STATEMENT
OF
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BEFORE THE
HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON INSULAR AFFAIRS

REGARDING
H.R. 3079, NORTHERN MARIANA ISLANDS COVENANT IMPLEMENTATION ACT AND NORTHERN MARIANA ISLANDS DELEGATE ACT

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Madame Chairwoman and members of the Committee, thank you for the opportunity to testify on H.R. 3079, the Northern Mariana Islands Covenant Implementation Act and Northern Mariana Islands Delegate Act, a bill containing immigration provisions substantively identical to those contained in S. 1634 as well as a second title which would give the Commonwealth of the Northern Mariana Islands a nonvoting Delegate to the United States House of Representatives. My testimony today will begin by reiterating the position expressed by the Administration with respect to the immigration provisions in S. 1634. I come before you today wearing at least two hats: As Deputy Assistant Secretary of the Interior for Insular Affairs, I am the Federal official that is responsible for generally administering, on behalf of the Secretary of the Interior, the Federal Government's relationship with the Commonwealth of the Northern Mariana Islands (CNMI). I also serve as the President's Special Representative for consultations with the CNMI on any matter of mutual concern, pursuant to Section 902 of the U.S.-CNMI Covenant. In fact, I was in Saipan in March for Section 902 consultations with CNMI Governor Fitial and his team. I was also in Saipan in June with Secretary Kempthorne as part of his visit to U.S.-affiliated Pacific island communities.

Under the Covenant through which the CNMI joined the U.S. in 1976, the CNMI was exempted from most provisions of U.S. immigration laws and allowed to control its own immigration. However, section 503 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (P.L. 94-241) explicitly provides that Congress has the authority to make immigration and naturalization laws applicable to the CNMI. Through the bill that we are discussing today, Congress is proposing to take this legislative step to bring the immigration system of the CNMI under Federal administration. We believe that any federalization of the CNMI's immigration system must be flexible because of the CNMI's unique history, culture, status, demographic situation, location, and, perhaps most importantly, fragile economic and fiscal condition. Additionally, we would need appropriate time to address

a range of implementation issues as there are a number of Federal agencies that would be involved with federalization. In testimony before this Committee earlier this year, I offered, on behalf of the Administration, five principles that we believe should guide the development of any federalization legislation.

In previous testimony before this Committee and others, I have described at length the impressive amount of progress that the CNMI has made to improve working conditions there since the 1990s. The CNMI should be congratulated for this progress. However, serious problems continue to plague the CNMI's administration of its immigration system, and we remain concerned that the CNMI's deteriorating fiscal situation may make it even more difficult for the CNMI government to devote the resources necessary to effectively administer its immigration system and to properly investigate and prosecute labor abuse. I will begin my statement with an overview of concerns that make a compelling case for federalization.

Need for an Effective Screening Process

The CNMI is hampered by the lack of an effective pre-screening process for aliens wishing to enter the Commonwealth. Under the Immigration and Nationality Act (INA), before traveling to the continental United States, Alaska, Hawaii, Puerto Rico, Guam and the U.S. Virgin Islands, aliens must obtain a visa from a U.S. consular officer abroad unless they are eligible under the Visa Waiver Program or other legal authority for admission without a visa. Carriers are subject to substantial fines if they board passengers bound for these parts of the United States who lack visas or other proper documentation. All visa applicants are checked against the Department of State's name-checking system, the Consular Lookout and Support System (CLASS). With limited exceptions, all applicants are interviewed and subjected to fingerprint checks. After obtaining a visa, an alien seeking entry to these parts of the United States must then apply for admission to an immigration officer at a U.S. port of entry. The immigration officer is responsible for determining whether the alien is admissible, and in order to do so, the officer consults appropriate databases to identify individuals who, among other things, have criminal records or may be a danger to the security of the United States. The CNMI does not issue visas, conduct interviews or check fingerprints for those wishing to travel to the CNMI, nor does the CNMI have an equivalent to CLASS. Furthermore, CNMI immigration inspectors determine admissibility under CNMI law rather than federal law. The CNMI does have its own sophisticated computerized system for keeping track of aliens who enter and leave the Commonwealth. A record of all persons entering the CNMI is made with the Commonwealth's Labor & Immigration Identification and Documentation System, which is state-of-the-art. However, that is not a substitute for comprehensive pre-screening by Federal government authorities. In a post-9/11 environment, and given the CNMI's location and the number of aliens that travel there, we believe that continued local control of the CNMI's immigration system presents significant national security and homeland security concerns.

Human Trafficking

While we congratulate the CNMI for its recent successful prosecution of a case in which foreign women were pressured into prostitution, human trafficking remains far more prevalent in the CNMI than it is in the rest of the U.S. During the twelve-month period ending on April 30, 2007, 36 female victims of human trafficking were admitted to or otherwise served by Guma' Esperansa, a women's shelter operated by a Catholic nonprofit organization. All of these women were victims of sexual exploitation. Secretary Kempthorne personally visited the shelter and met with a number of women from the Philippines who were underage when they were trafficked into the CNMI for the sex industry. As you can imagine, he found their stories heartbreaking. The State Department estimates that a total of between 14,500 and 17,500 victims are trafficked into the U.S. each year from many places in the world. This estimate includes not only women in the sex trade, but men, women and children trafficked for all purposes, including labor. Assuming a CNMI population of roughly 70,000 and a U.S. population of roughly 300 million, the numbers above suggest that human trafficking is between 8.8 and 10.6 times more prevalent in the CNMI than it is in the U.S. as a whole. This is a conservative calculation that most likely makes the CNMI look better than it actually is: The number of victims counted for the CNMI includes only actual female victims in the sex trade who were served by Guma' Esperansa. This is being compared with a U.S. estimate of human trafficking victims of both genders that is not limited to the sex trade. In an apples-to-apples comparison, the CNMI's report card would be worse. We note that most of the victims that have been served by Guma' Esperansa were referred by the CNMI government (as a result of referrals from the Federal Ombudsman to local authorities). However, it is clear that local control over CNMI immigration has resulted in a human trafficking problem that is proportionally much greater than the problem in the rest of the U.S.

A number of foreign nationals have come to the Federal Ombudsman's office complaining that they were promised a job in the CNMI after paying a recruiter thousands of dollars to come there, only to find, upon arrival in the CNMI, that there was no job. Secretary Kempthorne met personally with a young lady from China who was the victim of such a scam and who was pressured to become a prostitute; she was able to report her situation and obtain help in the Federal Ombudsman's office. We believe that steps need to be taken to protect women from such terrible predicaments.

We are also concerned about recent attempts to smuggle foreign nationals, in particular Chinese nationals, from the CNMI into Guam by boat. A woman was recently sentenced to five years in prison for attempting to smuggle over 30 Chinese nationals from the CNMI into Guam. With the planned military buildup in Guam, the potential for smuggling aliens from the CNMI into Guam by boat is a cause for concern.

Refugee Protection

We have very serious concerns about the CNMI government's administration of its refugee protection system, which was established pursuant to a Memorandum of Agreement signed by former Governor Juan Babauta and me in 2003 with the financial support of the Office of Insular Affairs. Establishing a refugee protection system in the

CNMI was important to the U.S. because of our concerns regarding U.S. compliance with international treaties to which the U.S. is a party, including the 1967 United Nations Protocol Relating to the Status of Refugees and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Even though the CNMI for the most part is not included in the Immigration and Nationality Act, the U.S. is obligated to ensure that aliens in the CNMI are not returned to their home countries if there is a sufficient risk under the Convention Against Torture or the Refugee Protocol that they will be tortured or persecuted there.

Under the Memorandum of Agreement, the CNMI has established its own refugee protection system with the assistance of U.S. Citizenship and Immigration Services (USCIS) acting as "Protection Consultant." In this role, USCIS assisted the Commonwealth in drafting regulations and forms, trained all staff for the program, provided quality assurance review prior to a decision on all cases, and performed background checks on all applicants. The two-year performance period during which the duties of the Protection Consultant were enumerated in the Memorandum of Agreement terminated in September 2006. USCIS and the CNMI have yet to enter into a subsequent instrument to delineate the assistance that USCIS has offered to provide to the CNMI, because of a delayed response by the CNMI to USCIS's requests for cooperation since the new "Letter of Agreement" was first proposed and drafted by USCIS in February 2007.

In my testimony on July 19, 2007 before the Senate Energy Committee, I described a particularly disturbing exchange of correspondence between the CNMI Attorney General and USCIS. In this exchange the CNMI refused to provide information on the status of particular refugee protection cases, accusing the Department of Homeland Security and the Department of State of inappropriate interference in these cases. The CNMI's response to the inquiry reflected a lack of acknowledgement of the legitimate role of the Federal Government in monitoring the CNMI's compliance with U.S. treaty obligations.

In the aftermath of the Senate hearing there has been some reason to believe that the CNMI may be moving toward a less confrontational approach to this important issue – a development that the Federal Government would welcome – but substantial concerns remain regarding the ability of the Federal Government effectively to ensure that the CNMI's process is being implemented fairly and properly, in accordance with international treaty obligations.

The circumstances described above present the Federal Government with a dilemma: If the Federal Government cannot verify that the CNMI is administering its refugee protection program in a manner that accords with U.S. compliance with international treaty obligations, then extending the protections available under U.S. immigration law to cover aliens in the CNMI may be the only way to ensure that compliance. However, making aliens in the CNMI eligible to apply for protection in the U.S. is a potentially serious problem if the CNMI maintains control over its immigration system and continues to determine which aliens, and how many, are able to enter the CNMI. Under that scenario, the U.S. could be required to provide refugee protection to aliens who have

been admitted to the CNMI through a process controlled not by the Federal Government, but by the CNMI. The U.S. would be subjecting itself to potential costs and other consequences for decisions made by the CNMI. This is a strong argument in favor of Congress taking legislative action, as contemplated under Section 503 of the Covenant (P.L. 94-241), to take control of the CNMI's immigration system.

Recommended Changes to this Bill

The above are some of the factors that have led us to conclude that the CNMI's immigration system must be federalized as soon as possible. We believe that H.R. 3079 is generally sound legislation that embodies the concept of "Flexible Federalization"—that is, federalization of the CNMI's immigration system in a manner designed to minimize damage to the CNMI's fragile economy and maximize the potential for economic growth. We also believe that H.R. 3079 reflects the principles previously spelled out by the Administration as those that should guide the federalization of the CNMI's immigration system. Last month, I testified before the Senate on behalf of the Administration on S. 1634, which would federalize the CNMI immigration system through provisions which are identical to those of H.R. 3079. I announced the Administration's support for S. 1634, subject to the following points:

- Long-term Status to Temporary Workers. At this time, the Administration is evaluating the specific provisions granting long-term status to temporary workers in the CNMI in light of the Administration's immigration policies. We look forward to working with Congress on this important issue.

- Protection from Persecution and Torture. Consistent with the general transfer of immigration to Federal control on the transition period effective date, the bill should clarify that U.S. protection law, including withholding of removal on the basis of persecution or torture, would apply and be administered by Federal authorities beginning on the transition period effective date. However, given the uncertainties inherent in changing the CNMI immigration regimen, we recommend that extension of the affirmative asylum process under section 208 of the INA to the CNMI be delayed until the end of the transition period. We would also recommend a provision requiring the CNMI to maintain an effective protection program between date of enactment and the transition period effective date.

- Authority of the Secretary of Homeland Security. In general, it is important that the Secretary of Homeland Security have sufficient authority and resources to effectively administer the new responsibilities that would be undertaken under the bill. Improvements to the bill in this regard would include ensuring that the Secretary has full authority in his discretion to designate countries for the new CNMI visa waiver program (giving due consideration to all current CNMI tourist source countries); and providing the necessary fiscal and operational authority to conduct all necessary activities in the CNMI.

- Visa Waiver. As noted above, it is essential that the Secretary of Homeland Security, in consultation with the Secretary of State, have full authority to determine countries authorized to participate in a visa waiver program for the CNMI. We would also recommend consideration of authorizing integration of the proposed CNMI visa waiver program with the Guam visa waiver program as a possible means of increasing the value of these programs to those jurisdictions, such as, for example, allowing visitors qualifying for both programs a combined 30 days, with a maximum stay of 21 days in either territory.

- Employment-Based Visas. The bill would authorize the Secretary of Homeland Security to establish a specific number of employment-based visas that will not count against the numerical limitations under the Permanent Alien Labor Certification (PERM) program, if the Secretary of Labor, after consultation with the Governor of the Commonwealth and the Secretary of Homeland Security, finds exceptional circumstances with respect to the inability of employers to obtain sufficient work-authorized labor. We would recommend that this provision be removed from the bill as unnecessary because the CNMI will have an uncapped temporary worker program during the 10-year transition period.

- Conforming and Technical Amendments. We would like to work with Congress on a number of other conforming, technical and other amendments necessary to fully effectuate the transfer of responsibilities and effectively administer and integrate the CNMI-specific programs with the INA. For example, the CNMI should be added to the definitions of "State" and "United States" in section 101 of the INA.

Conclusion

We point out, however, that one of this Administration's principles for considering immigration legislation for the CNMI is that such legislation should be carefully analyzed for its likely impact in the CNMI before we implement it. We have also urged that such analysis occur expeditiously: the need to study must not be used as an excuse to delay. We understand that the Senate has requested an analysis of the provisions of S. 1634, and that the results of this analysis would of course apply equally to H.R. 3079. We note that H.R. 3079 provides a flexible framework to federalize the CNMI immigration system, and that the results of any study could be accommodated in the development of implementing regulations.

It is important to remember that H.R. 3079 deals with a unique situation, and hence does not establish any precedents that are relevant to the discussion of national immigration reform. H.R. 3079 is designed to bring under the ambit of Federal immigration law a territory that generally was not previously subject to Federal immigration law. Accomplishing this transition without causing severe economic disruption requires special transitional provisions that take into account the reality that CNMI society has been shaped by immigration policies that vary significantly from Federal immigration policy. Because CNMI society has evolved in a unique manner under unique

circumstances, it would not be prudent to apply immigration policy designed for the 50 states to the CNMI in a blanket fashion with no transition mechanisms. The special transitional provisions contained in this bill are designed to move CNMI society from one set of governing principles to another in a manner that minimizes harm to CNMI residents.

Finally, Madame Chairwoman, we again point out that the people of the CNMI must participate fully in decisions that will affect their future. As I have said in the past, a better future for the people of the CNMI cannot be imposed unilaterally from Washington, D.C., ignoring the insights, wisdom and aspirations of those to whom this future belongs. That is why I applaud you and the members of this panel who have traveled so far to give the many voices of the CNMI an opportunity to be heard—an opportunity that many of today's witnesses and most of the people you will meet during your stay would not otherwise have had. At a time when young men and women from the CNMI are sacrificing their lives in Iraq in proportions that far exceed the national average, the CNMI has more than earned the right to have the Federal Government act collaboratively and with great care as we consider policies that will change these islands forever. Therefore, with regard to Title II of the bill, I am pleased to again express the Administration's support for a nonvoting Delegate from the CNMI to the House of Representatives.

Thank you.