 2008 as Deputy Assistant Secretary of the Interior for Insular Affairs. In that capacity I was the Federal official responsible for generally administering, on behalf of the Secretary of the Interior, the Federal Government's relationship with the CNMI and Guam. I also served as the President's Special Representative for consultations with the CNMI pursuant to Section 702 and 902 of the U.S.-CNMI Covenant, and as Co-Chairman of the Federal Interagency Task Force on the Guam Military Buildup.

As Deputy Assistant Secretary of the Interior, I supervised the preparation of the original draft of the legislation that would eventually become Title VII, Subtitle A of Public Law 110-229, which deals with immigration, security and labor issues in the CNMI and Guam. I will refer to Title VII, Subtitle A as the "Marianas Immigration Legislation". I testified on behalf of the Bush Administration on two occasions before this Committee and on two occasions before the Senate on CNMI labor and immigration issues. I was very actively involved in the development of the Marianas Immigration Legislation.

The Bush Administration eventually came to the conclusion, for reasons that I need not belabor again here, that we could not support continued CNMI control over immigration. We recognized, however, that applying the Federal immigration law to the CNMI in a blind and abrupt fashion would be ruinous to the economic and social fabric of the CNMI. We therefore fashioned a policy of "Flexible Federalization", whereby the CNMI would be granted immigration flexibility offered to no other U.S. jurisdiction under the Immigration and Nationality Act. Examples of such flexibility included establishing a CNMI-only transitional guest worker program that could be extended indefinitely as necessary; exempting the CNMI from national caps on H visas; allowing holders of CNMI investor visas to transition to Federal treaty investor visas, even for investors from non-treaty countries; creating a special visa waiver program for the CNMI, with the ability to include countries not eligible for the national visa waiver program; and allowing new categories of CNMI-only non-immigrant visas to be created. As the Marianas Immigration Legislation worked its way

through Congress, most of these provisions would eventually be made applicable to Guam as well.

The Marianas Immigration Legislation was developed during a period when the CNMI's economy was in steep decline. The largest pillar of the CNMI economy at the time, the garment industry, was on its way out, and the only other major pillar of the economy, tourism, had been dropping precipitously. It was clear that the CNMI's economy, which has depended heavily on guest workers, was too fragile to go "cold turkey" with a strict application of Federal immigration law. The Bush Administration consistently made it clear that CNMI immigration should be federalized in a manner that minimized the damage to the CNMI economy and maximized the potential for future economic growth. I believe that this principle was endorsed by both parties through the overwhelming bipartisan support that the Marianas Immigration Legislation ultimately received.

I visited the Northern Mariana Islands again two weeks ago. As I saw with my own eyes, the economic decline that was already in full swing when we were drafting the Marianas Immigration Legislation in 2007 has continued to the present day. People are leaving in droves, the garment industry is completely gone, vacant hotels and commercial properties blight the islands, and businesses of all types are closing. As we prepare for the implementation of the Marianas Immigration Legislation, we are at a critical point in the CNMI's history. If the Marianas Immigration Legislation is implemented in accordance with the stated intent of Congress, the CNMI will have a chance to rebuild its economy into one that is stronger, more sustainable and more just than ever before. If not, then an economic and humanitarian disaster is likely to occur. Jobs will continue to disappear. Health and safety will be jeopardized by the government's inability to provide essential services. Families will be uprooted. Families will be separated. The islands will become depopulated with the continued exodus not only of guest workers, but of indigenous Chamorros and Carolinians as well.

This worst case scenario has already started to unfold. If these trends are not reversed, then "Flexible Federalization" will have become an empty slogan and a broken promise. The Federal Government has three choices. First, it can tolerate the intolerable conditions that I have just described, accepting the damage to our conscience and prestige. Second, it can force taxpayers to pay for a costly bailout, recognizing that such a bailout would likely morph into permanent dependence because it would not give the CNMI the tools to develop a viable economy. Third, it could implement Flexible Federalization in the way that Congress intended, and ensure that the people of the CNMI do have the tools to support themselves.

With this background in mind, I will now offer suggestions for the implementation of the Marianas Immigration Legislation. Some of these suggestions will require legislative action.

First, the express intent of Congress must be taken seriously. Congress has clearly stated its 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 by encouraging diversification and growth of the economy of the Commonwealth in accordance with fundamental values underlying Federal immigration policy."

Congress has further stated its intent as follows: "In recognition of the Commonwealth's unique economic circumstances, history, and geographical location, it is the intent of Congress that the Commonwealth be given as much flexibility as possible in maintaining existing businesses and other revenue sources, and developing new economic opportunities, consistent with the mandates of this subtitle. This subtitle...should be implemented whenever possible to expand tourism and economic development in the Commonwealth...."

These were not intended to be empty words. These words were intended to guide every action taken by the Executive Branch to implement the Marianas Immigration Legislation, and hence to protect the people of the CNMI from the great harm that would almost surely result if the law were not implemented with careful attention to their unique and precarious situation. Congress should hold the Executive Branch accountable to this language, and require the Executive Branch to demonstrate how every action that it takes or fails to take to implement the Marianas Immigration Legislation is consistent with the letter and spirit of Congress' clearly stated intent.

Second, it should be recognized that the law establishes a strong presumption in favor of including China and Russia in the Marianas visa waiver program, and that this presumption can only be defeated by following the standards set forth in the statute. The statute provides that the visa waiver regulations should include in the program "any country from which the Commonwealth has received a significant eco-

nomic benefit from the number of visitors for pleasure within the one-year period preceding the date of enactment of the Consolidated Natural Resources Act of 2008, unless the Secretary of Homeland Security determines that such country's inclusion on such list would represent a threat to the welfare, safety, or security of the United States or its territories." China and Russia clearly meet the test to presumptively be included on the initial visa waiver list. In order to keep China and Russia off the initial list, the Secretary of Homeland Security would have to determine, reasonably and in good faith, that their inclusion would represent a threat to the welfare, safety, or security of the United States or its territories. Congress should hold the Secretary of Homeland Security to this standard, as well as to the previously stated intent of Congress that "the Commonwealth be given as much flexibility as possible in maintaining existing businesses and other revenue sources" and that the statute "should be implemented whenever possible to expand tourism and economic development in the Commonwealth." The statute gives the Department of Homeland Security plenty of special tools to ensure that China and Russia can be included on the list without threatening the welfare, safety or security of the United States or its territories. For example, the Department could impose special bonding requirements of the type that have worked so well to ensure that Chinese tourists to the CNMI return home. In order to be consistent with the intent of Congress, the Secretary of Homeland Security must make every effort to enable China and Russia to be included in the program, including using all tools at her disposal to mitigate any threat that might otherwise be posed by including these countries.

It is not permissible under this statute to keep China or Russia off the list simply because they do things from time to time that we find objectionable. Including Russia on the list, for example, would not in any way suggest that we condone Russia's military actions in Georgia, any more than the continued presence of our Embassy in Moscow suggests that we condone such military actions. A clever bureaucrat could concoct a reason as to why Russia's recent actions in Georgia suggest that it would threaten our welfare, safety and security to allow Russian tourists to continue to visit Saipan without a visa. That would, however, just be a concoction, and Congress would hopefully recognize that as an attempt to circumvent the requirements of the law.

It would make no sense to retaliate against China or Russia for any purpose by keeping them off the Marianas visa waiver list. That would not in any way punish China or Russia, whose tourists could spend their money in foreign countries rather than in our own U.S. territories. It would punish the CNMI and Guam, which would be counterproductive and quite contrary to the intent of Congress.

The CNMI especially cannot afford to lose the jobs and revenue that are provided by Chinese and Russian tourists. Tinian's economy would be absolutely devastated by the loss of Chinese tourists.

We must remember that the Marianas visa waiver program is a special program. The standards applicable to the national visa waiver program should not be applied to the Marianas visa waiver program. To do so would violate the letter and the spirit of the Marianas Immigration Legislation. If we were simply going to apply to the Marianas the same standards that we apply to the rest of the country, then there would have been no reason to create a separate program. Congress did create a separate program because it recognized that the Mariana islands necessarily have a disproportionate dependence on foreign tourism, and that the remote location of these small islands allows us to be much more flexible with visa waivers than we can afford to be with the rest of the country.

Third, the CNMI should be permanently exempted from caps on H visas; Guam should be exempted from such caps at least for long enough to ensure that it has the labor required for the military and civilian infrastructure planned for the coming years. Please keep in mind that H visas are supposed to be used only when qualified U.S. workers are not available.

The CNMI is reeling from the loss of its top industry, and there is nothing on the horizon to take its place. It will not be easy for the CNMI to attract an industry to replace the jobs and public revenues that the garment industry once provided. The CNMI is a small island community with a limited local talent pool. Its infrastructure is very poor. It is remote and burdened with high transportation costs for people and goods, especially now that it is no longer exporting garments. Airline and shipping service to the CNMI is limited. The CNMI is resource poor. It regularly gets hit with typhoons and other destructive storms.

Many of the disadvantages that the CNMI faces in attracting new industry are permanent. The Marianas Immigration Legislation provides the CNMI with some temporary competitive advantages in immigration, but it does not make sense to try to offset permanent disadvantages with temporary advantages.

A permanent H cap exemption could give the CNMI a competitive advantage that might help it bridge at least some of the substantial gap between its standard of living and that of even the poorest of the 50 states. It could use such an exemption to attract software engineers, research scientists, professors, doctors and others who could form the basis of a 21st Century economy to replace the 19th Century economy from which the CNMI is just now emerging. This would be a cost-effective way to help the CNMI to help itself, rather than promoting dependence on Federal grants.

Guam is in a different position. Its long term economic prospects are bolstered by the planned military investment in the island, but it must rely upon the H cap exemption to provide much of the labor needed to implement that investment. According to the Government Accountability Office, the H cap exemption for both Guam and the CNMI will expire on December 31, 2014 and cannot be extended under current law. That will likely result in the military's labor supply being cut off before the buildup is finished. Cutting off necessary labor in the middle of a crucial military project would simply not be acceptable. Congress will have no choice but to amend the H cap exemption provision of the Marianas Immigration Legislation. The question is how.

I previously explained why the CNMI should receive a permanent exemption from caps on H visas. At the very least, the CNMI H cap extension should be capable of being extended as long as it is providing a significant economic benefit to the CNMI. The Guam H cap exemption should also, at the very least, be capable of being extended for as long as it is necessary for Guam.

If Congress is not willing to make the H cap exemptions permanent, it should allow them to continue for as long a possible. In that vein, Congress should direct the Department of Homeland Security to allow normal extensions of the validity period for each H petition to extend beyond the cap exemption period. Note that an approved H-1B petition for specialty occupations is generally valid for three years, and can normally be extended for three additional years without being subject to the cap. If the H cap exemption is set to expire on December 31, 2014, an H-1B petition approved prior to that date should generally be valid for three years, and should generally be renewable for three additional years without being subject to the cap. This should be true even if the total validity period of six years would extend beyond December 31, 2014, and indeed even if the initial three-year validity period expires after that date. In either case, the beneficiary of a cap-exempted H-1B petition should generally receive six consecutive years of validity as long as he or she complies with applicable law. This would allow the CNMI and Guam to maximize their benefit from the H cap exemption in the event that Congress does not see fit to make it permanent. I should disclose here that I am representing a client that is seeking to have the Marianas Immigration Legislation interpreted to allow this. Such an interpretation is, in my view, the correct interpretation of the statute in light of the Congressional intent "that the Commonwealth be given as much flexibility as possible in...developing new economic opportunities."

Fourth, we should recognize that it would be counterproductive to rapidly reduce the number of guest workers in the CNMI. The statute provides for the transitional guest worker program to be phased out by the end of 2014, but it can be extended indefinitely in increments of up to five years. The Senate Committee on Energy and Natural Resources has already acknowledged in report language that at least one five-year extension will likely be necessary. I note that there is nothing to prevent the Secretary of Labor from making that determination today, rather than waiting until the end of the five-year period. An early extension would certainly help to alleviate the uncertainty that businesses and workers in the CNMI currently have to deal with. Better yet, Congress should acknowledge reality and extend the initial phase-out deadline to ten years. The worst approach would be for the Executive Branch to adopt an arbitrarily linear five-year phase-out schedule, only to have the Secretary of Labor determine at the last minute that the CNMI continues to need workers who would by then have already been sent home. The best approach, short of Congress extending the initial transition period to ten years, would be for the Secretary of Labor to determine as soon as possible that a five-year extension of the transition period is necessary, and in any event for the phase-out schedule to not significantly reduce the number of guest workers until the Secretary of Labor determines, on the basis of proper analysis, that such a reduction is warranted.

Fifth, we should make sure that the Marianas Immigration Legislation does not break up families. The statute will likely have to be amended in order to prevent many long-term residents of the CNMI from losing their status, including spouses of citizens of the freely associated states, persons to whom the CNMI granted permanent residence and their spouses, widows and widowers of U.S. citizens, and those remaining so-called "Stateless Children" who were born before the U.S.-CNMI

Covenant legislation was signed into Federal law. I would encourage Congress to consult with immigration attorneys in the CNMI who could provide details on how the Marianas Immigration Legislation would have to be amended to avoid splitting up the families of long-term CNMI residents.

Sixth, we must do right by the long-term guest workers who have become an integral part of CNMI society. A number of guest workers have devoted most of their working lives to the CNMI. Many are raising children in the CNMI, and their children are U.S. citizens. These workers were invited to come to the CNMI because they were needed, they came and have stayed legally, and they have contributed much to the community. The value of their work skills has been confirmed again and again the by the repeated renewal of their employment contracts. A worker who loses his job because of the current economic downturn faces the prospect of having to return to the low-wage economy of his original homeland, uprooting his American children from the only home that they have ever known. Such a worker would, under current law, have no right to remain in the CNMI and no right to travel to the rest of the U.S. These workers have already proven their value to a small corner of this country, and America would benefit if this small number of people could share their talents with the rest of the country. They would be a benefit, not a burden, to any community in America. The CNMI, meanwhile, will continue to benefit from the contributions of those who stay on out of commitment to the CNMI, not because the law restricts their options. Congress should make legal guest workers who have lived in the CNMI for at least five years eligible to apply, on a one-time basis, for lawful permanent residence in the U.S.

Congress may, in the not-too-distant future, again consider comprehensive immigration reform. If Congress is going to entertain proposals to grant a pathway to citizenship for people who entered this country illegally, it should at least offer permanent residence to long-term CNMI workers who entered this country legally. Conversely, there is no reason to wait for comprehensive immigration reform in order to address the status of CNMI guest workers. Their situation is unique, and granting them status would not set precedents that would prejudice any subsequent debate on national immigration reform. I am aware that the statute provides a mechanism to address this issue next year, but it is in no one's interest to continue this needless limbo. It is never too early to do the right thing.

I would note that making long-term workers eligible for green cards would be the best way to stabilize the CNMI's workforce, short of returning to the system that Congress was determined to eradicate through its passage of the Marianas Immigration Legislation. Although many guest workers would likely leave the CNMI, many others, especially of the most valued workers, could be persuaded to stay and hence mitigate the turnover and instability that businesses would otherwise face under the Marianas Immigration Legislation. Those workers who do leave can be replaced by local workers, citizens of the freely associated states, U.S. workers and, to the extent necessary, by temporary guest workers on transitional visas or regular U.S. visas.

Can the United States of America, a nation of over 300 million strong, absorb a few thousand guest workers who have contributed so much to an American community? I don't want to put words in the mouth of our new President, Madam Chairman, but I believe that he, along with reasonable and fair-minded people across the country, would answer that question with a resounding "Yes we can!"

Finally, let me point out the obvious: The Marianas Immigration Legislation is far from perfect, but it is a creative, flexible and unique statute. It must be implemented with a matching creativity and flexibility, and a profound appreciation for the unique circumstances that make it so imperative that we get this right. Every single resident of Guam and, especially, the CNMI, will be profoundly affected by the manner in which this statute is implemented. The Chamorros and Carolinians indigenous to these islands want a strong economy so that they can raise their children in their own homeland. The business community wants a business environment that will enable businesses to survive and continue to provide employment for the community. The guest workers want to keep their jobs so that they will not have to uproot their families. All of these constituencies must have a seat at the table at which their fate will be decided. You will find that these groups have sharp but reasonable differences of opinion on some issues, but everyone agrees on the absolute urgency of fixing the economy. The Federal Government must ensure that the people of the Marianas can keep the tools to do that.

Si Yu'us Ma'ase and Olomwaay.

Ms. BORDALLO. Thank you, Mr. Cohen for your very thoughtful comments on the issue.

And finally we have Mr. Arenovski, who is here to testify on behalf of the Saipan Chamber of Commerce. Did I pronounce your name correctly, sir?

Mr. ARENOVSKI. Yes, ma'am.

Ms. BORDALLO. Thank you. You may begin.

STATEMENT OF JIM ARENOVSKI, PRESIDENT, SAIPAN CHAMBER OF COMMERCE

Mr. ARENOVSKI. Thank you. The Saipan Chamber of Commerce extends its greetings this morning to Madeleine Bordallo, Ranking Member Brown, Members of Committee, and our Representative from the Commonwealth of the Northern Mariana Islands, The Honorable Gregorio "Kilili" Sablan.

Thank you for this opportunity to testify today with respect to the Consolidated Natural Resources Act of 2008. The CNRA significantly and negatively impact three interrelated and critical areas of the Commonwealth's economy: tourism, foreign investment, and the availability of labor. Let me explain some of our main concerns. With respect to tourism, regulations issued by the Department of Homeland Security would exclude at least initially Russian and Chinese tourists from the Guam-CNMI Visa Waiver Program.

We are asking first that Russia and China be included in the Guam-CNMI Visa Waiver Program, and second that implementation of the transition period be delayed until DHS can take whatever steps they believe necessary to allow such inclusion. As of last year, expenditures by Russian and Chinese tourists on our islands represented about 20 percent of the total expenditures of all tourists combined. If Russian and Chinese tourists are required to obtain Federal B2 tourist visas to visit our islands as proposed by DHS, even if only on an interim basis, we will lose the vast majority of those visitors to other markets.

We believe that the study commissioned by DHS about the potential economic impact of such a loss is seriously flawed, as we explain in our written testimony. Tourism is the only remaining industry that we have in the Commonwealth, and a loss of that magnitude would be ruinous to our islands. With respect to the two remaining areas of our economy, foreign investors and foreign workers, I am at a bit of a disadvantage because DHS has not yet promulgated the regulations despite having a year to do so.

We ask that any of our foreign investors who will not qualify for a Federal foreign investor visa because their investments may be deemed insubstantial or insignificant in economic impact be granted Federal foreign investor status by virtue of their investment in our islands and be allowed to maintain that status so long as they maintain their investment in the Commonwealth. We also request that any current investor who is granted foreign investor status be issued the appropriate multiple entry visa while within the Commonwealth so they are not subjected to the expensive and time consuming process of having to apply for these visas at a counselor office abroad.

Foreign investment is critical to our existing economy. There are currently 478 foreign long-term business permit holders in the Commonwealth. Companies operated by those permit holders employ over 4,000 U.S. citizen and foreign worker employees. They

contribute millions of dollars annually to our tax base, and they have aggregate assets in the Commonwealth of approximately one quarter of a billion dollars. The fact that a number of these foreign investors will not meet the threshold for Federal foreign investor status does not mean that they do not provide valuable goods and services to our isolated island community.

Finally, we ask that Congress reconsider the issue of creating a permanent Federal visa category for Commonwealth-only foreign workers. Our need for foreign labor is long term. And the positions to be filled there are permanent, not seasonal or temporary. In any event, any foreign worker who is granted Federal status, including as a transitional worker, should be issued a multiple entry visa while within the Commonwealth for the same reasons I have described in relation to foreign investors. It is untenable to grant legal status and not grant ability to exit and reenter.

Foreign workers represent approximately two thirds of the Commonwealth's workforce. That number is not going to reach zero in our lifetimes. Existing Federal visa classes are not the answer. There is an extremely limited need for H1 visa holders and an almost nonexistent need for H2. Only a few hundred highschool graduates each year enter the full time workforce, and there will not be a mass immigration of American citizens to fill those approximately 18,000 jobs in the Commonwealth.

The CNRA establishes a Commonwealth-only transitional worker program that is by definition temporary and designed to reduce those numbers to zero. This does not create a viable business environment for current employers or potential investors and is having a negative effect even now. In order to have a healthy and growing economy we need assurances of a continued, not temporary, availability of foreign workers. The CNRA and related regulations have vast economic, social, and human implications in the Commonwealth, and getting this done right is as important as getting it done.

Thank you for your consideration on these issues, and I will be happy to answer any questions.

[The prepared statement of Jim Arenovski follows:]

Statement of James T. Arenovski, President, Saipan Chamber of Commerce

The Saipan Chamber of Commerce welcomes this opportunity to comment on Public Law 110-229, the Consolidated Natural Resources Act of 2008 (the "CNRA"), which extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands. This imposition of federal immigration law on the Commonwealth significantly impacts three interrelated and critical aspects of our economy: the ability to attract tourists, the ability to attract and retain foreign investors, and access to foreign labor.

The Saipan Chamber of Commerce is the largest business organization in the Commonwealth, with approximately 150 members that range from individuals and small companies to some of the largest corporations operating in the Pacific region and which collectively employ thousands of individuals in the Commonwealth. The Chamber was founded in 1959 and incorporated in 1976, two years before the Northern Mariana Islands gained U.S. commonwealth status. The Chamber not only promotes and protects business interests in, and the economic interests of, the Commonwealth, but also works to promote the civic interests and general health and welfare of the Commonwealth community as a whole.

I. INTRODUCTION

The intent of Congress that "the Commonwealth be given as much flexibility as possible in maintaining existing businesses and other revenue sources, and devel-

oping new economic opportunities" will be subverted unless Congress takes further steps to ensure that the Commonwealth does not fall victim to a federal bureaucracy clearly unprepared to carry out the mandates of P.L. 110-229 at this time. The imposition of federal immigration law on the Commonwealth will have the effect of (1) terminating the Commonwealth's successful and effective Visitor Entry Permit (VEP) program and replacing it with an untested "Guam-CNMI Visa Waiver Program," under which Russian and Chinese tourists will be required to obtain a United States visa in order to enter the Commonwealth; (2) terminating the Commonwealth's foreign investor program, which has allowed the economic development of the Commonwealth in a manner and to a degree that will not occur under the federal foreign investor visa program; and (3) terminating the Commonwealth's foreign worker program and replacing it with a "Commonwealth Only Transitional Worker" program which is initially scheduled to terminate on December 31, 2014, at which time employers in the Commonwealth will only have access to needed foreign labor through a federal employment visa program ill-suited to the unique needs of our islands.

The CNRA is a 124-page piece of legislation which primarily authorizes programs and activities in the Department of the Interior, the Forest Service, and the Department of Energy. Dramatic changes to the fundamental relationship between the Commonwealth and the United States government are introduced on page 101. Public Law 110-229 imposes on the Commonwealth a significant negative economic impact, the regulations relating to the Guam-CNMI Visa Waiver Program promulgated by the Department of Homeland Security ("DHS" or the "Department") unnecessarily compound that negative impact, and the Department's inability or unwillingness to issue regulations with respect to the Commonwealth's foreign investor and foreign worker populations causes additional harm. The Saipan Chamber of Commerce has submitted written comments to DHS in response to the issuance of the Department's interim final rule for the Guam-CNMI Visa Waiver Program. While we are disappointed by certain aspects of those regulations, we are even more concerned by the fact that DHS has not yet issued regulations with the Commonwealth's foreign investor and foreign worker populations. We are also distressed by the apparent lack of a publication requirement for the regulations concerning the Commonwealth Only Transitional Worker program.

II. THE GUAM-CNMI VISA WAIVER PROGRAM REGULATIONS

That Public Law 110-229 imposes on the Commonwealth a significant negative economic impact is unquestionable and is not refuted by either the supplementary information accompanying the interim final rule for the Guam-CNMI Visa Waiver Program published in the Federal Register or the economic analysis prepared by Industrial Economics, upon which several key determinations by DHS have been based in the rulemaking process. We believe that the CNRA allows the Department of Homeland Security the flexibility necessary to mitigate those negative effects to a much greater degree than would be accomplished under the published interim final rule, and accordingly have asked that the Department reconsider the exclusion of Russia and the People's Republic of China from the list of Visa Waiver Program participating countries. We have also asked that the Secretary of Homeland Security identify any technical assistance or other support offered to the Commonwealth under the rule, identify with specificity the additional layered security measures referenced in the rule, reevaluate the Department's reliance on the economic analysis prepared by Industrial Economics, and provide incentives to foster longer-term tourist stays in the Commonwealth/Guam region.

The Commonwealth was granted the right to administer its own immigration system 33 years ago, in 1976. Fundamental aspects of the Commonwealth's entire tourism industry, whose visitors spend approximately $317 million dollars in the Commonwealth per year (as compared to the local government's overall annual revenues of approximately $150 million), have been premised on local control over immigration. Based on the October 31, 2008 Economic Analysis for the Interim Final Rule (the "Economic Analysis") prepared by Industrial Economics, Russian and Chinese tourists recently represented, collectively, 11 percent of total annual visitor arrivals and over 18 percent of total annual visitor expenditures in the Commonwealth during the baseline period of May 2007 to April 2008.

A. RUSSIA AND CHINA SHOULD BE INCLUDED IN THE LIST OF VISA WAIVER PROGRAM PARTICIPATING COUNTRIES

DHS's interim final rule specifically excludes nationals of Russia and China from the Guam-CNMI Visa Waiver Program. Section 702(b) of the CNRA requires inclusion on the list of visa waiver program participating countries:

any country from which the Commonwealth has received a significant economic benefit from the number of visitors for pleasure within the one-year period preceding the date of enactment of the Consolidated Natural Resources Act of 2008, unless the Secretary of Homeland Security determines that such country's inclusion on such list would represent a threat to the welfare, safety, or security of the United States or its territories.

The Commonwealth and the Department agree that the Russian and Chinese visitors provide a significant benefit to the local economy—over 18 percent of total on-island expenditures made by all tourists in a recent one-year period studied by Industrial Economics. While the Chamber is not in a position to evaluate all possible welfare, safety, or security threats to the United States vis-à-vis the admission of Russian and Chinese visitors to our islands, we believe that a review of the Commonwealth's experience with visitors from those two nations over the past 12 years is instructive and should be considered when determining whether to include Russia and China in the list of Guam-CNMI Visa Waiver Program participating countries. We are informed that in the existence of the Commonwealth's Visitor Entry Permit ("VEP") program there has never been an instance of a Russian national overstaying his permit. Likewise, we understand that there has been a minute number of Chinese overstayers under the VEP program and that in all of the very few instances in which Chinese tourists have overstayed their visas, the disposition of those overstayers was resolved in a timely manner. It was determined that in 2006, during a period of time in which 334,196 tourists entered the Commonwealth, there was one Chinese tourist who overstayed. We fail to understand how DHS can extrapolate, from a nearly flawless Russian and Chinese tourism record in these islands, that visitors from Russia and China would represent a threat to the welfare, safety, or security of the United States or its territories.

One factor certainly contributing to the successful minimization of overstaying Chinese tourists in the Commonwealth is bonding requirements for the tour agents who bring those tourists into the Commonwealth. The CNRA specifically acknowledges and provides for the inclusion of countries whose nationals may present an increased risk of overstaying or other potential problems on the list of visa waiver program participating countries. Section 702(b) of the CNRA provides that the regulations should include "any bonding requirements for nationals of some or all of those countries who may present an increased risk of overstays or other potential problems..." In conjunction with our request that DHS reconsider the exclusion of Russia and the People's Republic of China from the list of Visa Waiver Program participating countries, we suggested that DHS considers making use of the bonding requirement system that has served the Commonwealth well in developing a Chinese tourist market.

The Commonwealth has successfully administered a tourist entry program, having parameters somewhat similar to the Guam-CNMI Visa Waiver Program, for Russian and Chinese tourists. In light of the Commonwealth Only Transitional Worker program and the Commonwealth Only Foreign Investor visa program, passports and other travel documents for each individual entering or departing the Commonwealth will be checked at ports of entry/exit, and there is almost no chance that a national from either of those countries could successfully travel to the mainland United States illegally, using the Commonwealth as an initial port of entry. If the security of the Territory of Guam is the primary determinant, we see no legislative prohibition in the CNRA against limiting entry a particular class of tourist to, exclusively, either the Commonwealth or Guam. Furthermore, as regards Guam, we similarly note that any Russian or Chinese tourist who wished to pose a threat to that territory, by virtue of its proximity to the Commonwealth, has had ample time to do so under the Commonwealth's VEP program—but that has not occurred. We have no reason to believe that the Russian and Chinese tourist demographics would change for the Commonwealth simply because of the federal government's assumption of immigration responsibilities. If anything, undesirable nationals from those countries would be less likely to attempt entry into the Commonwealth with the knowledge that their entrance was now being monitored by the federal, not local, government.

B. THE ECONOMIC ANALYSIS THAT HAS BEEN RELIED UPON BY THE DEPARTMENT OF HOMELAND SECURITY IS SUBSTANTIVELY FLAWED

We believe that the Economic Analysis is flawed in a number of important respects. This is consequential, given the obvious weight accorded that analysis by DHS, and the fact that considerations of "significant economic benefit" vis-à-vis potential threats to "the welfare, safety, or security of the United States or its territories" must involve a balancing test.

i. RELIANCE ON THE REPORT PREPARED FOR THE CANADIAN DEPARTMENT OF FINANCE ("AIR TRAVEL DEMAND ELASTICITIES: CONCEPTS, ISSUES AND MEASUREMENT") IS MISPLACED

Industrial Economics' entire analysis of the degree of negative impact to the Commonwealth economy likely to result from the implementation of the interim final rule, including the exclusion of Russian and Chinese nationals from the Guam-CNMI Visa Waiver Program is premised on the findings of a 2004 Canadian study which, in its introductory paragraph, clarifies that the study "reports on the findings of a review of the economics and business literature on empirically-estimated own-price elasticities of demand for Canada and other major developed countries." [Emphasis added.] The Commonwealth of the Northern Mariana Islands is neither Canada nor a major developed country. It is not even a state of the United States. It is a Commonwealth in political union with the United States, located approximately 6,000 miles west of Los Angeles. It is far closer to Tokyo, Beijing, Vladivostok, Seoul, and Manila, than it is to Washington, D.C., and tourist demographics reflect this reality. It is inappropriate to attempt to apply the own-price elasticities of demand for travel calculated for countries that span the width of entire continents to a small island community.

While foreign visitors might be rather forgiving (or more inelastic) with respect to an increase in the price associated with obtaining a visa that allows entry into and travel within the entire United States of America, they would likely be less forgiving (or more elastic) in the event that there was a comparable increase in the price associated with entry into, and travel restricted within, the Commonwealth of the Northern Mariana Islands, or any other small town in the United States.

ii. THE REPORT FAILS TO RECOGNIZE ESTABLISHED STATISTICS AND INSTEAD RELIES ON ASSUMPTIONS

Industrial Economics assumes that Russian and Chinese visitors to the Commonwealth (1) are not representative of the Russian and Chinese populations as a whole and (2) the existing visitor pools from those countries will not be refused visas for entry. While we do not dispute that Russian and Chinese visitors to the Commonwealth may not represent the demographic of the average Russian or Chinese citizen, we do not agree that those tourists to the Commonwealth are so completely dissimilar from the overseas-travelling populations of Russia and China that existing quantitative data should be dismissed entirely. Likewise, we do not accept the company's apparent assumption that the imposition of federal immigration control in the Northern Marianas will result in no change to the entry refusal rates for Russian and Chinese tourists to the Commonwealth. Industrial Economics provides no basis for its sweeping assumptions.

In Fiscal Year 2007, the Department of State refused 12.4 percent of Russian B visa applications and 20.7 percent of Chinese B visas applications.

One of the central arguments cited in favor of federal takeover of immigration control in the Commonwealth was that "the CNMI does not have, and never will have, the capacity to properly control its borders" and that "even with good faith and an honest commitment, there are substantive and procedural problems that the local government simply cannot handle." The implication of those and many other similar assertions is clear: the Commonwealth has been allowing entry to many individuals from Russia and China who the federal government would not allow. In light of the federal B visa refusal statistics and the assertions by federal proponents of the CNRA that a main factor favoring federal assumption of immigration responsibilities in the Northern Marianas is the "lack of an effective pre-screening process," the only logical conclusion is that federal visa refusal rates for Russian and Chinese tourists desiring to visit the Commonwealth will at least mirror, if not exceed, existing federal visa refusal rates for tourists visiting the 50 states.

During the one-year period studied by Industrial Economics, the Commonwealth received 4,566 Russian tourists and 38,827 Chinese tourists, whose on-island spending totaled $20 million and $38 million, respectively. Although that economic benefit might seem insignificant at the federal level, it's vitally important to our economy. A refusal of 12.4 percent for Russian tourists to the Northern Marianas would result in 566 fewer Russian visitors and $2,480,000 less on-island spending. A refusal rate of 20.7 percent for Chinese tourists to the Northern Marianas would result in 8,037 fewer Chinese visitors and $7,866,000 less on-island spending. Collectively, the decreased Russian and Chinese tourist spending in the Commonwealth, based solely on federal visa refusal rates, would equal approximately $10,346,000, or 67 percent more than the $6.2 million estimate of Industrial Economics, which was based solely on an inapplicable analysis of air travel demand elasticity and which did not take into account the effects of federal visa refusal rates. The $10,346,000 represents only the loss of tourist dollars spent at on-island establishments. It does not take into

account the decreased revenue to airlines, it does not take into account income or economic output multipliers, it does not take into account the resulting loss of revenues to the Commonwealth government, and it does not reflect the many jobs that will be lost in the islands.

iii. A LIMITED SURVEY OF RUSSIAN AND CHINESE TOURISTS CURRENTLY VISITING SAIPAN DEMONSTRATES THAT DECLINES IN TOURISTS FROM THOSE COUNTRIES WILL LIKELY BE MUCH MORE SIGNIFICANT THAN APPROXIMATED BY INDUSTRIAL ECONOMICS

The Saipan Chamber of Commerce prepared a limited survey for Russian and Chinese tourists regarding the likelihood of their returning to visit the Commonwealth under United States visa requirements. In conjunction with a number of larger hotels on Saipan, including the Aqua Resort Club, Hyatt Regency Saipan, Pacific Islands Club, Saipan Grand Hotel, and Saipan World Resort, over the course of a few days, 57 Russian tourists and 23 Chinese tourists completed the survey. While this survey is admittedly unscientific and the responses represent a tiny sample of the total number of Russian and Chinese visitors to the Commonwealth, it is an example of the type of research Industrial Economics could have performed on a much larger scale in order to base the Economic Analysis on fact, rather than theory. The results of the Chamber's survey clearly demonstrate that the assumptions of Industrial Economics are likely far from accurate.

Of 57 total Russian tourists polled, 53 (93 percent) responded that they would visit the Commonwealth again, "if [they] could continue to travel to the CNMI by obtaining only the Visitor Entry Permit, as [they] did for [their] current trip." In stark contrast, only 23 (40 percent) would visit either "the CNMI only" or "the CNMI and other U.S. destinations" in the event they "had to obtain a U.S. visa." A full 60 percent of the Russian respondents would either "visit only other U.S. destinations" or "would not visit any U.S. destination" if required to obtain a visa. Of the 23 who indicated that they would continue to visit the Commonwealth and/or other United States destinations by obtaining a federal visa, only 5 (9 percent of total respondents) indicated that they would visit only the Commonwealth if they obtained a federal visa. The remaining 91 percent indicated that they would also visit other United States destinations. Furthermore, of the 18 respondents who indicated that they would visit both the Commonwealth and other United States destinations with a federal visa, ten (59 percent of the 18) indicated that in the event they obtained a visa, they would "shorten any future stay in the CNMI in order to visit Guam or other areas of the United States."

The Industrial Economics analysis was based on the speculative travel behavior of tourists to "major developed countries" which apparently did not factor in the distinctly different demand elasticities of tourists to a small island. The Saipan Chamber of Commerce survey, on the other hand, is based on actual responses of the Commonwealth's current tourist base. Our survey clearly suggests that, as regards Russian tourists alone, the Commonwealth stands to lose over $12 million in direct on-island expenditures from Russian tourists who will chose not to travel to the Commonwealth in the event a United States visa is required for entry. In addition to this, there will be a decrease in the remaining expenditures as half of the tourists who indicated that they would continue to travel to the Commonwealth would shorten their stays in order to visit other United States destinations. In other words, the negative economic impact of decreased numbers of Russian tourists alone is likely more than 100 percent greater than what Industrial Economics estimated as the total decrease in direct on-island spending by both Russian and Chinese tourists together.

Of 23 total Chinese tourists polled, 12 (52 percent) would "visit only other U.S. destinations" if required to obtain a visa. Of the 11 who would continue to visit the Commonwealth and other United States destinations by obtaining a federal visa, 100 percent indicated that they would "shorten any future stay in the CNMI in order to visit Guam or other areas of the United States." Based on these statistics, the Commonwealth stands to lose nearly $20 million in direct on-island expenditures from Chinese tourists who will chose not to travel to the Commonwealth in the event a United States visa is required for entry. In addition to this, there will be a decrease in the remaining expenditures as all of the tourists who indicated that they would continue to travel to the Commonwealth would shorten their stays in order to visit other United States destinations. In other words, the negative economic impact of decreased numbers of Chinese tourists alone is likely over 300 percent greater than what Industrial Economics estimated as the total decrease in direct on-island spending by both Russian and Chinese tourists combined.

Taken together, the direct on-island expenditures by Russian and Chinese tourists will likely decrease by over $32 million annually, or more than 10 percent of the

aggregate expenditures by all visitors to the Commonwealth. This is over 400 percent greater than the estimate of Industrial Economics—an estimate based solely on the speculative travel behavior of tourists to "major developed countries." A loss of 10 percent of tourist on-island expenditures (and the directly-related loss of taxes, fees, and jobs) would be ruinous to the Commonwealth economy and community.

C. THE DEPARTMENT OF HOMELAND SECURITY SHOULD IDENTIFY EXACTLY WHICH "LAYERED SECURITY MEASURES" WILL BE REQUIRED IN ORDER TO INCLUDE RUSSIA AND CHINA IN THE LIST OF VISA WAIVER PROGRAM PARTICIPATING COUNTRIES

Section III.A.2. ("'Significant Economic Benefit' Criteria") of the Supplementary Information accompanying the proposed rule confirms that visitors to the Commonwealth from both China and Russia during the one-year period preceding the date of enactment of the CNRA provided a significant economic benefit to the islands. However, due to what the Department terms "political, security, and law enforcement concerns, including high nonimmigrant visa refusal rates and concerns with cooperation regarding the repatriation of citizens...of the country subject to a final order of removal", tourists from Russia and China will not be eligible to participate in the Guam-CNMI Visa Waiver Program. As an initial observation, "political" concerns are not identified in the CNRA as a basis for excluding a country, particularly one whose tourists provided "significant economic benefit" to the CNMI, from the list of Guam-CNMI Visa Waiver Program participating countries. The CNRA provides only that a country may be excluded in the event that inclusion would "represent a threat to welfare, safety, or security of the United States or its territories and commonwealths." We also note that the national visa refusal rate for visitors from Russia (12.4 percent) is significantly lower than the maximum visa refusal rate allowable under the current Guam Visa Waiver Program (16.9 percent).

Section III.A.2. further states that "[a]fter additional layered security measures, which may include, but are not limited to, electronic travel authorization to screen and approve potential visitors prior to arrival in Guam and the CNMI, and other border security infrastructure, DHS will make a determination as to whether nationals of the PRC and Russia can participate in the Guam-CNMI Visa Waiver Program." The Chamber has requested that the Department identify specifically which "layered security measures" will be necessary before the Department revisits the issue of including Russia and China in the list of Guam-CNMI Visa Waiver Program participating countries. Without the identification of specific benchmarks that would trigger an automatic review of the Department's determination regarding tourists from Russia and China, the above-referenced language is void of significance. Section 702(b) of the CNRA provides:

> The Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands may request the Secretary of the Interior and the Secretary of Homeland Security to add a particular country to the list of countries whose nationals may obtain the waiver provided by this subsection, and the Secretary of Homeland Security may grant such request after consultation with the Secretary of the Interior and the Secretary of State...

The language of the interim final rule seems designed to offer a sense of prospective hope, but in reality offers nothing more than what was already included in the underlying legislation—the possibility that countries could be added to the list of Guam-CNMI Visa Waiver Program participating countries at some time in the future. There is no guarantee that the additional layered security measures will be implemented, and no guarantee that if they are implemented the Department will allow the inclusion of Russia and China in the list of Guam-CNMI Visa Waiver Program participating countries, or even consider such inclusion.

We have requested that, at a minimum, DHS identify exactly which layered security measures the Department will need to implement before the Secretary would reconsider including Russia and China in the list of Guam-CNMI Visa Waiver Program participating countries. We have also asked DHS that the rule include assurances that such security measures will, in fact, be implemented by the Department; a deadline by which the Department must implement such measures; and an assurance that, once the measures are implemented, the Secretary will actively reassess, without further request from the governors of the Commonwealth or Guam, the inclusion of Russia and China in the list of Guam-CNMI Visa Waiver Program participating countries.

D. THE RULES SHOULD ALLOW AN INCENTIVE FOR LONGER-TERM TOURISTS TO VISIT BOTH GUAM AND THE CNMI UNDER THE VISA WAIVER PROGRAM THAT IS ALLOWED UNDER THE CNRA

DHS's interim final rule language sets the maximum stay in the Guam/Commonwealth region under the Guam-CNMI Visa Waiver Program at 45 days. We believe that the 45-day regional limitation is unnecessarily restrictive under the language of the CNRA and will unnecessarily limit the growth of the economy of the Commonwealth in a manner inconsistent with the CNRA's statement of congressional intent. Although a 45-day visit to either Guam or the Commonwealth represents a 200 percent increase for the Guam tourism industry, as compared to the current maximum allowable stay under the Guam Visa Waiver Program (15 days), it represents a 50 percent decrease for the Commonwealth tourism industry, as compared to the current maximum allowable stay under the CNMI Visitor Entry Permit program (90 days).

The rule, as currently drafted, does not make available to Guam-CNMI Visa Waiver Program tourists the possibility of an extended regional stay of 90 days that is allowable under the CNRA. Some visitors will choose to stay either exclusively in the Commonwealth or on Guam, and some visitors will choose to divide their time between the two locations. We believe that there is an opportunity to incentivize longer-term visitors to visit both locations, at the expense of neither. Section 702(b) of the CNRA allows "entry into and stay in Guam or the Commonwealth of the Northern Mariana Islands for a period not to exceed 45 days...—[Emphasis added.] This language clearly allows the Secretary of Homeland Security the authority to allow a tourist from an eligible country to stay in the Commonwealth for up to 45 days and in Guam for a separate stay of up to 45 days, without returning to the visitor's point of embarkation between the stays in the Commonwealth and on Guam. A maximum 90-day stay in the region is entirely consistent with the federal Visa Waiver Program, which allows tourists from eligible countries a 90-day stay within the United States. The rule, however, seems not to allow such an extended stay in the region. The interim final rule requires that an arriving eligible tourist must possess "a round trip ticket that is nonrefundable and nontransferable and bears a confirmed departure date not exceeding forty-five days from the date of admission to Guam or the CNMI." Under this rule, a tourist entering Guam for a 45-day visit in Guam would then be required to return to his point of embarkation before commencing a 45-day visit to the Commonwealth, which would otherwise be allowable under the CNRA. We have requested that the language of section 212.1(q)(iv) be revised to permit tourists traveling to the region to visit the Commonwealth for a period of not more than 45 days and Guam for a period of not more than 45 days, without requiring departure and readmission. Such a language would be entirely permissible under the explicit language of the CNRA, and would encourage longer regional visits without threatening the welfare, safety, or security of the United States or its territories and commonwealths.

Although few visitors from the countries initially included in the Guam-CNMI Visa Waiver Program may currently enjoy visits of such durations, the flexibility offered by extending the maximum allowable stay to be consistent with that of the United States Visa Waiver Program would allow both the Commonwealth and Guam additional marketing opportunities and would also obviate the need to revisit this issue in the event that, in the future, visitors from a country who typically prefer longer stays were to be allowed under the Guam-CNMI Visa Waiver Program. We believe that the requested change to the language of the interim final rule is consistent with both the explicit language of the CNRA regarding the Guam-CNMI Visa Waiver Program and the intent of Congress that "the Commonwealth be given as much flexibility as possible in maintaining existing businesses and other revenue sources, and developing new economic opportunities."

III. THE COMMONWEALTH'S FOREIGN LABOR REQUIREMENTS, EXISTING FOREIGN WORKERS, AND THE COMMONWEALTH ONLY TRANSITIONAL WORKER PROGRAM

A second component of the CNRA that severely impacts our economy is the termination of the Commonwealth's ability to attract and retain a pool of qualified and willing foreign workers to augment the local workforce in the numbers needed to meet the labor demands of the private business sector. The termination of this historic right granted under the Covenant has not been replaced with a comparable federal system, but rather seems based on the assumption that either existing U.S. workers in the Commonwealth will hold multiple full-time jobs or there will be a mass migration of thousands of U.S. citizens from the mainland who desire to work in the Commonwealth of the Northern Mariana Islands as hotel chambermaids, store clerks, waiters and waitresses, and the like. Despite the enormous impact on

the Commonwealth community that the discontinuance of available foreign labor will bring about, regulations pursuant to the CNRA have not yet been published in this regard.

Approximately two-thirds of the Commonwealth's total labor pool is comprised of foreign workers. It is worthy of note that these approximately 18,000 foreign workers are employed at a time when the Commonwealth's economy is in a long-term and severe depression. In the event the Commonwealth's economy was to begin to grow in the next few years, the need for foreign labor would increase. The stated objective of the CNRA is to reduce the number of Commonwealth Only Transitional Workers "to zero, during a period not to extend beyond December 31, 2014, unless extended [by the United States Secretary of Labor]." To decrease that number to zero is akin to removing over 90 million workers from the United States workforce. There are not 18,000 local workers waiting to fill those positions and the likelihood of 18,000 United States citizens moving from the mainland to fill those positions is zero. Although the CNRA seems to allow the Secretary of Labor to authorize extensions of the Commonwealth Only Transitional Worker program, it does not guarantee those extensions and it does not relieve the Secretary of the "reduce to zero" obligation. Thus, a cloud of uncertainty looms over the Commonwealth for current businesses as well as potential investors. Healthy, growing economies are not borne of uncertainty.

The Commonwealth public school system graduates fewer than 700 students annually. The majority of those students do not enter the full-time workforce immediately. By way of example, the Marianas High School class of 2008 reported 48 percent of its members were attending college following graduation and an additional 17 percent were joining the military. Only 35 percent of the graduating seniors would potentially be available for full-time employment. Applying those percentages to the entire public school system leads to 241 potential new entrants into the Commonwealth labor pool. It is unrealistic to expect 18,000 additional jobs to be filled by the residents of the Commonwealth.

One popular misconception is that repatriated foreign workers can simply be replaced by workers from the mainland. Those unfamiliar with realities of island life might pose the question: Why not employ United States citizens from the mainland to staff the economy? The fact is that some do come to the islands—but many individuals from the mainland who move to the islands for employment reasons find adjustment difficult and do not remain long after their initial enthusiasm wears off. Usually, disenchantment of one spouse or the other is likely to result from one or more of the following: high cost of living compared with the United States, particularly for utilities and food; limited and expensive supply of fresh fruit, vegetables, and other refrigerated foods; perceived or actual limited medical facilities or educational opportunities; inability to adapt to a different environment; limited employment opportunities for a spouse; the expense of moving household effects vast distances and the cost of re-establishing one's household; limited opportunities for professional growth; hot and humid climate; separation from family members on the mainland and the expense of returning for frequent visits. The Commonwealth is a service-oriented economy with limited opportunities for many professions; opportunities for cultural enrichment are limited; there is no public transportation; public utilities are far more expensive than the mainland and far less reliable; and, in some cases, special medical needs or special educational needs cannot be met. Individuals with employment options available to them in the mainland are not likely to endure perceived or actual inconveniences on a small group of islands whose capitol island is 46 square miles of land, over 6,000 thousand miles of open ocean from the west coast of the United States, accessible only by a grueling journey involving a minimum of 13 hours of air travel in addition to many hours of layovers. In this sense, the Commonwealth truly is an "insular" area. In the mainland, employers in one town can attract prospective employees from surrounding areas with relative ease. Employees can choose to work in cities or towns as far away from their homes as they wish to commute without having to sell their homes, without moving their children to different schools, without causing their spouses to seek new employment, and without abandoning their established social network. That level of worker mobility does not apply in an island setting. The move to an island community many thousands of miles from the mainland United States is a tremendous undertaking that very few people are willing to commit to. There will not be a migration of United States citizen workers into the Commonwealth in numbers sufficient to supplant our foreign workforce.

In the event the directives of the CNRA with respect to foreign workers are not amended, we believe that any process implemented in furtherance of the congressional mandate to eventually reduce the number of CNMI-only workers to zero should be the result of collaboration between federal officials, the Commonwealth

government, and representatives of private sector employers in the Commonwealth. Inasmuch as there will be a continued need for foreign workers in the Commonwealth, the determination of which employers are allowed to retain foreign workers, even as other employers are denied that ability, requires input from parties other than representatives of various federal agencies located 8,000 miles from the Commonwealth in Washington, D.C.

There is great concern amongst employers and foreign employees alike about the likely process that will be implemented with regard to foreign workers who exit the Commonwealth and then return. We have come to understand that although a foreign employee lawfully in the Commonwealth on the transition program effective date may not be deported until the earlier of the expiration of that employee's employment authorization or two years after the transition program effective date, if that employee desires to temporarily depart the Commonwealth during that time, he or she must first obtain federal status prior to departing and then obtain a United States visa at a foreign consular office in order to reenter. Foreign employees in the Commonwealth routinely return to their home countries for family visits, deaths in the family, or medical care. We believe it is contradictory to the intent of the CNRA to require foreign employees who are considered "authorized by the Secretary of Homeland Security to be employed in the Commonwealth" to undergo a time-consuming and expensive federal visa process in a foreign country in order to return to their authorized employment. Such a requirement will cause further uncertainty and harm for Commonwealth employers, employees, and potential investors. We believe that a multiple-entry visa should be issued, in the Commonwealth, to each foreign worker granted Commonwealth Only Transitional Worker status or other federal status. In the alternative, there should be an expedited visa process at foreign consular offices for those workers in the event they are required to obtain the visas outside of the Commonwealth.

While we appreciate how daunting a task it must be for DHS to create an entirely new set of regulations for a program unlike any that the department has administered before, the very fact that those regulations have not yet been published is detrimental to the Commonwealth business community, and economy, even now. Although the CNRA provides an initial two-year prohibition against the removal of individuals lawfully present on the transition program effective date, current and prospective employers must know the terms under which the vast majority of our foreign workforce, who will not qualify for federal employment-based visas, will be reduced to zero and the timeline for that reduction. There will be little to no new investment in the Commonwealth until those regulations are published. Once the regulations are published, there will continue to be little to no new investment in the Commonwealth unless those regulations, or an amendment to the CNRA, provide a mechanism for employers to ensure that there will continue to be unfettered access to a qualified foreign workforce in the event there are no qualified United States citizen applicants for unfilled positions.

We believe that the creation of a permanent federal visa category for CNMI-only foreign workers would be an essential component in ensuring the long-term economic viability of the Commonwealth. Such a visa program could be easily administered by DHS, it could require a showing that no United States citizen is available to fill the particular jobs (as with H visas), and it could simply not contain the requirement that jobs for which unskilled employment-based visas are awarded be seasonal or temporary in nature. The existing H visa category is of limited use in the Commonwealth. There will likely be some accountants, engineers, and other professionals who will qualify for H-1 visas (it has been estimated that substantially less than ten percent of foreign workers currently working in the Commonwealth would qualify for H-1 visas), but there will be almost no use for the H-2 visa category (unless there is a particularly large construction project). The Commonwealth's labor needs are not temporary or seasonal; they are permanent and year-round.

While the Chamber is concerned that the relevant regulations have not yet been published, we are more concerned that the CNRA does not recognize the realities of the Commonwealth labor market and does not contemplate, provide for, or even seemingly allow adequate alternatives in the face of an unrealistic congressional directive that the Commonwealth develop a self-sustaining labor pool.

IV. THE COMMONWEALTH'S FOREIGN INVESTOR BASE

There are currently 478 foreign long term business permit holders in the Commonwealth. As a group, these foreign investors annually contribute millions of dollars to the Commonwealth tax base and employ over 4,000 United States citizen and foreign worker employees (who also contribute to the Commonwealth tax base). The

companies operated by these investors have aggregate assets in the Commonwealth of approximately one-quarter of a billion dollars.

The Commonwealth's economy is heavily dependent on foreign investment. While some of those foreign investors will qualify for federal Treaty Investor status, many will not. Although a significant portion of foreign investment in the Commonwealth may not appear "substantial" to federal officials or may not have a "significant economic impact in the United States," it does not follow that all of those foreign investors have not been providing valuable goods or services to our isolated community which, in most cases, is closer to their home countries than it is to the mainland United States. Many of our foreign investors have resided in the Commonwealth for years, and most are law-abiding, tax-paying members of our business and social communities.

While we understand that future investors will need to comply with applicable federal visa requirements, we believe that it would be both equitable and in the best interests of the Commonwealth community and economy that there be a one-time "grandfathering" of the portion of the foreign investor base in the Commonwealth who will not otherwise qualify for federal visas because they do not meet the "substantial" or "significant economic impact" tests, but who do provide important goods and services in the Commonwealth. The federal government, the Commonwealth government, and representatives of the private sector should collaboratively develop a system to identify foreign investors in the Commonwealth who provide needed and valuable services to our island community and who would not qualify for federal Treaty Investor status, but who should be granted federal nonimmigrant investor status by virtue of their investment in the Commonwealth.

As with foreign workers, regulations for our foreign investors have unfortunately not yet been published. There is, however, a concern that foreign investors, like foreign workers, will face unnecessary, time-consuming, and costly visa issues should they travel outside the Commonwealth for business or pleasure. We make the same request with regard to the issuance of visas for foreign investors that we have made for foreign workers.

V. CONCLUSION

Although not specifically addressed in the CNRA, the Commonwealth's tourism industry is the common thread that links the issues of the Guam-CNMI Visa Waiver Program, the Commonwealth's foreign workers, and the Commonwealth's foreign investors. It is important that Congress understand the nature of the Commonwealth's remaining viable industry and understand how tenuous our ability to serve the customers of that industry is. Although in a serious decline, the Commonwealth's tourist industry is the backbone of our economy. There are very few, if any, businesses that do not receive at least derivative benefits from the tourism industry.

The tourism industry generates approximately one-third of the Commonwealth government's overall revenues. A large portion of the Commonwealth's overall workforce, as well as foreign workforce, is employed in tourism-related jobs. Approximately 100 companies controlled by foreign investors provide goods and services to our tourists. The cumulative effect of P.L. 110-229 will likely be to exclude current tourist sources, decrease the number of employees available to serve the remaining tourists, and exclude many foreign investors whose companies provide goods and services to tourists. This scenario can be avoided, but it will require Congressional oversight of the departments charged with implementing the law and it will require Congress to reconsider a few of the misapprehensions upon which the law was premised and consider amending portions of the law.

In enacting Public Law 110-229, the United States Congress clearly expressed its will that federal immigration law be applied to the Commonwealth of the Northern Mariana Islands. Congress must now ensure that the various federal departments charged with responsibilities under that law carry out, to the fullest possible extent, the Congressional 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 growth...encouraging diversification and growth of the economy of the Commonwealth...recognizing local self-government...[and] assisting the Commonwealth in achieving a progressively higher standard of living for citizens of the Commonwealth..." Already, in the form of the interim final rule establishing the Guam-CNMI Visa Waiver Program, Congressional intent is not being adhered to. The interim final rule, as published, will cause significant economic harm to the Commonwealth of the Northern Mariana Islands. The fact that the Department of Homeland Security has not yet published regulations with respect to the Commonwealth's foreign workers and foreign investors is currently causing economic harm to the Commonwealth.

The Saipan Chamber of Commerce respectfully requests that Congress require the Department of Homeland Security to include Russia and China in the list of visa waiver program participating countries and that the transition program effective date be delayed until the Department is able to comply with that directive. We ask that Congress reconsider its stated intent to reduce "to zero" the number of Commonwealth Only Transitional Workers, perhaps through the creation of a federal employment-based visa category specific to the Commonwealth. We also request that Congress consider a one-time "grandfathering" of certain existing Commonwealth foreign investors who would otherwise not qualify for federal foreign investor visas. Finally, we ask Congress's assistance in ensuring that any foreign worker or foreign investor who is permitted to lawfully remain in the Commonwealth during the transition period, and who is granted federal status, be allowed to travel freely between the Commonwealth and other countries without having to apply for a federal visa through an expensive and time-consuming process in a foreign country.

We would be happy to answer any questions that the subcommittee may have or provide any additional information required, and thank the subcommittee for its consideration of these matters of great import to the Commonwealth.

Ms. BORDALLO. Thank you very much for your insight on this matter.

And now I would like to begin. We have some questions for the third panel.

Mr. Cohen, you were very much involved in discussions of this bill when it was drafted. Did you encounter strong resistance to China and Russia from Homeland Security or State, and were you surprised that China and Russia were excluded in the rule of January 16th, 2009?

Mr. COHEN. Thank you for the question, Madam Chairman. I guess without revealing too much about the internal discussion that we had in the Administration, when my office was originally tasked with drafting the bill, we were aware of the importance of the China and Russia markets and wanted to do what we could to help the CNMI, and Guam was later included, to continue to receive tourists from those markets.

So we crafted the test of substantial economic benefit that was ultimately adopted by Congress and in the final version of the statute, because we knew that that test would presumptively put China and Russia on the list. And we wanted to be very clear and specific about the criteria that Homeland Security would have to have for removing China and Russia from the list notwithstanding their substantial economic benefit.

I was not surprised that perhaps there was resistance to specifically naming China and Russia in the statute because that would have been unprecedented, but we did want to make sure that China and Russia could not be excluded arbitrarily or for just any reason but that there would be a very narrow and specific set of criteria that would have to be followed in order to defeat the presumption that China and Russia should be on the list.

Ms. BORDALLO. So, just to repeat it for the record, Mr. Cohen, then did you encounter any strong resistance to China and Russia from Homeland Security or State, yes or no?

Mr. COHEN. Nothing specific, but I think there was a desire to make sure that they would have flexibility to keep China and Russia off the list if they deemed it to be necessary. And then the ultimate compromise was what you have in the statute, which was very narrow and specific criteria for being able to keep them off the list.

Ms. BORDALLO. So, then your answer to that question is, not specifically?

Mr. COHEN. Correct.

Ms. BORDALLO. All right, my second question is, you point out that the law establishes a strong presumption in favor of including China and Russia in the Marianas Visa Waiver Program and that China and Russia clearly meet the test to presumptively be included on the visa waiver list. Why then do you believe that they were not listed?

Mr. COHEN. Well, I can't speak for the people who are currently in the positions of responsibility in the Executive Branch, but I would call upon them and on Congress to take a hard look at this and make sure that the very narrow and specific criteria that Congress has laid out in the statute are indeed being follows, and that other criteria aren't being used as a pretext to keep China and Russia off the list.

Ms. BORDALLO. Do you believe that the message is being heard that, as you say, the CNMI cannot afford to lose the jobs and revenue that are provided by Chinese and Russian tourists? Do you think that message is out there?

Mr. COHEN. I am not sure it is being heard yet, but I think I am gratified that at this hearing that message has been delivered loud and clear by most of the witnesses. And I is very important to remember that this, as I noted in my testimony, it is a different program from the national Visa Waiver Program. And I think it is a natural human tendency to sort of apply the same standards and the same mind set to something else that is called a visa waiver program as you apply to the other visa waiver program. But that is a trap that I hope no one will fall into, and we should all remember that this was set up as a different program with different criteria, different purposes, and a different situation.

Ms. BORDALLO. What is the issue with the H1 B cap exemption that was provided in the law, and was this something that we missed when we passed Public Law 110-229?

Mr. COHEN. No I don't think it was missed. You know, the desire in fashioning a flexible Federalization policy was to provide initially the CNMI and then later also Guam with as much flexibility as possible, recognizing that the circumstances under which they operate are very different from the 50 states of the United States, and applying the Immigration and Nationality Act in the same way that we apply it in the rest of the country would have a very destructive impact on the CNMI.

And that the Federal Government could achieve its objective of making sure that there is effective border control and protecting worker rights and our other objectives without a blanket application of the Immigration and Nationality Act. This was one of the flexibility features that we added to the law. Whereas the rest of the country has a cap on H1 B workers for example of 65,000, the CNMI could bring in unlimited numbers of research scientists, for example, software engineers and others to perhaps create a modern economy to replace the garment industry.

Ms. BORDALLO. I noted with interest when you said we don't want to find ourselves caught in a trap in the future with what we

are discussing today. But, you know, as an original drafter of this bill, we are in quite a trap today, wouldn't you say, Mr. Cohen?

Mr. COHEN. Well, I am hopeful that the bill itself provides us all with the tools to avoid the traps. I agree with what was expressed earlier by I believe yourself and Congressman Sablan that if the flexibility that this bill provides is used properly and in the way that Congress intended it to be used, then it could have a very good effect. But if it isn't used properly, and if the bill is implemented in a rigid fashion, it could be very destructive to the CNMI. I believe there are some amendments that should be made to the bill but, by and large, I think the bill is a very sound bill. If the intent of Congress is followed, then it can be very beneficial to both the CNMI and Guam.

Ms. BORDALLO. Thank you, Mr. Cohen.

I have a few questions for Mr. Beighley and then I will recognize Mr. Sablan.

What is it about Guam and the CNMI that makes them uniquely suitable for the establishment of a visa waiver program which expands tourism opportunities on the island?

Mr. BEIGHLEY. Well, one of the major issues that makes them unique is the distance.

Ms. BORDALLO. Would you come a little closer, Jim, to the microphone.

Mr. BEIGHLEY. Certainly.

Ms. BORDALLO. Thank you.

Mr. BEIGHLEY. One of the major differences that makes Guam and the CNMI unique is their location. Their proximity to Asia, within a three or four-hour flight of most of the major cities within Asia makes access to tourist source markets in Asia very convenient. And second, their position of distance relative to the mainland United States makes them very unique in the application of a visa waiver program, with over 7,000 miles to travel to the United States.

In addition, there is only one way to get to the United States directly from Guam and the CNMI, and that is a daily flight to Hawaii. And before you can board that flight you must go through an additional Customs and Border Patrol checkpoint before you can even board that flight to Hawaii. So, those two things, I think, are the most important issues that make Guam and the CNMI unique as it regards visa waiver.

Ms. BORDALLO. You also said that the Guam-CNMI Visa Waiver Interim Final Rule turns the broad application emphasis of Congress, when it established the Guam Visa Waiver Program, on its head. That is what you said in your statement. Can you expand on what you mean by this?

Mr. BEIGHLEY. Well, the Guam Visa Waiver Program first, as it was established in 1986, recognized the uniqueness of Guam. And therefore I believe it was in the passage of the statute it was recognized that the unique position of Guam justifies a broad application of the U.S. visa waiver system. This application today, taking basically the U.S. visa waiver criteria and applying all of them, as was testified earlier, to the Guam CNMI Visa Waiver Program completely negates any unique conditions and fails to recognize any

unique conditions that were already set under the 1986 Guam Visa Waiver Program.

In addition to that, there are elements contained in the Guam-CNMI Visa Waiver Program Interim Final Rule that actually put in tests that are not contained in the U.S. Visa Waiver Program by adding humanitarian concerns to eligibility criteria. That is not contained in the U.S. Visa Waiver Program, and so therefore we believe that that makes it more onerous than even the U.S. Visa Waiver Program. So, not only have we taken a step backwards from a 1986 Guam Visa Waiver Program precedent, we have even taken a step backwards from the U.S. Visa Waiver Program under the Interim Final Rule.

Ms. BORDALLO. All right, one other question. How does the CNMI market itself in China and Russia, and what cities are targeted and what is the level of advertising?

Mr. BEIGHLEY. The cities that are targeted are the main cities of Beijing, Shanghai, and Guangzhou. The CNMI currently has direct flights to Shanghai, there will be direct flights from Guangzhou resuming, and we have had on and off direct flights from Beijing with plans to resume direct flights to Beijing. So, the CNMI's marketing efforts are very targeted at those specific cities.

Ms. BORDALLO. Large cities?

Mr. BEIGHLEY. Large cities, correct.

Ms. BORDALLO. What about Russia?

Mr. BEIGHLEY. Russia, the CNMI's marketing efforts are targeted at two large population areas on the eastern part of Russia only.

Ms. BORDALLO. Where is that?

Mr. BEIGHLEY. We are looking at Vladivostok and Sokolniki.

Ms. BORDALLO. All right, how do the tourists from Russia get to the CNMI?

Mr. BEIGHLEY. They either transit through Korea or through Japan. And for the record as well, as it regards visa waiver programs, there is no American Embassy in that part of Russia. A Russian tourist, if they were required to get a visa to go to the CNMI or Guam, would have to travel to Moscow first and then be able to travel back in order to get to the CNMI, which is a longer trip in and of itself than to go to the CNMI and back.

Ms. BORDALLO. So, it is quite an ordeal.

Mr. BEIGHLEY. That is why we believe that the economic analysis that DHS concluded that there would be a minimal loss of Russian tourists specifically is quite flawed.

Ms. BORDALLO. All right, thank you. And I will have some questions for the third member of the panel.

But I will turn it over right now to The Honorable Sablan from CNMI.

Mr. SABLAN. Thank you, Madam Chair. And I apologize, time is moving on. But I don't have too many questions, Madam Chair, but before I proceed, sorry I have to go think this over, but given the uncertainties that we have heard today from the Federal agencies and the implementation of 110-229, I am thinking we may find it necessary if I may ask to keep a close eye on this implementation. And for that reason I would respectfully, I hope I am not overex-

tending your gracious invitation, for a followup hearing before November 28 and invite the Federal agencies here.

Ms. BORDALLO. Be assured, Mr. Sablan, we will keep an eye on this.

Mr. SABLAN. Thank you.

Mr. Cohen and the other Jim, Mr. Arenovski, let me ask, you have different perspectives on an issue here. Mr. Cohen seems to be suggesting that we allow workers with five years in the CNMI to have a status or apply for permanent residency. Jim, you are asking for a visa for permanent CNMI-only workers. Can each one of you take a little time and explain the different benefits of the different ideas?

Mr. COHEN. Thank you, Congressman Sablan. I suggested in my testimony that we allow long-term guest workers in the CNMI, at least five years as I suggested, although it could be shorter, to apply for green cards. And I suggested that this was the best way to stabilize the workforce in the CNMI short of returning to the old system. And when I talk about returning to the old system, I am referring to a system whereby workers could stay in the CNMI for year after year getting their one-year contracts renewed on a one-year basis, but end up staying there for 10, 15, 20 years or more having put down very deep roots in the CNMI, having raised families of U.S. citizens in the CNMI, but having no rights of citizenship and no right to travel to the rest of the great country of which the CNMI is a part.

So, that is why I did not suggest that there be a worker category that would enable that to happen. If there is a special CNMI worker program that was more temporary in nature, so you don't incur the problem of, what do you do with people who have devoted their entire lives to the CNMI but at the end of the day have no rights and are effectively left with a choice of being there or going back to poverty wages in the country of their birth where they might have lost all ties, where their children have no ties. You have to deal with that.

If you give green cards, or allow them to apply for green cards if they are otherwise eligible, to the long-term workers, many will leave and many will stay. You will get an equilibrium. And on the basis of that equilibrium, and I think your best workers will stay, then you will know what your labor needs are. And then maybe it could be supplemented with a special guest worker program for the CNMI that does not allow the same type of situation to develop, where workers' rights are protected, and that we don't look at workers merely as workers, as you suggested in your earlier questioning, but as members of society, unless they are going to stay there for a very short and limited period of time. So, that was my thinking, sir.

Mr. SABLAN. Jim, please?

Mr. ARENOVSKI. Thank you. The business community, the Chamber, has taken the spot of this bill in a labor context. The bill specifically talks about workers, so we came to an employment response, a labor response. And the best response for that is to create a Federal visa that will allow folks in the CNMI to work. There is no doubt about it, that is what we want. We did not address any of the human interests of what David was speaking and some other

folks have been talking about. But let us guarantee that I will add some information.

My personal experience having my own employees who get green cards. You know, they do leave eventually, and a short time after getting them. And so we believe that the green card issue is not the answer to a labor issue, and there is a way of getting folks to work there in a non-immigrant fashion. And if over time or if the Federal Government decides to make those immigrant type visas, these special visas, then so be it. But at this point in time, we are addressing a labor issue, and a green card does not address a labor issue for the 18,000 folks that we have in the CNMI.

Mr. SABLAN. I just have, you are fine with one more?

I would like to give my remaining time to Mr. Cohen, and I am going to ask him this question, I think you answered part of it earlier to the Chair's question. But you say that China and Russia can only be excluded from the initial visa waiver list if their inclusion in the list would represent a threat to the welfare, safety, or security of the United States or its territories, but doesn't the statute go on to say that the Secretary of Homeland Security shall consider factors that the Secretary deems relevant in making that determination?

Mr. COHEN. Yes.

Mr. SABLAN. And you have the remainder of my time, which is not a lot. Thank you.

Mr. COHEN. Thank you, Congressman. And you raise a very important issue there, because I had made the point that there has to be a demonstrated threat to the welfare, safety, or security of the U.S. or its territories, but yet there is another provision where it says the Secretary of Homeland Security can consider all relevant factors in deciding whether or not to keep Russia and China on the list.

And as a lawyer and also as someone who participated in drafting the statute, you have to interpret the word relevant in the proper context, and I think it is very important for everyone to realize. When you use the word relevant, you have to ask, relevant to what? It has to be relevant to something else, and in this case clearly it has to be relevant to the threat to welfare, safety, or security of the U.S. or its territories.

In other words, the Secretary of Homeland Security can't deny Russia or China inclusion on the list simply because of a factor that the Secretary of Homeland Security deems to be important or relevant in general, it has to be relevant to that test, it has to be relevant to establishing that there is a threat to the welfare, safety, or security to the U.S.

So, it is a narrow test, that additional language to which you refer, Congressman Sablan. It is not a general catchall. It is not a carte blanche to the Secretary of Homeland Security to pull in humanitarian factors, or political factors, or economic factors, or other factors that do not relate to welfare, safety, or security. So, that is a very narrow standard to which, I think, the Department of Homeland Security needs to be held when it makes this very important decision.

Mr. SABLAN. My final one, I promise. So, Mr. Cohen, you are saying that excluding Russia and China from the Visa Waiver Pro-

gram based on the conversation in the Interim Final Rule does not meet the standards set in the law?

Mr. COHEN. Well, let me say, Congressman Sablan, that I have not reviewed in detail all the factors they used.

Mr. SABLAN. DHS doesn't tell us very much.

Mr. COHEN. I agree with you on that. But I will say that some of the factors that were raised in the Interim Final Rule as brought to light in Mr. Beighley's testimony suggest that perhaps other criteria were being considered, criteria other than a threat to the welfare, safety, or security of the U.S. And to the extent that was the case, it is in my view not permitted under the statute.

Mr. BEIGHLEY. It is also, if I may, our understanding that this is the first time in visa waiver policy history that the question of welfare has been directed at a country rather than directed at an individual, or in other words using the test of a threat to the welfare of the United States has historically been applied to an individual and a reason for an individual to be barred from entering into the United States, not to an entire country.

Ms. BORDALLO. I thank you, the gentleman from the CNMI, Mr. Sablan, for his questions. And I have just a few questions to wrap up this Subcommittee hearing.

To Mr. Arenovski, in an article from the Marianas Variety News dated Monday, May 18th, Joseph Bradley, Senior Vice President and Economic and Market Statistics Officer for the Bank of Guam is quoted as saying that he believed the Federalization of immigration in the CNMI will help stabilize the economy but with a very difficult transition period. What do you think of that conclusion, do you agree with it?

Mr. ARENOVSKI. No I do not agree with that.

Ms. BORDALLO. All right, thank you. And the other question that keeps coming up here, we keep talking about security. I can't believe with a $14 billion military buildup in Guam and the CNMI that we need any more security than that. What other state or part of our nation has such a buildup in its history? And we keep talking about the welfare and security of this and that, we have all we need plus all the adjacent agencies that go with it and that are already established in both CNMI and Guam. Now does the CNMI Chamber believe there are any security concerns that include China and Russia in the joint Guam-CNMI Visa Waiver Program? Do you really believe that there will be security problems with all of this military coming to Guam?

Mr. ARENOVSKI. It is probably not best for me to tell Homeland Security how that level of threat is. But I can use some facts about the Russians and Chinese that have come in. It was earlier stated that we have had an occasional overstayer from China. All those tourists that we have in there are bonded, OK? We work with the agent in China or Russia as well as the local agent. They are bonded. So, it gives an incentive for China and Russia to make sure that if anybody does happen to get out of line, that there is incentive for the local tour agent to make sure that all their people are in check. And by the way there have not been any Russian overstayers at all.

Ms. BORDALLO. Well, thank you very much, but I still go back to the fact.

Mr. ARENOVSKI. We do not believe that there is a security threat. We would certainly want to live on a secure island, and we believe that the security measures that the local government has been putting forth have been just fine.

Ms. BORDALLO. Very good, thank you.

Mr. ARENOVSKI. You are welcome.

Ms. BORDALLO. And my last two questions are to Mr. Cohen. Mr. Cohen, in your opinion, what is a suitable timeline for the phasing out of the transitional guest worker program slated to be scheduled for 2014?

Mr. COHEN. Well, Madam Chairman, I agree with the report language of the Senate Committee on Energy and Natural Resources that says at least one five-year extension will be necessary. And in the future a lot of that will be determined by the shape that the CNMI economy takes, but I don't see it happening properly in five years. You know, the original draft of the bill said 10 years. I think at least one five-year extension will be necessary, and after that it is hard to predict.

Ms. BORDALLO. And then my final question, Mr. Cohen, since you were one of the drafters of the current legislation, do you believe that there should be a path to citizenship for the long-term workers in the CNMI?

Mr. COHEN. I do. I think they pay their dues. The Federal Government has come into a situation that was allowed to develop over a number of years, and there were reasons for it, and I am not making a comment on that, but on a one-time basis the Federal Government is coming in to impose the Immigration and Nationality Act in a place that had not experienced it before. Just like in the U.S. Virgin Islands before, you have to deal with the situation that you have, and that is the only just way that I can think of to deal with the situation of those workers.

Ms. BORDALLO. Thank you very much. Mr. Sablan and I have agreed that we have kept you here until, I think it is 1:00 p.m. already. The Members of the Subcommittee may have some additional questions. I am sure my colleague from the CNMI will have some additional questions for the witnesses, and we will ask you to respond to them in writing. The hearing record will be kept open for 10 days.

If there is no further business before the Subcommittee, the Chairwoman again thanks the Members of the Subcommittee and our witnesses from all three panels for their participation here this morning.

And the Subcommittee now stands adjourned.

[Whereupon, at 12:55 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

[A letter submitted for the record by Frank J. Campillo, Chairman of the Board, Guam Chamber of Commerce, follows:]

GUAM CHAMBER OF COMMERCE
PARTNERS IN PROGRESS

May 19, 2009

CONGRESSWOMAN MADELEINE Z. BORDALLO
Chairwoman, Subcommittee on Insular Affairs, Oceans and Wildlife
Committee on Natural Resources
U.S. House of Representatives
Washington, D.C. 20515

RE: Oversight Hearing of the House Subcommittee on Insular Affairs, Oceans and Wildlife relative to the Implementation of Public Law 110-229 to the Commonwealth of the Northern Marianas (CNMI) and Guam, with specific reference to the Visa Waiver Program

Dear Congresswoman Bordallo,

On behalf of the Guam Chamber of Commerce Board of Directors and Membership, thank you for the opportunity to submit comments on the implementation of the Visa Waiver Program (VWP) as authorized by Public Law 110-229.

The Guam Chamber of Commerce is comprised of over 350 members representing all sectors of the business community and collectively employing 40,000 island residents in the private sector. About 52% of our members come from small businesses, but our combined membership generates approximately $2 billion annually in economic activity or nearly 70% of Guam's Gross Island Product.

The Guam Chamber of Commerce strongly endorses the continued promotion and diversification of Guam's tourism markets. In particular, we support seeking out the China visitor market. We feel, however, it is necessary to have a balanced and realistic policy that safeguards our security while promoting economic self-sufficiency within our island economies.

In our March 4, 2009 letter to the U.S. Department of Homeland Security (DHS), we expressed our support for the 180-day delay in the start of the transition period until the required additional security measures are in place and DHS has completed the work necessary to add China and Russia to the Guam-CNMI Visa Waiver Program. We are interested in knowing the progress made thus far to ensure these security measures are in place and are concerned that any further delay than what is allowed under section 702(b)

173 Aspinall Avenue • Suite 101, Ada Plaza Center, Hagåtña • P.O. Box 283, Hagåtña, GU 96932
Tel. (671) 472-6311/8001 • Fax: (671) 472-8202 • http://www.guamchamber.com.gu • E-mail: gchamber@guamchamber.com.gu

of the Consolidated Natural Resources Act (CNRA) of 2008 could hinder economic progress to our island.

Tourism, our major economic pillar, represents 35% of Guam's Gross Island Product, contributes $1.2 billion to our local economy and provides more than 20,000 jobs for our community. In 2008, the Guam Visitors Bureau (GVB) reported a 3.6% decline in visitor arrivals to Guam. More importantly, Japanese and Korean arrivals, Guam's largest visitor markets, dropped more than 5%. The CNMI also reported a significant decline in both the Japanese and Korean markets in 2008, while their Chinese market grew 12%.

China represents the largest and fastest growing potential for tourism in the world with an estimated 30 million plus Chinese citizens capable of traveling overseas with incomes from $60,000 to $100,000 annually. Because Guam is the closest U.S. destination to China, just 4 to 5 hours by commercial jet, we believe that China is a viable second leg for Guam's tourism economy, which is currently dominated (80%) by Japanese visitors. U.S. Secretary of State Hillary Clinton's visit to Asia earlier this year to promote the development of stronger relations and closer cooperation with countries in Asia, particularly China, is in support of our nation's policy to pursue constructive engagement with China through trade and commerce.

Department of Defense spending represents another major economic pillar for Guam. Our island has begun to prepare for the relocation of 8,000 Marines and their dependents from Okinawa. Construction projects are underway to support the rapid growth of our island's population, far quicker than the local skilled labor force can sustain. Temporary workers are required to fill vital positions that will allow projects to stay on track. If further delay is required by DHS to achieve the necessary security objectives, we recommend delinkage of the H-2 cap to ensure continued forward progress of any construction projects related to the development of our island.

We take this opportunity again to reaffirm our support for a China Visa Waiver Program as authorized by Public Law 110-229. The Chamber stands ready to support our local Government and visitor industry in this endeavor.

Sincerely,

FRANK J. CAMPILLO
Chairman of the Board

[A letter submitted for the record by Hon. Arnold I. Palacios, Speaker, Sixteenth Northern Marianas Commonwealth Legislature, follows:]

OFFICE OF THE SPEAKER
HOUSE OF REPRESENTATIVES
SIXTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE
P.O. Box 500586 Saipan, MP 96950
Telephone: 670/664-8971
Facsimile: 670/664-8900
E-Mail: aipalacios@yahoo.com

ARNOLD I. PALACIOS
Speaker

May 12, 2009

Congresswoman Madeleine Bordallo
Chairwoman
House Subcommittee on Insular Affairs, Oceans and Wildlife
111th United States Congress
427 Cannon HOB
Washington, D.C. 20515-5301

Dear Congresswoman Bordallo:

Thank you for the opportunity to testify on the implementation efforts thus far of Public Law 110-229, as it affects immigration in the CNMI.

It is the collective sense of the House Leadership of the 16th Northern Marianas Commonwealth Legislature that the implementation of Public Law 110-229, could not have come at the worst possible time. The CNMI economic depression continues to deepen. The last apparel manufacturing firm has closed down and businesses struggle to keep up with rising costs made worse by an ambitious minimum wage increase of 50 cents a year required under PL 110-28. All of this is reflected in years of declining tax revenues for the Commonwealth which have resulted in severe cutbacks on the delivery of government services and operations. Weighing in on the CNMI's economic future, even the chief economist of the First Hawaiian Bank has recently issued a report highlighting the enormous and difficult challenges facing the CNMI.

For this reason, the decision by Secretary Napolitano to extend the implementation of PL 110-229, another 90 days, was met with a collective sigh of relief by the CNMI House of Representatives. As the original June 1, 2009 deadline approached, we in the CNMI were gravely concerned that we had heard little from the Department of Homeland Security on how federal immigration law and policies, through PL 110-229, would be applied and implemented in the CNMI. Absent definitive DHS regulations on the implementation of PL 110-229, a cloud of uncertainty continues to hover over our islands affecting not just business but also families who have come to call the CNMI as their home.

Although it is evident that life as we have known it in the CNMI will change under the new federal regime, planning and preparing for those changes have proven difficult and problematic without a sense of direction on DHS's implementation plans. As a consequence, we have seen small businesses close up shop and move their operations elsewhere. Both residents and alien workers have left in droves in the past three years to other places to live and work. A drive through once bustling commercial and tourist centers and even residential areas show empty warehouses and apartment buildings and houses. To be candid, these places are a depressing and disheartening sight.

What we do know about proposed DHS regulations is that the visa waiver program for Guam and the CNMI will not include two promising tourism markets for the CNMI. In recent months, visitors from China and Russia have offset the market losses we have experienced in visitors from Japan and Korea. For several years, the CNMI visitor industry has carefully courted and expended substantial funding on marketing the CNMI in China and

Russia. The Russian market is especially promising given that, in general, Russian tourists stay longer, spend more, and frequent a variety of small businesses in the CNMI. All of our past efforts and investment in this market will go down the proverbial drain if the DHS regulations take effect as originally proposed. Notwithstanding the CNMI's concerted efforts to demonstrate the important of these two markets, DHS has turned a deaf ear to our plea that China and Russia be included in the visa waiver program.

The impact of PL 110-229, moreover, goes far beyond tourism. As you may know, the CNMI labor pool comprises of a significant number of immediate relatives of FSM citizens holding foreign citizenship. Without any modification to PL 110-229, I am concerned that the nearly year-old law will accelerate the departure of those individuals many of whom are skilled workers and have called these islands home for more than 15 years. Many of them have lived in the CNMI for over 20 years, have borne children here, and have invested their time and money in these islands. The reality is that under PL 110-229, these individuals will be forced to return to their home countries leaving behind in the CNMI their spouse and children. A similar situation involves many foreign citizens who have lived here a long time many with children born in the CNMI. The CNMI's immigration and labor laws were flexible enough to have allowed these workers to remain here for such a long time and to travel freely from their home country to the CNMI so long as they maintained a valid permit. That would not have been possible under the federal law. Upon the full implementation of PL 110-229, it is unclear if they can continue to live and work in the CNMI. Even if they are permitted to remain in the CNMI during the transition period, it is also unclear whether these foreign citizens will be allowed to travel to and from their home country, posing a tremendous hardship. PL 110-29 should be amended to prevent families from being separated. Under such a directive, immediate relatives of FSM citizens who are non-US or non-FSM citizens, or those foreign workers with CNMI-born children should be permitted to remain in the CNMI.

Another grave concern is the fate of CNMI permanent residents. Those residents were permitted under this special category of immigration that was eventually repealed in 1985. As CNMI permanent residents, they have lived in these islands for over 20 years, built their family homes in which they raised their children, engaged in business ventures employing local residents, and entered into long-term leases of land. But PL 110-229 fails to recognize and accommodate CNMI permanent residents. As such, it is unclear whether they will be permitted to remain in the Commonwealth indefinitely along with their spouse and children as they were allowed to do under CNMI immigration law.

The foregoing illustrates the daunting difficulties and uncertainty that we presently face in the CNMI and the perhaps unintended consequences of a major policy shift. Although it may very well be the Congress's resolve to keep the provisions of federal immigration in PL 110-229 unchanged, on behalf of the members of CNMI House of Representatives, I respectfully request that you take into account the foregoing comments and concerns.

For your consideration,

ARNOLD I. PALACIOS

cc: All Members, CNMI House of Representatives

Statement submitted for the record by The Honorable Pete P. Reyes, Senate President, The Senate, 16th CNMI Legislature

Dear Chairwoman Bordallo:

First, I would like to thank you and the honorable members of the House Subcommittee on Insular Affairs, Oceans and Wildlife for holding an oversight hearing on the "Implementation of Public Law 110-229 to the Commonwealth of the Northern Mariana Islands and Guam," and thank you for the invitation and opportunity to submit written and oral testimony on behalf of the people of the Commonwealth of the Northern Mariana Islands (CNMI) for the subcommittee's consideration with respect to the oversight hearing.

As a native and lifelong resident of Saipan, anything which impacts my home islands is obviously important but also because P.L. 110-229, the Consolidated Natural Resources Act of 2008 (CNRA), affects almost every facet of life in the CNMI, especially our labor pool and our economy. There is no doubt that P.L. 110-229 will have wide-ranging effects on the CNMI. I trust, however, that this and future Congresses will continue to have due regard for the welfare of the CNMI and her people in the enactment, application and implementation of U.S. federal policy to the islands.

Prior to the CNRA, the CNMI controlled its own immigration pursuant to its Covenant agreement with the United States. 48 U.S.C. § 1801 et seq. This was so that the CNMI could tailor its own immigration policy to, among others, maximize economic opportunities and prosperity, the CNMI being in close proximity to the more prosperous countries of East Asia. During this time, federal immigration law did not apply, and the CNMI was free to allow entry to or exclude persons as allowed by Commonwealth law. In the first two decades under its own immigration authority, the CNMI witnessed astounding growth in its economy and population. Tourism and foreign investment initially and garment manufacturing later comprised the bulk of

the swelling, economic upsurge. Hotels, golf resorts, garment manufacturing, and a casino hotel on the island Tinian, retail establishments all thrived and benefited from the CNMI's flexible immigration system. I believe the CNMI exercised this right responsibly, as the CNMI funded and maintained Immigration officers and handled issues within its own judiciary. Although I do not profess that our immigration system was flawless or immune from abuse, the system worked and brought in thousands of visitors and significant numbers of foreign investors. This influx fueled the need for foreign workers, as the resident worker pool up to now is nowhere near adequate to sustain the rapidly expanding economy.

The Covenant, however, also provides that the United States can, at any time, extend the application of U.S. immigration laws to the CNMI without the CNMI's consent. Although past attempts to federalize the CNMI's immigration failed, Congress eventually succeeded with the enactment of the CNRA, thus subjecting the CNMI to the full application of the immigration laws of the United States to the CNMI. The CNRA provides for a transition period in the implementation process which shall start one year after enactment, but this has been delayed for 180 days by the Secretary of Homeland Security pursuant to the Secretary's discretion under the CNRA. While I appreciate the Secretary's decision to delay the transition because presumably it will give the Department of Homeland Security (DHS) ample time to effectuate a more orderly and efficient implementation of the CNRA to the CNMI, my concerns regarding the implementation is based on my views and perspective as an elected representative of the people of the CNMI to voice their collective concerns that implementation of the CNRA will bring benefit rather than harm to the CNMI.

Many of the foreign workers and investors allowed entry under the CNMI's immigration system continue to reside and work in the CNMI, raising families of their own, their children acquiring U.S. citizenship. The CNMI's economy could not have been possible without the hard work and sacrifice of its foreign workers and investors. It is, therefore, key that implementation of the CNRA and any regulations promulgated thereunder take mindful, humanitarian consideration of the plight of these foreign workers and investors and their families, especially in cases where such implementation will result in separation of family members or severe economic hardship in the case of investors.

No less important is the CNRA's effect on the CNMI's tourism industry. Tourism has always been a major player in the CNMI's economy, playing the lead role again now that garment manufacturing in the CNMI has all but disappeared due to overseas competition. CNRA regulations must be tailored to afford a sufficient number of workers, including foreign workers, to maintain the CNMI's tourism industry. In the same manner, the implementation of the CNRA and accompanying regulations should allow for easy, yet secure, flow of tourists to and from the CNMI.

The Department of Homeland Security late last year issued final regulations on the Guam-CNMI Tourist Visa Waiver Program, which included a host of foreign countries from which tourists do not need a visa to enter either Guam or the CNMI, but excluded the People's Republic of China (PRC) and Russia for unspecified reasons of national security. The CNMI's PRC Chinese and Russian tourists have been growing in significant numbers the last several years, their gross spending a boon to the CNMI's otherwise contracting, economic base. Our Marianas Visitor's Authority, in a letter to the Department of Homeland Security dated February 5, 2009, revealed: "In Fiscal Year 2008, tourist arrivals from the countries of 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." Without these tourists, the CNMI will lose millions of revenue dollars annually.

The Department of Homeland Security's proposal to exclude PRC and Russia from the CNMI visa waiver program is tantamount to withholding up to one-fifth of our tourism revenues. If subjected to the U.S. visa process, I submit that most, if not all, tourists from PRC and Russia will forgo the CNMI. The United States Government Accountability Office's August 2008 Report to Congressional Committees entitled: "COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS Managing Potential Economic Impact of Applying U.S. Immigration Law Requires Coordinated Federal Decisions and Additional Data" (GAO-08-791) shows why this is so.

> Implementation of the U.S. visa process for the CNMI is likely to add costs, inconvenience, and uncertainties for tourists. For example, if China is not included in the joint visa waiver program, visa fees could add close to 20 percent to tour package costs for Chinese tourists. In-person visa interviews will impose additional inconvenience and cost. However, most tourists from China will not likely have to travel great distances to apply for visas because the CNMI currently markets only to tourists in Chinese cities with U.S. embassies or consulates. CNMI tourist industry representatives also

> expressed concerns that some Russian tourists may need to travel long distances to U.S. embassies or consulates to apply for visas. While Russian tourists can apply for visas from U.S. consulates in the region, such as the U.S. consulate in Vladivostok in Far Eastern Russia, and do not need to travel to Moscow, others may need to travel long distances. In addition, the new visa requirements will add uncertainty to the application process. According to Department of State data, 24.5 percent of visitor visa applicants from China and 15.3 percent from Russia are refused entry after paying application fees and attending interviews.
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> To the extent that tourists facing increased costs and time in obtaining a visa may choose destinations other than the CNMI, the legislation could have a negative effect on CNMI tourism. A CNMI tourism sector representative expressed concerns that added costs and inconvenience would deter tourists from visiting the CNMI and would make the CNMI less competitive with other Asian and Pacific destinations.

In good economic times, losing 20% of revenue can be devastating. In these economically depressed times, it is difficult to see how we could ever recover from the loss.

What is especially troubling is that the reasons for this exclusion are, at best, contradictory. The Congress, in enacting P.L. 110-229, demonstrated its concern for the CNMI's tourist industry. Obviously, Congress did not and does not want to see the CNMI suffer, yet the Department of Homeland's Security's proposed exclusion has exactly the impact that Congress did not intend. Frankly, it is difficult to see how P.L. 110-229's stated goal of "minimiz[ing], to the greatest extent practicable, potential adverse economic and fiscal effects of phasing-out the Commonwealth's nonresident contract worker program and—maximize[ing] the Commonwealth's potential for future economic and business growth" is met by slashing 20% of our tourist revenue.

The Department of Homeland Security's proposed course of action is perplexing given the clear language of § 701(b):

> (b) Avoiding Adverse Effects—In recognition of the Commonwealth's unique economic circumstances, history, and geographical location, it is the intent of the Congress that the Commonwealth be given as much flexibility as possible in maintaining existing businesses and other revenue sources, and developing new economic opportunities, consistent with the mandates of this subtitle. This subtitle, and the amendments made by this subtitle, should be implemented wherever possible to expand tourism and economic development in the Commonwealth, including aiding prospective tourists in gaining access to the Commonwealth's memorials, beaches, parks, dive sites, and other points of interest.

In light of the Department's deviation from what I assert is Congress' intent, I respectfully submit that further legislative guidance to the Department may be appropriate.

Further, Congress, under § 702(b)(3) of the CNRA, mandated that the Department create a waiver list specifically for Guam and the CNMI, and include on the visa waiver list:

> a listing of all countries whose nationals may obtain the waiver also provided by this subsection, except that such regulations shall provide for a listing of any country from which the Commonwealth has received a significant economic benefit from the number of visitors for pleasure within the one-year period preceding the date of enactment of the Consolidated Natural Resources Act of 2008, unless the Secretary of Homeland Security determines that such country's inclusion on such list would represent a threat to the welfare, safety, or security of the United States or its territories.

As noted by Representative Gregorio Kilili Camacho Sablan in his March 17, 2009 letter to the Department of Homeland Security, tourists from PRC and Russia significantly impact the Commonwealth's economy, yet the Department has excluded them from the list without making any finding that such tourists represent a threat to the welfare, safety or security of the United States or its territories.

Madame Chair, I remain disappointed by the current DHS position to exclude the countries of China and Russia from the Guam—CNMI Visa Waiver Program and in view of the harm to the CNMI's economy, I humbly solicit you and your Subcommittee's support for regulatory and/or statutory changes necessary to allow Chinese and Russian tourists to continue to visit the CNMI and address the other implementation concerns alluded to above, meanwhile assuring the security of the CNMI and our country's borders and ports of entry.