Remarks of the Commonwealth of the Northern Mariana Islands
Senate Vice-President
The Honorable Pete P. Reyes
Before the
U.S. House Subcommittee on Insular Affairs
The Honorable Donna M. Christensen, Chairwoman
August 15th, 2007
Guma Hustisia Supreme Court Building
Saipan, CNMI

Chairwoman Christensen and Members of the Committee, thank you for allowing me this opportunity to present testimony in regards to H.R. 3079, "To amend the Joint Resolution Approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands, and for other purposes."

Senate President Joseph M. Mendiola has had the honor of submitting testimony on similar legislation in S 1634 to the U.S. Senate Committee on Energy and Natural Resources earlier this year. For the record, I concur with the President's position as stated in that testimony and will repeat the salient points for this Committee along with some comments of my own. Let me also take this opportunity to applaud this Committee for including a CNMI non-voting delegate provision in H.R. 3079. Whereas, I stand by my belief that the CNMI should first be given a voice in Congress before any attempt at federalizing our immigration system is made, this portion of the bill is an improvement to our current situation and a step in the right direction.

If enacted into law, H.R. 3079 will have far reaching repercussions that will forever change the Commonwealth's economic, political, and cultural landscape. Therefore, I ask that the committee members take a thorough and measured approach to reviewing this piece of legislation and fully consider all of the ramifications this bill will have on the people of the CNMI. Please allow me this opportunity to point out some of my concerns with the bill as drafted.

As a member of the CNMI Legislature, I have three main areas of concern with the bill as drafted. First, I object generally to a complete federal takeover of the CNMI immigration system. Second, I am concerned that the provisions for granting nonimmigrant status to certain contract employees may overwhelm our already strained public resources. Third, I feel that the transitional oversight provision is vague and leaves many unanswered questions about the various roles of federal agencies and the CNMI Government.

As for the federalization of our immigration system, I feel strongly that the traditional relationship between our islands and the U.S. Government has been a strong and productive one, but also one born of the mutual recognition that we are in many ways very different from a U.S. state or even other U.S. territories. The Covenant, subsequent legislation, and federal and local jurisprudence have recognized the unique nature of our island Commonwealth, and the importance of preserving local control over certain legal functions. I believe that a blanket application of the Immigration and Nationality Act (INA) to our islands under a "one size fits all" approach could cause irreparable harm to our struggling economy and impinge upon the notions of self-government that underlined the Covenant negotiation process.

"[T]he authority of the United States towards the CNMI arises solely under the Covenant. . . . [I]t is solely by the Covenant that we measure the limits of Congress' legislative power." United States ex rel. Richards v. De Leon Guerrero, 4 F.3d 749, 754 (9th Cir. 1993) The Covenant provides that US immigration laws will not apply to the CNMI "except in the manner and to the extent made applicable to them by the Congress by law after the termination of the Trusteeship Agreement." (Covenant § 503.)

However, the Covenant also provides that "[t]he people of the Northern Mariana Islands will have the right of local self-government and will govern themselves with respect to internal affairs in accordance with a Constitution of their own adoption." (Covenant § 103) We cannot simply focus on Section 503 and ignore the conflict or tension with Section 103. The whole Covenant was approved together, and its various sections need to be reconciled and read in harmony with each other.

Section 103 especially cannot be ignored, because the development and establishment of self-government was the whole point of the Trusteeship and the Covenant. There could be no Covenant without Section 103 – it is the only essential provision in the whole document. Everything else (US citizenship, application of federal laws, etc.) was optional, and could all have been done differently (as it was with the freely associated states, for example). Section 103 is the *what* of the Covenant; everything else, including Section 503, is just the *how*.

The Ninth Circuit Court of Appeals has established a balancing test for resolving questions of this kind: "[W]e think it appropriate to balance the federal interest to be served by the legislation against the degree of intrusion into the internal affairs of the CNMI." United States ex rel. Richards v. De Leon Guerrero, 4 F.3d 749, 754 (9th Cir. 1993)

Those are the terms in which the debate should be framed. What is the federal interest to be served by the proposed legislation? How important or significant is that interest? How greatly does the proposed legislation intrude into the internal affairs of the CNMI? Does it intrude more deeply than it needs to in order to serve any legitimate federal interest? Currently in the Commonwealth we have the presence of various federal agencies including the Transportation Security Administration, the Federal Bureau of

Investigation and the United States Coast Guard. It may be only that additional resources to the agencies already established here are necessary to achieve the desired federal effect of increased border security.

As we look beyond our current economic downturn to a future with a much diminished apparel industry, we continue to search for alternative economic activities to generate income for our Commonwealth. Past and present administrations have taken steps to diversify our tourism economy, and have in recent years opened new tourist markets beyond the CNMI's traditional tourist market of Japan. These new markets include China, South Korea, and Russia. In 2004 the CNMI signed an Approved Destination Status Agreement with China, providing the CNMI with access to Chinese tourist markets and direct flights from major Chinese cities. Because of the anticipated boom in Chinese outbound tourism and the proximity of the CNMI to the Chinese mainland, we hope to experience significant growth in the Chinese tourist market in the coming years. Maintaining local control over immigration is critical to the development of this market, as our local immigration authorities are able to work directly with Chinese government officials and respond to the changing conditions of the market as needed. Our long term strategy also focuses on the development of the South Korean market. Arrivals from Korea have been steadily increasing even as other country numbers decline. Finally, we have been working diligently to develop an eastern Russia tourist market with regularly scheduled charter flights to the CNMI. The Russian market is characterized by longer than average visits resulting in increased revenues, a high percentage of return visitors, and little to no legal complications. As with the development of the Chinese market, I do not believe the CNMI could have experienced such a rate of success without local immigration control. It is here that we should consider both national security and the economic well being of the Commonwealth. Immigration is paramount to national security, but we must be cognizant of the impact federalization will have on our economy. I feel that our full absorption into the INA and the paternalistic nature of the transition plan will threaten this growth and, as a consequence, undermine our economic recovery.

An additional problem with federalization is the negative impact it will have on our ability to engage a foreign national labor force for important positions that simply cannot be filled locally. Foreign nationals, and our ability to process them locally, have become an important component of our continued development. For twenty-five years foreign laborers have contributed in a vital way to our islands: sustaining businesses, building schools, and improving public works. They have helped to transform the CNMI into a dynamic, multicultural society teeming with potential. In light of our struggling economy, I feel that local control over foreign national labor is essential to efforts to rebuild critical industries such as tourism and regional and international education. The recent passage of minimum wage legislation in the U.S. Congress will eventually raise local wages to the federal level and provide more economic security to foreign national workers. This should help to alleviate any lingering fears that our foreign national workers are not being compensated appropriately. Furthermore, we are now debating a labor reform bill in the CNMI Legislature. This Act will reform current foreign national

labor laws, provide for increased local participation in the workforce, and ensure the fair treatment of foreign nationals working in the CNMI.

I would like to assure the Committee that the CNMI is making every effort to ensure that our borders are secure and our immigration policies reflect current best practices among the nations of the world. In 2005, the Commonwealth Legislature passed the Human Trafficking and Related Offenses Act through Public Law 14-88. The Act, supported by the U.S. Department of Justice, has become an important and effective tool in the CNMI's continuing efforts to combat labor fraud and trafficking. Also in 2005, the Legislature passed Public Law 14-92, an act to amend our voluntary departure law to provide immigration prosecutors with improved procedural options in deportation cases. This law should lead to a more consistent and expedient system for resolving pending cases. Additionally in the 2005 session the Legislature passed Public Law 14-59, the "Anti-Terrorism Act of 2004," Public Law 14-63 "An Act to Establish the Office of Homeland Security," and Public Law 14-84, legislation which corrected constitutional deficiencies in certain immigration statutes that were struck down by the U.S. District Court for the Northern Mariana Islands in *Gorromeo v. Zachares,* Civil Action No. 99-0018 (C.N.M.I. 2000). Most importantly, the impending passage of our labor reform bill will serve as a means of decreasing our traditional reliance on foreign national workers through the training of local residents. It will also ensure that resident and foreign national workers alike are treated fairly in the employment process. Finally, the Division of Immigration continues to work on closing potential loopholes in our immigration system and should be commended for its reform efforts. The Division has assisted in developing effective border management and labor identification systems and continues to welcome the assistance of federal agencies. The Border Management System (BMS) generates a record of all entries to and exits from the Commonwealth, regardless of citizenship. Immigration investigators have instant access to arrival information and can confirm the departure of those foreign nationals with expired contracts and those ordered deported from the Commonwealth for violating local law. The Labor and Immigration Identification System (LIIDS) tracks all foreign national labor contracts, job category authorizations, and permit status of non-citizen workers in the Commonwealth. This allows immigration and labor investigators to quickly determine the permit status of all foreign national workers involved in labor complaints and administrative hearings, as well as compile data on overstaying aliens in every entry permit category. As always, we welcome cooperation with U.S. agencies, and any technical or financial assistance they may provide, in the training of our local immigration investigators, inspectors, and processing personnel.

I wish to be clear that we welcome U.S. involvement in our immigration system short of the complete application of the INA. Immigration issues can sometimes have defense and foreign policy implications, and as such are a legitimate area of federal concern. However, the status of aliens in the CNMI is also deeply interwoven with internal affairs, since they constitute approximately half the population and are involved in nearly all facets of our social and economic life. The impact of the extension of federal immigration laws on the CNMI's internal affairs may not have been so great had it been

done in, say, 1978 when there were very few aliens here. The impact *now* is much greater, and that must be taken into consideration.

I feel strongly that several components of our immigration program are both secure and economically beneficial to our islands and do not require federal pre-emption. Our BMS system tracks both entries and exits, giving us the advantage of knowing not only who is arriving but also who is leaving the Commonwealth. Our foreign national labor program will enable us to redevelop an economic infrastructure that has suffered setbacks as a result of garment closures, SARS, global terrorism, and a downturn in several Asian economies. Finally, local control over visitor entries is critical to the success of our major remaining industry- tourism. With local control, we can continue to work on developing markets that are uniquely suited for the CNMI because of geography or cooperative agreements.

I must voice my concern with the "One-Time Nonimmigrant Provision for Certain Long-Term Employees." Because we are a very small territory with a modest financial base, I fear that the granting of long term resident status to contract workers *and their family members* who meet certain residency requirements may create massive financial drain on our limited public resources. Simply put, the more-or-less permanent presence of foreign nationals and the influx of their eligible family members will most likely tax our public services beyond capacity. This will result in a lower quality of life for *everyone* within our borders. I have no objection to granting nonimmigrant status to certain long-term nonresident workers similar to that granted to citizens of the Federated States of Micronesia, however I am concerned that H.R. 3079 does not establish adequate financial assistance mechanisms to allow us to sustain a large permanent foreign national population, a very real problem that Congress has previously acknowledged through the provision of Compact-Impact funding. Indeed, the bill is silent on the long-term economic and social impact of this new class of resident foreign nationals. I respectfully suggest that the Committee consider this impact, as it will certainly create a hardship for our already overburdened public services.

With regard to the transitional oversight program in the bill, I feel the provision is vague and leaves many unanswered questions about the various roles of federal agencies and the CNMI Government. Although I understand that DHS will be tasked with the primary responsibility of drafting transition regulations, the complete delegation of authority to executive agencies offers the CNMI no certainty in the transition process. The bill provides for "recognizing local self-government, as provided for in the Covenant . . . through consultation with the Governor of the Commonwealth." But consultation is *not* self-government. If Congress can and will do whatever it wants, regardless of any objections to it the Governor may raise in the course of consultation, then the consultation is a meaningless formality, and the purported recognition of self-government is a facade. Our recent inconclusive 902 talks are a case in point. This legislation should have been shelved until those negotiations produced an agreement. Otherwise, what is the point of the talks? Self-government means never having to say, "Please do not do this to us." Moreover, transitional oversight by not one, but five federal agencies could bring our struggling tourism industry to a halt. Bureaucratic red tape could hamper the

issuance of tourist visas to the extent that we would lose all of the momentum we have thus far achieved.

Furthermore, the cost-sharing requirement under the Technical Assistance Program is not feasible at this time due to the poor financial health of our government. If the transition plan will direct most or all immigration fees to the federal government, then local agencies will not be in a position to cost-share. In the event that the federal government sees fit to take control of the immigration system that gives us a competitive advantage over other regional tourist destinations such as Guam, Palau, the Philippines, Hawaii, and Bali, the federal government should shoulder one hundred percent of the cost to retrain our local workforce and develop new industries in the Commonwealth.

Let me end by commending this Committee for taking into consideration our concerns over the federalization of our immigration system as stated by our very capable Washington Representative Pete A. Tenorio. In a letter to the Honorable Jeff Bingaman, Chairman of the Senate Committee on Energy and Natural Resources, dated March 1st, 2007, a majority of CNMI legislators endorsed Representative Tenorio's position and his seven items of concern that were for the most part incorporated into H.R. 3079. In that letter we asked for the consideration of two additional components. First, the creation of an immigration board that would be comprised of members of both the local and federal government for the purpose of reviewing on a periodic basis the effectiveness of our immigration policies. This board could make appropriate changes to immigration regulations without having to pass future laws or regulations. Second, a provision to mandate an independent study to evaluate the impact of changing the residency status of non-resident workers as it relates to the economic and political futures of the CNMI. If asked if federal immigration laws should be applied to the CNMI my answer would be an emphatic no. However, if federalization is inevitable I ask that these provisions be incorporated into the current bill.

Finally, the more the federal government intervenes in CNMI matters, the more it will be called upon to intervene in the future. Will Congress, having once intervened, show any restraint when faced with the inevitable future complaints? We should be at the table with Congress as equal partners, hammering out a fair and mutually agreeable solution to any differences there may be between us. Our critics should address you and us together, not you over our heads.

We do not want the fate of the CNMI indigenous population to be the same as those in Guam, Hawaii, and the US mainland. We do not want to become a marginalized, alienated minority because of unilateral federal action. We do not want to face a political future of "native rights" movements that go nowhere, but never end because of dispossession that feeds endless frustration and bitterness.

Substantive 902 consultations are necessary in order to maintain the mutual respect, good faith, and understanding that the Covenant guarantees, and without which the entire system that the Covenant establishes would fail. This is particularly true in time of differences or disputes between the parties. Successful 902 talks should precede any

legislation that would so drastically alter the nature of the relationship between the United States and the Northern Mariana Islands such as that now proposed.

The CNMI was exempted from US immigration laws in the first place in order to avoid a repetition of what occurred on Guam, where the political power of the native population was significantly diluted by foreign immigration under US laws, and where the indigenous population was overwhelmed by immigration laws over which it had no control.

The removal of local authority over the terms and duration of aliens' stay here, not to mention the granting of long-term residency rights to all or any substantial portion of this population, would drastically and permanently change the social, economic and political landscape of the CNMI, and would create exactly the situation that everyone had intended to prevent when the Covenant was first entered into.

The people of the United States are currently engaged in their own vigorous debate regarding the national capacity to assimilate large numbers of immigrants. The proportion of immigrants who would potentially need to be absorbed in the CNMI is very much greater, and the society into which they would be absorbed very much smaller and more fragile than in the case of the United States. We need to have our own debate, and reach conclusions we can accept. There must be some middle path between making them all future citizens and not inviting them here at all, and we need to find that path ourselves.

Here is what I would like to hear from the Committee: 1) The Committee recognizes and respects the CNMI's unique self-governing status under the Covenant; 2) The Committee wishes to sit down with the CNMI, as equal and fraternal partners, to discuss matters of our mutual interest regarding immigration, population, and the future course of economic development in the CNMI; 3) The Committee stands ready, if necessary, to assist the CNMI with manpower, expertise, technology, cooperative enforcement, mutually reinforcing legislation, or otherwise, as we may mutually agree to be appropriate to the improvement or enhancement of the CNMI immigration system, and to advance the best interests and prosperity of the CNMI people; and 4) Any such assistance would, of course, be provided solely at the request and with the free consent of the CNMI government, and would be immediately withdrawn whenever the CNMI government deems it to be no longer necessary or appropriate to its purpose.

In closing, let me be clear that we in the CNMI take matters of national security very seriously and are willing and active participants in making sure that our borders are secure. We welcome any federal support in this regard. However, my primary concerns with this bill are first that federalization of the CNMI's immigration system will have a negative impact on our already troubled economy by stripping our Commonwealth of its ability to effectively manage tourist arrivals and foreign national labor, second that the creation of a new class of permanent resident aliens will drain our public resources, and third that the transition period is vaguely defined and offers the CNMI no assurances

about which of the many successful elements of our immigration program can continue to operate under a transitional structure.

I thank you for considering my comments on H.R. 3079 and for allowing me this opportunity to address the Committee on this critical issue.