May 18, 2010

STATEMENT OF GOVERNOR BENIGNO R. FITIAL
BEFORE THE HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON INSULAR AFFAIRS, OCEANS AND WILDLIFE

On behalf of the Commonwealth of the Northern Mariana Islands, I appreciate the opportunity to testify before the Subcommittee today with respect to the implementation of the Consolidated Natural Resources Act of 2008 (”CNRA”).

I know that the timing of this hearing – almost exactly two years after the enactment of this law on May 8, 2008 – is not an accident. Virtually everyone who testified before Congressional committees about this proposed legislation in 2007 and 2008 recognized that it sought to apply the federal immigration laws to the unique conditions that had developed in the Commonwealth during its first 30 years as part of the American family. We all – whether supporters or opponents of the legislation – appreciated that achievement of the law’s objectives entailed risks to the Commonwealth and required careful implementation by the federal government.

To minimize these risks and assist effective Congressional oversight, the CNRA was quite precise in defining the responsibilities of several federal agencies.

First, the Department of Homeland Security (“DHS”) was given very specific directions with respect to the issuance of regulations pertaining to a joint visa waiver program, a CNMI-only foreign investor program, and a Commonwealth foreign worker permitting system. All of these regulations were required to be in place on the effective date of November 28, 2009.

Second, the Secretary of the Interior was directed to consult with the Governor of the Commonwealth and DHS and provide a report to Congress by May 8, 2010, addressing several specific issues with respect to the foreign workers employed in the Commonwealth.

Third, the Government Accountability Office (“GAO”) was asked to assess by the same date the performance of the responsible federal agencies and the Commonwealth in implementing the Congressional intent, as well as assessing the impacts of the law’s implementation on the Commonwealth’s economy and its foreign investors, and the effectiveness of federal and Commonwealth efforts to locate and repatriate foreign workers illegally residing in the CNMI.

Congress obviously contemplated that these federal agencies would fulfill their statutory responsibilities in compliance with the law’s deadlines. If they had done so, this Subcommittee would have for its consideration today final regulations issued by DHS; a report by Interior

prepared in collaboration with the Governor of the Commonwealth; and a GAO report that provided the assessments of the law's implementation to date. Based on this information, this Subcommittee could begin to evaluate the performance of the federal agencies and decide whether the CNRA should be amended.

I am disappointed that the Subcommittee does not have before it at this time the information that was anticipated and required under the CNRA. In this statement I will present the Commonwealth's views regarding the regulatory and enforcement efforts of DHS, which have had a very serious adverse impact on the Commonwealth, and the failures of the Interior Department and GAO to provide the reports mandated by the CNRA.

Regulatory and Enforcement Actions by the Department of Homeland Security

When I testified before this Subcommittee last year regarding the CNRA, I emphasized the following points:

First, I advised the Subcommittee that the Commonwealth was coping to the best of its ability with the fourth year of a serious economic depression. Today, I can report that our people continue to suffer and that no signs of economic recovery are apparent after five years. The Commonwealth Legislature and I are in the midst of intense discussions regarding the spending cuts and other measures that need to be taken to adjust to the reduced revenues available for appropriation. Beginning this week, close to 400 excepted service employees in the Executive Branch of the CNMI Government will receive a 10-hour work cut per pay period. Other such actions are inevitable.

Second, I expressed a year ago the Commonwealth's frustration with the Interim Final Rule regarding the joint Guam-CNMI visa waiver and the exclusion of China and Russia from the list of approved countries. As the Subcommittee knows, the Commonwealth and Guam believe that this decision was contrary to the legislative intent of the CNRA and failed to acknowledge the importance of these countries to the Commonwealth's tourism industry. The Subcommittee was told a year ago that the Department of Homeland Security was considering the comments that we and other interested parties had filed. One year later, no action has been taken by the Department, which now advises that a decision with respect to amending the Interim Final Rule might be made later this year.

Third, I expressed our concerns last year about the inaction by the Department of Homeland Security in promulgating the regulations required to implement the law. Once the extension of six months was provided by the Secretary of Homeland Security, the Department had a total of 18 months before the effective date November 28, 2009, to do its job. The Department now has advised that final regulations with respect to CNMI foreign investors will be published in June or July and that the worker regulations may be published later in the year

This year, we have the same concerns that we have expressed in the past. We believe that the implementation of the CNRA by DHS and Interior has been seriously flawed. The mandates of the law have not been followed; the procedures adopted have actually decreased security in the Commonwealth since the CNRA was passed; our economy has been unnecessarily hurt, making us more reliant on federal assistance; and the process has been essentially a one-way street with little or no consultation and cooperation with the Commonwealth. We need the Subcommittee's assistance in correcting the implementation of the CNRA by the responsible federal agencies and considering any amendments to the law that might be necessary.

1. **The DHS failure to publish final regulations resulted in unnecessary injury to the Commonwealth's economy and residents.**

The Department failed to issue any regulations in final form before November 28, 2009, notwithstanding the 180-day deferral of the effective date. The proposed regulations regarding CNMI-only investor visas were not proposed until September 2009, with a comment period that ended on October 14, 2009. DHS's proposed rules regarding transitional workers in the CNMI were published in late October 2009, just a month ahead of the transition date, without compliance with the notice and comment provisions of the Administrative Procedures Act. These rules were enjoined by a federal district court at the Commonwealth's request. In rejecting DHS's excuses for bypassing the notice and comment provisions, the court concluded that the Department had ample time over the prior 18 months to develop and issue these regulations, that it had made no showing of diligent efforts during the period to do so, and that "the Commonwealth's residents and government have meaningful concerns about the Rule." *Commonwealth of the Northern Mariana Islands v. United States of America, et al*, Civil Action No. 08-1572 (Opinion, November 25, 2009), pp. 10, 14, 15. The extended period for comment on these rules ended on January 8, 2010

The Department's delay in issuing these regulations in final form has contributed to the increased uncertainty and instability in the Commonwealth's economy over the last year. Many current CNMI foreign investors have left the community. The CNMI Department of Commerce recently reviewed the 37 foreign investment applications that were not renewed. Based on the available information, Commerce officials concluded that 22 of these non-renewals were the result of the enactment of the CNRA. The total investment affected by these non-renewals was approximately $6.7 million involving these lines of businesses: retail, tour agency, scuba diving, real estate development, restaurant, wholesale, photo service, and commercial space.

The lack of a federal work-permitting program has contributed to uncertainty among employers and workers alike with respect to the status of foreign workers who have, or do not have, an "umbrella permit" from the CNMI Department of Labor. In the absence of timely federal regulations, the Commonwealth developed this permitting program in accordance with the

provisions of the CNRA.[1] The lack of federal worker regulations is being exploited by some federal employees and advocates for U.S. citizenship for all aliens in the Commonwealth, who are encouraging foreign workers to violate local law during the two year period ending November 27, 2011.

2. The DHS regulations fail to comply with the Congressional intent in important respects and adversely affect the Commonwealth's ability to maintain access to its tourists and investors.

Visa Waiver Regulations: I know that the Subcommittee is well aware of our view that the Interim Final Rule issued by the Department on January 16, 2009, fails to comply with the Congressional intent in authorizing such a program. Congress plainly stated in the CNRA that its purpose was to expand tourism – currently the only industry of significance in the CNMI. The Department's exclusion of China and Russia from the program reversed longstanding practice with respect to visa waiver programs, applied criteria not authorized by the CNRA that have never been used previously regarding a visa waiver program, and failed to acknowledge the law's intent to expand tourism with specific reference to those countries of "significant economic benefit" to the CNMI.

The Secretary's October 2009 decision to use the Department's parole authority to admit tourists from China and Russia was welcomed in the Commonwealth as an effort to compensate for the exclusion of China and Russia from the Interim Final Rule. However, the delay in the announcement of the policy and the failure of Customs and Border Protection ("CBP") officials to implement the policy by the effective date of November 28, 2009, resulted in substantial economic damage to the Commonwealth. The CNMI Marianas Visitors Authority estimates that the 15-day delay in the implementation of the parole policy cost the CNMI $5.4 million and $2.4 million in lost revenue from China and Russia respectively.

Continuation of the parole program in place of amendment of the Interim Final Rule to include China and Russia will not allow the Commonwealth and Guam to expand their tourism markets. In its present form, the parole authority is applicable only to the CNMI and, therefore, fails to implement the directive of the CNRA for a unified and harmonized Visa Waiver Program for the CNMI and Guam. In addition, exercise of parole authority with respect to such an important element of the Commonwealth's tourism business is necessarily viewed as a "stop-gap" measure that at best seeks to preserve the status quo in the CNMI. But it does not provide the needed basis for the expansion of this tourism business. The Commonwealth needs the assistance of the

[1] Section 6(e) of the CNRA provides that aliens lawfully present in the Commonwealth under CNMI immigration laws may remain in the Commonwealth under the terms of their admission to the Commonwealth but no longer than two years after the transition program effective date. Under a program provided to DHS two months in advance of the effective date, the Commonwealth issued these "umbrella permits" before November 28, 2009, to those aliens who were lawfully in the Commonwealth, appeared in person to obtain the permit, and agreed to its terms, which authorized the CNMI to revoke the permit before its expiration date of November 27, 2011, if the changed status of the alien so required.

Subcommittee with respect to the amendment of the Interim Final Rule so as to include China and Russia or, if necessary, in proposing to amend the law to mandate this result.

CNMI-Only Investor Visa Regulations: The Department's proposed rules regarding CNMI-only investor visas fail to implement the relevant provisions of the CNRA in three important respects.

First, the Department's proposed rules reject the law's directive that the three separate components of the transition program (relating to caps on H visas, investor visas, and foreign worker permits) can all be extended if the Secretary of Labor exercises the discretion granted her by the law to extend the transition period beyond December 31, 2014. This issue came up during last year's Subcommittee hearing in light of the contrary view expressed in the report of the Senate Energy Committee in April 2008. The Commonwealth has provided DHS a written statement supporting the Senate Energy Committee's interpretation of the law, but has never received or seen a written opinion by DHS on this issue. It would be of great assistance if the Subcommittee could request the Department to support its position with a written opinion in an effort to resolve this very simple, but important, issue regarding the interpretation of the CNRA.

Second, the proposed investor visa regulations impose a financial requirement on some current CNMI foreign investors that is not authorized by the CNRA. The law authorizes issuance of the new federal visa to a person with long-term investor status under former CNMI laws who "maintains the investment or investments that formed the basis for such long-term investor status." By superimposing a requirement of $150,000 minimum investment, the proposed DHS regulations would deny the new CNMI-only investor status to an estimated 87 investors in the CNMI who originally qualified at the $50,000 level but were permitted to continue living and investing in the CNMI after the Commonwealth increased the minimum requirement to $150,000 in 1997. In our view, the CNRA does not authorize the Department to draw such distinctions among those investors otherwise qualified under CNMI law. The Commonwealth needs the assistance of the Subcommittee with respect to enforcement of the intent and specific language of the CNRA in these regards.

Third, the Department's examination of the likely economic effects of the proposed regulations in compliance with Executive Order 12866 and the Regulatory Flexibility Act is deficient in very important respects. It fails to recognize that the Commonwealth is now in the fifth year of serious economic depression. It fails to assess accurately the likely impacts of the proposed regulations on the foreign businesses critical to a productive CNMI economy. Most importantly, it fails even to acknowledge the economic data, analysis, and conclusions of the October 2008 economic impact study funded by the Department of the Interior and authored by two highly credentialed and experienced economists, Dr. Richard Conway and Malcolm McPhee. This report 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, according to the 'federalization' scenario. Unequivocally, this is a depression of great magnitude. It is equivalent to turning back the clock for the CNMI economy to 1985." Report, p. 42.

This report has previously been provided to the Subcommittee by the Commonwealth. Its conclusions regarding the likely impacts of the CNRA and recent minimum wage legislation have been confirmed by the performance of the CNMI economy since the report was published 18 months ago.

Transitional Foreign Worker Permitting Program: The proposed regulations issued by the Department with respect to the permitting system for foreign workers authorized by the CNRA do not comply with the law. Notwithstanding the provisions of the CNRA, they fail to specify any basis for "allocating" work permits among employers seeking to hire foreign workers and any methodology for reducing the number of work permits to zero by the end of the transition period on December 31, 2014, in the absence of an extension by the Secretary of Labor

The Department's failure to comply with the law imposes additional burdens and uncertainty on the Commonwealth's citizens. As DHS recognizes, the CNMI economy is composed almost entirely of small businesses, many with less than five employees and only a handful with more than 50 employees. Without some clear indication of DHS's intentions with respect to the allocation and reduction of the available permits for foreign workers, all participants in the economy suffer. Investors, especially potential new investors, have no guarantees with respect to how their businesses will be treated by federal officials Current employers need to make investment and other decisions looking into the future and, without some clear indication of their continued access to foreign workers, this planning becomes even more difficult and problematical. Individual foreign workers, whose fears have mounted in recent months, seek guidance about how they can continue to work, and live, in the Commonwealth if they cannot qualify for a standard INA visa.

3. The DHS component agencies have not developed and enforced an effective program to identify and remove illegal aliens in the Commonwealth with the result that the national security objectives of the CNRA are not being achieved to the detriment of the Commonwealth and its citizens.

As this Subcommittee has been advised, the Commonwealth's Border Management System ("BMS") is an automated arrivals and departures database containing data from passports, visas, alerts, and permissions (extensions of stay, changes of status, or other modifications of entry conditions) as applicable for all persons entering the CNMI. The system was obtained under a license from an established Australian supplier several years ago and was updated in 2008. It is used in several countries to provide reliable information regarding the entrance and exit of

persons into the jurisdiction. In recent years the Commonwealth has substantially reduced the number of illegal aliens in the community by reliance on the data generated by the BMS system.

The Commonwealth has continued to use the BMS program after November 28, 2009. The Commonwealth recognizes that the federal government now exclusively controls the removal of unauthorized aliens from the Commonwealth. However, the Commonwealth has an ongoing responsibility for enforcing its local labor laws. This is especially necessary for the remainder of the period until November 27, 2011, during which the CNRA expressly recognizes the validity of permits issued by the Commonwealth. That is why the Commonwealth t recently requested airline flight data ("APIS") from CBP in order to facilitate the collection and timely processing of the entry and exit data and eliminate the need for collecting duplicative passport information from arriving travelers.

This Subcommittee is well aware that the Department of Homeland Security does not have an effective digital exit data system. CBP cannot, for example, identify any overstayer from among the tourists that they admitted after they took over the immigration function. For the Commonwealth, this is an unacceptable situation. The failings of the U.S. immigration data system have burdened the United States with overstaying tourists and others for years. The failings of the U.S. system will similarly burden the Commonwealth with illegal aliens. It was for that reason that the Commonwealth requested CBP to provide the APIS data so that the Commonwealth, using and sharing its BMS system with CBP, might identify illegal aliens promptly and refer them to DHS's enforcement component (ICE) for institution of removal proceedings. The CNMI will continue to submit regular reports to ICE regarding overstayers in the Commonwealth who should be the subject of removal proceedings.

The Department's refusal to supply the APIS data to the Commonwealth is difficult to understand. A letter of March 31, 2010, from CBP Assistant Commissioner Winkowski seems to suggest that the Commonwealth is seeking to intrude on the federal government's exclusive control over the removal of unauthorized aliens from the Commonwealth. This is not the case. Or he may be reflecting the view of some DHS officials that the CNRA preempts all of the Commonwealth's labor laws, which we believe is not supported by the language or the legislative history of the law.

The Commonwealth's objectives in making this request are very simply stated: the Commonwealth wishes to have the APIS data in a timely fashion so that it can reduce the burdens placed on its visiting tourists and manage its own labor laws effectively. This is an area where the interests of the Commonwealth and DHS coincide in furthering the objectives of the CNRA. It would be helpful if the Subcommittee focused on this issue and assisted in persuading the Department to review its decision not to share this data with the Commonwealth.

The Commonwealth is gravely concerned by the slow pace of removal/deportation proceedings instituted by ICE since the effective date of the CNRA on November 28, 2009. Although ICE

has been provided with identification information regarding more than 1,300 illegal aliens currently in the Commonwealth, together with a certification by the Deputy Secretary of Labor as to the illegal status of each of these individuals, very few removal proceedings in fact have been initiated. As of March 26, 2010, the GAO report notes that not a single illegal alien has been deported by federal authorities. We learned just yesterday that the first deportation of an illegal alien by federal authorities was about to be implemented.

The GAO report comments on one group of 264 aliens referred to ICE, 215 by the Commonwealth and 49 by others. The 215 referrals were pending deportation cases from the CNMI Attorney General's office, which meant that a CNMI prosecutor had already marshaled the evidence, determined the individual to be deportable, and filed the case with the Superior Court in order to obtain a deportation order. These prosecutor files were turned over to ICE. There was no need to obtain any further immigration status information from the CNMI with respect to these individuals.

The number of illegal aliens in the Commonwealth is expanding rapidly, now that federal controls are in place, for two reasons: first, a perceived lack of enforcement by federal officials leads illegal aliens to conclude that there is no risk to staying in the Commonwealth, and second, federal officials have repeatedly suggested that green cards will be available to any alien who is in the Commonwealth when Congress addresses this question. Under these circumstances, voluntary repatriation by aliens in the Commonwealth has almost entirely disappeared.

The resources and procedures used by ICE in processing removal cases are insufficient to deal with the number of illegal aliens in the Commonwealth. Although the number of illegals in the Commonwealth is insignificant by U.S. standards, every illegal poses a financial burden on the Commonwealth. ICE needs to increase its capacity to schedule and complete immigration hearings in order to make any significant impact on the growing backlog of cases. A single judge coming out to Saipan for one week every month cannot handle this volume of cases. Two alternatives are readily available: (1) ICE and the Department of Justice should use video-conferencing facilities in order to handle more cases; and (2) CNMI judges and lawyers experienced in the handling of deportation cases can be designated by the U.S. Department of Justice to assist ICE officials in the handling of these immigration hearings. Immigration judges are appointed by an official in the Department of Justice. No Congressional (or any other) approval is required.

Unless such steps are taken, it is virtually certain that the Commonwealth's backlog will simply be added to the estimated 228,421 pending immigration cases nationwide as of October 1, 2009, up 23% since the end of fiscal 2008. In Los Angeles, the office with responsibility for the CNMI, the average wait for a hearing in the federal immigration courts is 713 days, compared with the national average of 439 days. (Transactional Records Access Clearinghouse, University of Syracuse) The Commonwealth needs the assistance of this Subcommittee in addressing this

situation so that the Department provides the necessary resources to reduce the number of illegal aliens in the CNMI.

DHS officials apparently do not appreciate the importance of this issue to the people of the Commonwealth. ICE has a stated objective of initiating removal proceedings first and foremost against aliens who have engaged in criminal activity. But the Commonwealth requires a higher priority with respect to illegal aliens who no longer are entitled to live in the CNMI. These aliens are not entitled to work in the Commonwealth and either disappear into the underground economy, or take jobs that should be held by US citizens or legal foreign workers. They impose an enormous burden on the Commonwealth's public services – law enforcement, public health, and education – which the CNMI's depressed financial resources cannot support. The CNRA was enacted in large measure because of the conviction that federal control was necessary to deal with, among other issues, the number of illegal aliens in the CNMI. Sooner or later, Congress will have to address seriously whether in fact the implementation of the CNRA by the Department of Homeland Security has aggravated, rather than improved, the security situation in the Commonwealth.

The Department of the Interior Report

The April 2010 report submitted to the Congress in the name of the Secretary of the Interior was submitted pursuant to section 6(g) of the CNRA, which provides: "The Secretary of the Interior, in consultation with the Secretary of Homeland Security, and the Governor of the Commonwealth, shall report to the Congress not later than 2 years after the date of enactment of the Consolidated Natural Resources Act of 2008."

The section then lists the five subjects that should be addressed in the report with respect to the "nonresident guest worker population" in the Commonwealth: the number of such aliens; the legal status of the aliens; the number of years that each alien has resided in the Commonwealth; the current and future requirements of the Commonwealth economy for an alien workforce; and such recommendations to the Congress "as the Secretary may deem appropriate, related to whether or not the Congress should consider permitting lawfully admitted guest workers lawfully residing in the Commonwealth on such enactment date to apply for long-term status under the immigration and nationality laws of the United States."

I have written the Secretary of the Interior and advised him that I was not consulted during the preparation of this report by Assistant Secretary Babauta or the staff in Interior's Office of Insular Affairs ("OIA") that prepared the report. I was not given the courtesy of commenting on a draft of the report at all before it was published, as was done with several federal agencies. My letter to the Secretary and its appendices also make the following points: (1) The OIA report's data collection and analysis are seriously defective; (2) The OIA report's conclusions regarding the Commonwealth's economy and future need for foreign workers are rebutted by publicly available data and professional economic analysis; (3) The OIA report's authors fail to consider

the potential impact of their recommendations on unemployed United States citizens in the CNMI and the ability of the Commonwealth to provide essential public services to its residents; and (4) The OIA report recommends unique immigration treatment for foreign workers in the Commonwealth that is not justified under any rationale; and should be considered only in the context of overall immigration reform in the United States.

A copy of my letter is provided with this written testimony. I have requested that the Secretary (1) withdraw this OIA report; (2) direct that the data on which the report was based be shared with the Commonwealth; (3) assign one of his deputies to oversee the preparation of another report in full collaboration with the Commonwealth as mandated by the CNRA; and (4) advise the pertinent Congressional committees of these actions. I have received a letter from the Saipan Chamber of Commerce regarding the Interior report which I am also attaching to this Statement.

With respect to the report's identification of several alternatives for changing the status of aliens in the Commonwealth, I believe that this is an important matter that should be considered at the local level before any federal legislation is considered. In this connection, I plan to discuss with the CNMI Legislature whether a referendum be prepared on this subject for consideration of the Commonwealth's voters at the November 2010 election.

The Report of the Government Accountability Office

The CNRA specifically provided that GAO should assess the implementation of the law with respect to "the performance of Federal agencies and the Government of the Commonwealth in meeting congressional intent;" "the short-term and long-term impacts of implementation [of the law] on the economy of the Commonwealth;" "the economic benefit of the investors 'grandfathered' under [the law] and the Commonwealth's ability to attract new investors after the date of enactment of this Act;" and "the number of illegal aliens in the Commonwealth, including any Federal and Commonwealth efforts to locate and repatriate them."

The report submitted to the Congress on May 7, 2010, does not provide the assessment mandated by the law. The GAO acknowledges that its report does not comply with this provision of the CNRA. It states that, "after consultation with the offices of" Chairman Rahall and Chairman Bingaman, it was agreed that the GAO report could be limited to a description (rather than an assessment) of actions taken by the federal agencies and the Commonwealth with respect to the law.

The Commonwealth was not previously aware that Congressional staffers have the authority to amend a provision of a law enacted by the Congress. This deferral by GAO means that this Subcommittee has no independent assessment of the implementation of the CNRA, even though the necessary information to make this assessment is available to GAO. The law required GAO to provide its best work with respect to an assessment, regardless of the difficulty of the task; and GAO failed to do that.

The GAO report discusses three operational concerns raised by DHS personnel which suggest that Commonwealth officials are at fault for not agreeing to various requests by federal officials. I will address each of these areas briefly.

CBP space needs at the Saipan Airport: There were no negotiations between CBP and CNMI officials regarding space needs at the Saipan Airport for several months after the signing of the Right of Entry ("ROE") agreements by both parties before November 28, 2009. Discussions were resumed with a conference call on April 21, 2010, and subsequent discussions in Saipan between Commonwealth Ports Authority ("CPA") personnel and CBP representatives. CBP has now refined its request to (1) an estimated 9000 square feet for a facility to house a generator and fire sprinkler system; and (2) temporary office space of about 1600 square feet. After an inspection of possible sites for the generator building on April 23, 2010, CBP and CPA officials have tentatively agreed on a site. On May 13, 2010, CPA and CBP officials examined alternative offices that might be used temporarily by CBP.

Once CBP defines its space needs and has secured the necessary approvals within DHS, we have asked that CBP incorporate its requests in a letter to the Governor and the CPA. The Commonwealth asks also that DHS confirm that it has the funds available for this project before the Commonwealth executes any binding commitment with DHS. As the GAO report indicates, DHS has not yet advised its Congressional appropriations committee of the resources needed to implement the CNRA in the Commonwealth, although such information was requested by Congress in its 2009 fiscal year appropriation for DHS.

Detention facilities in Saipan for ICE use: CNMI and ICE officials have been negotiating for several months with respect to the use by ICE of detention space at the CNMI Correctional Facility. This facility was constructed at a cost of $24 million during the period when the Commonwealth's correctional programs and policies were subject to a Federal Consent Decree adopted in February 1999. The Commonwealth borrowed about $12 million through a bond issue (with interest cost) which we are currently paying from local revenues. The Commonwealth created a separate Department of Corrections and took other actions required by the Consent Decree, which has now been terminated.

The Governor has designated the Commissioner of the CNMI Department of Corrections, Ramon (Ray) C. Mafnas, to take the lead in negotiating the Inter-Governmental Service Agreement (IGSA) between the CNMI and ICE. An update regarding these negotiations is attached to this statement. The Commonwealth believes that its offer to ICE is a reasonable one and is optimistic that the negotiations will yield positive results.

DHS access to CNMI databases:

GAO criticized the Commonwealth for what it considered a "refusal" to provide data to DHS. In fact, I anticipated cooperation with DHS on data matters and set out a specific proposal in the Protocol for implementation of PL 110-229 that I presented to the Secretary of Homeland

Security on September 22, 2009. In essence, I envisioned a two-way flow of data, with federal officials providing data that the Commonwealth needs and the Commonwealth providing data that federal officials need. I believe it is appropriate for the Commonwealth to be compensated for providing data because the current system (which was instituted after a federally-sponsored data system failed and had to be scrapped) was paid for by the Commonwealth's taxpayers.

In fact, the Commonwealth does provide data needed by federal officials. Requests from ICE are responded to within hours. The same is true with respect to requests from USCIS. The Commonwealth has offered to use its BMS system to help CBP find overstayers from among those admitted by to the Commonwealth. (The BMS system cannot itself be made available to the federal government under the license agreement with the Australian provider.) The Commonwealth believes that any difficulties with data exchanges can be resolved quickly in meetings of operational-level personnel from the Commonwealth and DHS.

Amendments to the CNRA

The Commonwealth believes that this Subcommittee should consider the following three amendments to the CNRA:

First, the elimination of the Covenant's cover-over provision relating to immigration and naturalization fees paid in the CNMI should be repealed. This punitive provision deprives the Commonwealth of much-needed funds that are available to other insular areas.

Second, the period of time within which CNMI-issued permits remain in force should be extended from the current two years to four years. The Commonwealth's "umbrella permit" program has provided needed stability in the absence of the required federal regulations. Until all these regulations have been published in final form and implemented, this Commonwealth program should be extended.

Third, the statutory transition period should be extended from the end of 2014 to the end of 2019. Every earlier draft of the bill that ultimately became PL 110-229 provided for a nine or ten year transition period. The five-year limitation was inserted into this legislation at the last minute without providing any opportunity for the Commonwealth, or the federal agencies, to present their views on such an abbreviated transition period.

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Thank you for the opportunity to participate in this oversight process and to have our views considered by the Subcommittee.