TESTIMONY OF JOSE S. DELA CRUZ

on behalf of

THE CNMI ENTERPRISE GROUP

Submitted to the

SUBCOMMITTEE ON INSULAR AFFAIRS,

HOUSE OF REPRESENTATIVES,

THE UNITED STATES CONGRESS

With respect to the Subcommittee hearing on

H.R. 3079, A BILL TO AMEND THE HOUSE JOINT RESOLUTION APPROVING THE COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, AND FOR OTHER PURPOSES

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TESTIMONY OF JOSE S. DELA CRUZ

On behalf of the CNMI Enterprise Group, I would like to thank the Chairwoman of the House Subcommittee on Insular Affairs, Representative Donna Christensen of the Virgin Islands, for inviting our Group to testify at the hearing to be held on August 15, 2007, with respect to H.R. 3079. It is a privilege and an honor to testify before the U.S. Subcommittee on Insular Affairs, which has oversight jurisdiction over the territories and commonwealths of the United States.

It is indeed rare for a Subcommittee of the United States Congress to conduct its hearing in one of the territories or commonwealth. It is to the Subcommittee's credit that it is conducting this particular hearing in the Northern Mariana Islands. The legislation under consideration, which proposes the inclusion of the Northern Mariana Islands within the overall scope and jurisdiction of the U.S. Immigration and Nationality Act, is of great importance to the Commonwealth of the Northern Mariana Islands and its people.

General Overview of H.R. 3079

If the proposed federal immigration legislation is enacted into law, the CNMI immigration regime that the Commonwealth of the Northern Islands has practiced for almost thirty (30) years will cease within one-year of enactment of the federal legislation. The measure is, therefore, of great significance to the Commonwealth of the Northern Mariana Islands and its people because of its potential effect on the economy of the Northern Mariana Islands and its potential impact on the social fabric, political make-up and cultural dynamics of its people. The legislation would, we believe, affect adversely the economic well-being of the Northern Mariana Islands, particularly at a time when the local economy is extremely depressed and is not moving. The legislation would change in a very fundamental way the social demographics of the local population. And it would make sweeping changes to the social fabric and local dynamics of the fairly small population of the Northern Mariana Islands. Finally, this federal legislation would bring major social and political changes to the CNMI that we believe would adversely affect the Commonwealth's welfare and well-being, because of the timing and the manner in which the legislation is being implemented—abruptly and without much consideration as to its potential consequences on the local economy. We believe that the effects of this legislation on the people of the CNMI should be the second paramount objective of this legislation. The first of course is our national security objectives.

About the CNMI Enterprise Group

As the Subcommittee may be aware, the CNMI Enterprise Group is a voluntary association of concerned citizens of the Northern Mariana Islands that meets every now and then to discuss some of the major issues affecting the Northern Mariana Islands and its people. Whenever the Group feels it appropriate or necessary to do so, we make formal recommendations either to the local government or to business and civic leaders to enact legislation, promulgate regulation, or adopt appropriate public policy or directive that would address an issue affecting the CNMI and its people. Major issues affecting the

CNMI which our Group has reviewed and considered in the past has run the gamut from the problems affecting the CNMI visitor industry (in view of its demise in recent years), to our recommendation to the CNMI government early last year strongly urging an increase in the local minimum wage, but on an incremental basis and based on the living standard here in the CNMI, not on the comparatively high living standards of the U. S. mainland.

Our Group has also reviewed the emotional and very divisive issue pertaining to the CNMI land alienation restriction. We have addressed the fundamental need for CNMI residents to be trained and to acquire the skills needed to be gainfully employed by the private sector; as well as the corresponding need for the CNMI government to begin weaning itself out of its long-time role as the biggest employer in the CNMI. We are, in a sense, a public interest group. So our testimony before the Subcommittee is as a CNMI public interest group, whose primary concern is the welfare and well-being of the people of the CNMI, now and in the future.

Statement of General Concerns Regarding the Impact of H.R. 3079 on the CNMI Economy

While the Group understands and appreciates the basic intent of the proposed legislation, namely, to implement the U.S. Immigration and Nationality Act in the Commonwealth of the Northern Mariana Islands, so that every jurisdiction under the U.S. flag follows the same uniform rules of immigration, we are very concerned about the legislation's potential impact on the fragile economy of the CNMI. We understand and appreciate the underlying reasons for doing so: namely, to ensure that the national security interests and the homeland security interest of the United States are promoted, and so that effective border control procedures could be implemented and carried out.

Our Group wholeheartedly agrees with these national security objectives and concerns. Indeed, in this day and age when the overall security interest of the United States is being actively threatened, it is not only necessary but mandatory as well for every member of the American political family to participate in and help implement such overriding national security objectives. Every resident of the Northern Mariana Islands, we believe, understands this and each resident gladly agrees to do his/her share to help ensure that our national security interests are preserved and protected. The best example of our commitment is the participation of our young people in the Iraq and Afghanistan conflicts.

The issue that our Group has with the proposed legislation relates to the second part of the legislative intent:

> (2) 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…

Section 102 (a) (2). Our Group has great difficulty agreeing with this part of the legislative intent because we believe that such statement is only paying lip-service to the intent (a) to as much as possible not disrupt the economy of the Northern Mariana Islands; and (b) to encourage the development and growth of a diverse economy for the Northern Mariana Islands. Our Group feels very strongly that the proposed legislation, as now drafted (with the many exceptions being carved out from the uniform immigration laws of the United States), would instead when implemented adversely affect the economic well-being of the Northern Mariana Islands and its people. Why is the proposed legislation carving out so many exceptions from the uniform immigration laws of the United States? Many of the provisions of the proposed legislation depart quite radically from the uniform immigration laws of the United States. Many of them do not make any sense both from a national perspective and from a CNMI economic perspective.

Put differently, how could an insular economy, like the fragile economy of the Northern Mariana Islands, "develop, diversify and grow" when limitations are being imposed under the proposed federal legislation which would, among other things, prohibit new foreign investors from coming in and investing in the CNMI? How could a fragile, insular economy grow and develop when the proposed federal legislation would prohibit the future hiring of guest workers that local businesses would need, because there are not enough trained or skilled workers locally to supplement the labor needs of local businesses and the visitor industry? Why can't the application of the Immigration and Nationality Act in the CNMI be drafted in a manner that would truly help to "develop, diversify and grow" the economy of the CNMI? After all, the Federal Government, and not the CNMI Government, will be enforcing the federal immigration law regime. Any fear of the CNMI government "fumbling" its responsibility on immigration and labor matters, as some have stated in the past, should no longer be the case. It will be the Secretary of Homeland Security that would make the call, not the CNMI government.

The Fragile, Insular Economy of the CNMI

The Group urges the Subcommittee to please seriously consider the fact that the CNMI has a very fragile, insular economy, which is completely different from the developed economy of the United States mainland where the standard of living is probably three to four times higher than here in the islands. The Group also urges the Subcommittee to recognize that the CNMI has almost no natural resources to supplement its tourist-based economy. Although we are surrounded by the vast Pacific, the CNMI does not have the capability or the means to harvest the abundant resources of the ocean so as to be able to have a viable fishing industry. Indeed, when we began local self-government thirty (30) years ago, the economy of the Northern Mariana Islands was essentially a subsistence economy. In other words, the people of the Northern Mariana Islands used to live by fishing and farming for their livelihood; and a good number of our people still fish and farm to supplement their meager salary.

It is, therefore, imperative on the part of the U.S. Congress, whenever it enacts legislation affecting the Northern Mariana Islands and the other insular territories, that it takes a

more sensitive approach to and closely scrutinize how a federal legislation that is being proposed would impact on our small, insular population and our fragile and limited resources. They have a saying here in the Northern Marianas that when Japan sneezes, the CNMI catches a cold. Indeed, the CNMI is so dependent on Japan for our local tourist industry and for investments in the islands that when Japan Airline stopped servicing the islands in October 2005, the CNMI visitor industry literally became paralyzed.

Resolving the visitor industry problem has now been one of the top priorities of the CNMI government and business leaders, but so far no new air carrier has stepped in to replace Japan Airline. Indeed, this is one area where the Federal Government could be doing something concrete to help the CNMI. It could be actively participating in assisting the CNMI get another air carrier to come and service the Japan-CNMI route. This is one very practical way that the Federal Government could help "develop, grow and diversify" the economy of the Northern Mariana Islands, not by removing the CNMI's ability to hire guest workers whenever there is a need to do so.

That is why when one reads the second part of the legislative intent in the proposed legislation, namely, that one of its purposes is to "encourag[e] diversification and growth of the economy of the Commonwealth," the Subcommittee needs to ask itself how such intent could actually and successfully be carried out, if we all know now that the proposed legislation would most likely do just the opposite: namely, it would decrease the number of guest workers needed by CNMI businesses from what it is now, to zero by the year 2017. Such guest worker "attrition formula" is clearly unrealistic because it presumes that by the year 2017, there would be enough local workers to accommodate the needs of all employers in the CNMI.

What would happen if that is not the case? Do we then ask the Congress to amend the law again? We believe that the proposed legislation should be drafted now in a manner that realistically addresses the actual guest worker needs of the CNMI as the years go by, rather than to allow guest workers to be employed in the CNMI for a period of only ten years, during which period the guest worker population will begin dwindling down to zero. Is the worker-attrition approach economically realistic? We don't think so. And we also believe that this Subcommittee would not think so.

We urge the Subcommittee to seriously consider the extremely critical suggestion made by the CNMI Administration that the General Accountability Office (GAO) of the U.S. Congress should first perform a study on the potential impact of the proposed legislation on the economy of the CNMI, before the measure is acted upon by Congress. It is better to find out the potential consequences in advance, rather than find out later on that the legislation became the final blow that destroyed the CNMI economy. Does Congress want this to happen? The answer, we believe, is clearly "No."

The Apparent Inconsistency of Certain Provisions in Title I with the Provisions of the U.S. Immigration and Nationality Act

Under the Immigration and Nationality Act's (INA) H-2 worker visa program, we understand that the need of the employer to hire a guest worker is one of the key criteria required in order to hire a guest worker. But under the proposed immigration legislation for the CNMI alone, if the CNMI needs additional guest workers they could only be admitted as immigrants, i.e. as permanent residents. The irony with this particular requirement—that all new guest workers hereafter could only be admitted into the CNMI as immigrants—is that for the guest workers who are now and have been here in the CNMI for five years or more, the "status" that these long-time guest workers are being accorded under the proposed legislation is as "non-immigrants," similar to the status accorded citizens of the Freely Associated States. We realize, of course, that this matter, i.e. the granting of "status," is strictly a federal prerogative, but the approach being taken under the proposed federal legislation appears illogical or is intended to simply make it extremely difficult for CNMI employers to hire additional guest workers in the future.

The proposed legislation is essentially telling the CNMI: "If you need more guest workers, you could only bring them in as part of the permanent population of the CNMI." The additional irony with this particular requirement is that under the existing Immigration and Nationally Act, H-2 workers who are admitted to work in New York, California, Idaho or Kansas (or anywhere in the United States), are not admitted as immigrants, but as non-immigrant H-2 workers, who must leave the United States when their term of employment ends. So why is this very strange twist on the uniform federal immigration law being made for the CNMI alone? It simply doesn't make sense. It makes you wonder whether this provision is somehow a form of retribution against the CNMI for its alleged past labor abuse and misdeeds, by those who drafted the language of this legislation.

We urge the Subcommittee to look very closely at this provision; and we also urge the Subcommittee to seriously reconsider the "ten-year winding down of guest worker" provision. Both of these provisions do not make any sense, and both are unrealistic for the development and growth of the economy of the CNMI. How these provisions would help "develop, grow and diversify" the economy of the CNMI is truly incomprehensible. Indeed, it may also be wise for the Subcommittee to ask those who drafted this legislation how some of these provisions came about. The Subcommittee should require them to explain to the Subcommittee why they think these unusual provisions would help in the growth and development of the economy of the CNMI. They should be asked to provide the Subcommittee with answers that make sense. If it turns out that some of these provisions are in essence, as we suspect, a form of retribution against the CNMI for allegedly being "an errant member" of the American political family in the past, we believe that an august and hallowed institution, as the United States Congress is, should not be used wittingly or unwittingly by individuals in such a cavalier manner. We sincerely hope that our suspicion on this matter is incorrect, and that the people who drafted this legislation were motivated entirely by a truly sincere interest in the growth and development of a diverse economy for the CNMI. The burden of explaining this

should, however, be on the drafters of the legislation: to show the Subcommittee that such is indeed the case, and not otherwise.

Specific Concerns with Respect to Certain Provisions of Title I of the Act

In addition to the foregoing concerns, we would like to point out to the Subcommittee several particular concerns that our Group has with some of the provisions of the proposed federal legislation. First, the Group would like to ask the Subcommittee to please clarify the provisions relating to "immigrants," as set forth in section 6 (c) of the proposed Amendment to the Joint Resolution Approving the Covenant. This particular subsection provides that no alien shall be admitted at a port of entry of the CNMI for purposes of admission as an immigrant alien, except family-sponsored immigrants and employment-based immigrants. We have earlier noted our concern as to why we do not understand why new admissions into the CNMI of additional guest workers have to be conditioned on their being admitted as immigrants only, and not as non-immigrants as is now and has been a long-standing rule under the INA. We are also not clear as to why a numerical limitation on family-sponsored immigrants is being set for the CNMI alone. Does this mean that once the numerical limit agreed to by the CNMI governor and the Secretary of Homeland Security has been reached, additional immediate relatives of U.S. citizens residing in the CNMI cannot be admitted into the CNMI? If so, why?

As to additional guest workers who could only be hired as immigrants, we urge the Subcommittee to seriously consider the impact the addition of such immigrants into the permanent population of the CNMI may have on the social demographics and dynamics of the CNMI. Would it have an adverse social impact on the relatively small population of the CNMI? We believe that unanticipated social, political and cultural issues would likely arise in the CNMI considering its small size: land-wise, population-wise and resource-wise. We, therefore, urge the Subcommittee to please consider the potential impact of the proposed federal legislation on the local demographics and on the social and cultural dynamics. The Subcommittee might also want to consider the question: what if the guest worker does not want to be an immigrant?

What has happened during the CNMI immigration regime in the past has been bad enough in terms of the lopsided population between residents and guest workers, as the Congress is fully aware of. So why is the proposed federal legislation trying to compound the problem by requiring that all new guest workers could be admitted only as permanent residents? It is almost as if the primary concern of the proposed legislation is not on the people of the CNMI, but on how guest workers would fare under the proposed federal legislation. We believe that the federal legislation should treat both residents and guest workers fairly and decently. Indeed, we wish to point out that the people of the Northern Mariana Islands are the rightful subjects of the United States. The people of the CNMI are the ones who voted to join the American political family in 1978. Inasmuch as our leaders may not have done a commendable job in the area of immigration and labor in the past, we are urging this Subcommittee to please listen to and take into account our people's concerns. All we are asking is for the Congress correct the problem, not compound it further with this legislation.

The Extension to the CNMI of the Guam Visa-Waiver Program

Our group appreciates the proposed extension to the CNMI of the statutory visa-waiver program for visitors to Guam from several countries in Asia. For the Northern Mariana Islands-Only Visa Waiver Program, however, the Secretary of the Homeland Security is given the discretion to determine by regulations which other countries would be given visa-waiver privilege to be able to visit the CNMI. We wish to point out that the CNMI has been issued an "approved-destination" status by the People's Republic of China, for the CNMI to be able to receive visitors from China. Because of the sharp decline in the number of visitors from Japan over the past several years, the CNMI visitor industry is trying its best to bring in more visitors from China. Our Group is urging that a special provision be inserted in the proposed federal legislation so that the Secretary of Homeland Security would actually allow tourists from China to visit the Northern Mariana Islands.

The Matter of Long-Term Investor Visas for Future Investors

The proposed federal legislation would allow the issuance of non-immigrant investor visas for aliens that have been admitted to the Commonwealth, have been given long-term investor status, and have continuously maintained residence in the CNMI as long-term investors. The Group's concern is with respect to new alien investors who hereafter wish to invest in the CNMI. Could the proposed legislation be amended so that the legislation provide for the Secretary of Homeland Security to promulgate regulations that would allow new foreign investors to also be given non-immigrant investor visas? This is a very important matter for the economic growth and development of the CNMI: the infusion of fresh capital into the CNMI economy. The Subcommittee should be aware that most of the investors in the CNMI are from foreign countries like Japan and Korea; not from the United States, due in large part because of geographical consideration.

The Matter of Granting "Status" to Long-Term Guest Workers

Our Group has no particular comment on the granting of non-immigrant "status" to guest workers who have been in the CNMI for at least five years. This is a matter that we feel is strictly for the Federal Government to decide. But as with our previous comments, we urge the Subcommittee to determine the basis or the rationale for the granting of what is essentially a permanent residency status on such guest workers. Would it adversely affect the social, political and cultural dynamics in the CNMI? Also, is it the eventual plan to grant U.S. citizenship to these guest workers after having such status for five years? That is the sense we have in reading this provision; otherwise it does not make sense to have a group of "non-immigrants" staying permanently all over the United States, almost as if "stateless." Because such proposed "status" does not make sense, we request that the Subcommittee have this matter clarified by the drafters of this legislation.

The Matter of Granting Asylum to Refugees

Our Group has no problem whatsoever with the provisions requiring the CNMI Government to comply with the treaties and conventions entered into by the United States with respect to asylum for refugees. Indeed, our position on this matter is unconditional: that the CNMI must comply with all the laws pertaining to asylum for refugees. The only caveat is that if the matter involving refugees overwhelms the ability of the CNMI to handle an influx of refugees, then the Federal Government must step in to assist financially, logistically, manpower-wise and so forth.

The Collection and Retention by the Secretary of Homeland Security of User Fees Paid by Employers of Guest Workers

The proposed legislation provides for the Secretary of Homeland security to establish and collect user fees from the employers of guest workers. It further provides that such fees shall be retained by the U.S. Treasury to be used to administer the guest worker program, notwithstanding section 703 (b) of the Covenant which mandates that all fees collected by the Federal Government in the CNMI shall be transferred over to the CNMI Government treasury for use by the CNMI Government. We urge the Subcommittee to continue the application of section 703 (b) of the Covenant to such user fees. First, we believe that the burden of footing the expenses for the work of the Department of Homeland Security in the CNMI is best left to the Federal Government pursuant to federal budgetary appropriations. Second, the user fees collected should be transferred to the CNMI Government, whose general revenue collection during the past two years has decreased dramatically. Third, we believe that section 703(b) of the Covenant should be honored by the Federal Government, because to do otherwise would give the impression that the United States is reneging on the terms of the Covenant.

The Ten Percent (10%) Matching Fund Contribution from the CNMI for Technical Assistance and Support Provided by the Department of Interior

Our Group appreciates the provisions of the proposed legislation that would provide the CNMI with technical assistance and support from the Department of Interior in economic matters. Section 103(e)(3). We urge the Subcommittee, however, to please consider removing the ten percent (10%) matching fund contribution that the CNMI would be required to pay for such technical assistance and support. As we have stated several times earlier in this testimony, the CNMI Government is literally broke and simply cannot afford to make this matching fund contribution. Maybe in the distant future, when the CNMI economy gets back to normal, such matching fund requirement would be reasonable to impose, but not for the foreseeable future.

TITLE II: THE NOTHERN MARIANA ISLANDS DELEGATE ACT

The CNMI Enterprise Group wholeheartedly endorses and supports Title II of the Act. If enacted into law, the people of the Northern Mariana Islands would, after thirty long years of waiting, finally have real representation in the United States Congress. We thank

the present Subcommittee on Insular Affairs and its distinguished Chair for its willingness and sensitivity in agreeing with the people of the Northern Mariana Islands that the Commonwealth of the Northern Mariana Islands, as a member of the American political family, should be accorded representation in our national lawmaking body. Democracy demands no less; and America, as we know, is the bulwark of democracy. Thank you very much for having the determination and commitment to make our representation in the U.S. Congress representation a reality. We are clearly elated with this very important proposal.

CONCLUSION

The foregoing sets forth the testimony of the CNMI Enterprise Group with respect to H.R. 3079. On behalf of the members of our Group, I wish to thank the Subcommittee Chair and Members for giving us the opportunity to comment on a very significant piece of legislation, one that will directly affect the future welfare and well-being of the people of the Northern Mariana Islands for years to come. Our Group will be happy to answer questions that the Subcommittee may have regarding our testimony.

Sincerely,

JOSE S. DELA CRUZ
Group Facilitator

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