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UNITED STATES/CNMI POLITICAL UNION

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

TO

RECEIVE TESTIMONY ON S. 1634, A BILL TO IMPLEMENT FURTHER THE ACT APPROVING THE COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA, AND FOR OTHER PURPOSES

JULY 19, 2007

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UNITED STATES/CNMI POLITICAL UNION

THURSDAY, JULY 19, 2007

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:43 a.m., in room SD–366, Dirksen Senate Office Building, Hon. Jeff Bingaman, chairman, presiding.

OPENING STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. Why don't we go ahead and start? I welcome all the witnesses. We have a very distinguished group of witnesses today. Of course, we welcome the Governor. I had the chance to visit with him and with Senator Akaka in the last couple of days on this set of issues as well.

Unfortunately, I'm going back and forth between two hearings this morning. We have a markup of the children's health insurance program in the Finance Committee that was scheduled just yesterday, but it's ongoing right now. So I'm going to make a very short statement, turn the hearing over to Senator Akaka, and then try to get back as quickly as I can.

Let me just indicate that both Senator Domenici and I asked the administration to take the bill that was passed by the Senate in 2000 and to update that bill reflecting the testimony both that we heard from the administration and from the CNMI Resident Representative when we had our hearing in February. Many of you were here for that same hearing.

I've not taken a position on every aspect of what they've come up with, but I do believe they've come up with something that gives us a solid basis for moving forward. Some have expressed concern that the legislation will add to the current economic difficulties that the island is experiencing. That is not our objective or our purpose. Instead, I believe that the current challenges that the island is facing economically underscore the need to establish a stable and sustainable labor and immigration framework for the CNMI's future and to establish a stable relationship between the United States and the CNMI.

So I look forward to reviewing all the testimony even if I'm not able to be here to hear it all, and hopefully I can get back to ask some questions as well.

But Senator Akaka has been our leader on this issue and many of the issues that affect the Pacific Islands for a long time, and I very much appreciate his help and leadership on this, and he's

going to conduct the hearing at this point while I rush back and try to offer a couple of amendments on the children's health insurance program. Senator Akaka, why don't you take charge here?

[The prepared statement of Senators Cantwell and Murkowski follow:]

PREPARED STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Chairman Bingaman, Ranking Member Domenici and members of the Committee, I want to thank you for the opportunity to speak in support of S. 1634. I also want to thank Senators Akaka, Murkowski and Inouye for working with me on this very important issue. Extending federal immigration law into the Commonwealth of Northern Mariana Islands is critical to ending the heinous practice of human trafficking in the Commonwealth.

In February, I had the privilege of meeting Kayleen Entena, a young woman from the Laguna Province in the Philippines. She traveled to DC to testify in an oversight hearing before this very Committee, providing a glimpse of the conditions of many living in the CNMI.

Kayleen was promised a chance to work abroad so that she could save money to help her family back in the Philippines. But like the many stories of other trafficked victims, the assurance of opportunity soon turned into an inexplicable broken promise for Kayleen. The recruiter promised Kayleen a waitressing job in Saipan that would pay $400.00 a month. Instead, her so-called "employer" forced her to work as a prostitute, threatening Kayleen that if she went to the police, she would never see her family again.

Kayleen said to me, as she expressed to the Committee back in February, "I am hoping that this kind of illegal system will stop, the way it happened to me, the way I was treated. I do not want this to happen to anyone. I know that there are other women out in the community like me."

Fortunately, Kayleen was able to escape. She survived and is able to share her story with us. But back in my home state of Washington, we know of two fatal cases in which women were trafficked. Their male sponsors sought the women out through international marriage broker agencies available on the internet and brought them to the U.S. on fiancee visas. In recent years, reports have indicated a disturbing correlation between "mail-order brides" and domestic abuse. Congress recognized the immediate need to address the cruel practice of human trafficking and passed legislation I sponsored that protects women in these situations against exploitation.

Like the two women who came to Washington State legally on fiancee visas, Kayleen was brought into the CNMI on a tourist visa, not knowing that such a visa would not allow her to work. This loophole is a major reason why it is possible for traffickers to sneak their victims into the U.S. and its territories. Unfortunately, the Commonwealth has neither the adequate resources nor the appropriate mechanisms to enforce such illegal behavior.

We must build on these past lessons. The Northern Mariana Island Covenant Implementation Act is another important step in ensuring vital safeguards are put in place to protect women from abuse and exploitation. It is time to implement immigration and labor law in the Commonwealth and provide the help to the women and children who need it most.

Thank you.

PREPARED STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Mr. Chairman, thank you for holding this hearing on immigration reform legislation in the Commonwealth of the Northern Mariana Islands, S. 1634.

This issue has been before this committee for 11 years. Hearings were held on the immigration issue in 1996 after my father, former Sen. Frank Murkowski, and Sen. Akaka traveled to the islands in February 1996 and saw first hand some of the abuses: where workers were not getting paid, were working in difficult conditions in some of the garment factories, and in some cases were being lured to the islands by promises of jobs and then being forced into illegal behavior, prostitution, for example, and sometimes into forced abortions as well.

Those abuses prompted legislation, legislation that passed the Senate in 2000, but ultimately did not become law. They also spawned a variety of actions intended to remedy the concerns and protect guest workers in the CNMI.

In 1999 a Federal Ombudsman's Office was created to give guest workers a place to file complaints—the office fielding 962 abuse complaints that year. Last year that number was cut in about half, but 500 cases is still a sizable complaint load.

In the same year 23 of the garment factories entered into a "strategic partnership" with the U.S. Department of Labor's Occupational Safety and Health Administration to set up safety and health standards for each worksite and staff housing. That certainly helped to reduce the lost workday injury rate in CNMI factories.

In 2003 the independent Garment Oversight Board was created as a result of a class-action lawsuit and it now monitors the remaining garment factories in the CNMI and can place factories on probation and end their eligibility to sell to 26 major U.S. retailers, if violations are found.

In 2003 the CNMI government also worked with the Department of the Interior's Office of Insular Affairs to establish a refugee protection system.

Following 9/11 there has been progress on improving immigration entrance inspections to CNMI from where access to the mainland is much easier, both to protect against terrorists and also to combat against human trafficking. There are, however, still questions about the enforcement of immigration rules and adequacy of staff and funding to enforce the CNMI's rules.

And the CNMI government has negotiated agreements with the Chinese Economic Development Association to pre-screen Chinese nationals coming to work in the CNMI, to limit the fees that workers can be charged.

But during a February hearing into immigration issues in the CNMI we heard tales that all of the problems have not been solved. This year we heard of Ombudsman cases where businesses in the CMNI have not paid workers on a bi-weekly basis, and of security guards again facing problems. We heard complaints where construction workers were not paid for work performed. We heard new complaints about garment workers being recruited to come to the islands and perhaps pushed into prostitution as a result. These problems sounded all too much like the problems of a decade ago.

For that reason a group of us started working with the Administration and island officials to craft reform legislation. Actually we started with the bill that passed the Senate seven years ago and attempted to update it to reflect the new conditions in the CNMI. Those conditions involve the fact that under WTO rules, global garment quotas ended for the factories in the islands in 2005, likely causing most of the remaining garment factories to close by year's end shifting operations to elsewhere in Asia.

That will have a significant impact on the economy, reducing CNMI's ability to afford immigration enforcement, especially since the CNMI's governmental revenues have fallen 24 percent since FY 2004 and will fall further once the last of the factories close. At the same time, immigration problems likely will rise when workers who wish to avoid returning to their Native countries try to remain in the islands.

Given the island's likely shift to tourism and education for economic diversification, there may well be a need for a differing mix of guest workers, especially for workers with special skills not currently found on the islands. But a revised immigration program is clearly needed to deal with the thousands of workers already in the CNMI, some wanting and perhaps some needing to stay, while at the same time protecting against future refugee floods and the dangers that porous immigration policies could cause to the United States mainland and to other territories in this age of terrorist threats.

The population of the CNMI has grown from 16,000 in 1976, when it became a U.S. territory, to perhaps 80,000 today because of guest worker imports, making the original U.S. citizens (21%) and the indigenous Chamorro and Carolinian ancestry residents (estimated at 43% in 2000) near minorities in the Commonwealth.

It is clear to me that we need new legislation to address these concerns. I believe the only way to improve the CNMI economy is to attract new businesses, but the best way to do that is to remove the cloud of uncertainty affecting businesses since the termination of the Trusteeship Agreement in 1986, by installing a new permanent immigration law for the Commonwealth.

I understand that the Commonwealth's economy is in a difficult condition. With the post 9/11 slowdown in aviation and the related slowdown in tourism, tax revenues have fallen. The decision by some in this body to raise the minimum wage for the islands is also making it harder for economic development to occur. But delaying immigration reform in my view is not the answer. Resolving this issue in a way that is mutually beneficial to the U.S. and the CNMI is the best way to promote long-term economic development for the Commonwealth.

The bill we have proposed and will hear reaction to today will extend U.S. immigration laws and enforcement aid to the CNMI, but with exceptions that were carefully tailored to help the island nation. The exceptions:

- Continue to require inspection of persons entering the U.S. from CNMI, as if they were coming from a foreign nation.
- Establish a CNMI-Only guest worker program for 10 years with an option for five-year extensions, so the need for guest workers is guaranteed to be met.
- Establish a CNMI-Only visa-waiver program for countries whose citizens now travel to the CNMI, such as the People's Republic of China, Russia and other Asian nations, whose citizens are most likely to spend money at the island's resort beach hotels.
- Provide a CNMI-Only opportunity for investors to obtain non-immigrant status in an effort to help the island keep its financial base.
- "Grandfather" certain long-term CNMI workers as nonimmigrant residents of the United States, in an effort to deal with the workers now on the islands, some of whom have children that are American citizens, who do not wish to return to their Native countries.
- Continue CNMI responsibility for U.S. refugee and nonrefoulement obligations. That means that the INA asylum provisions would not be extended as a way of preventing the future inducement of refugees to come to the commonwealth.
- Waive the CNMI from the national caps on the number of INA nonimmigrant worker visas. That will keep the island from having to compete against the mainland to gain visas under the current caps for some types of more skilled workers.
- Limit the CNMI as a port-of-entry for new immigrants to the U.S.
- And establish CNMI-Only technical assistance programs for economic planning and worker training and recruitment so the island can train a resident workforce and get away from having to recruit foreign workers—the cause of some of the problems with the current system.

I certainly look forward to the testimony to hear how we can improve the bill further; how we can make it work better for the citizens of the Northern Marianas. But I truly believe that the 21 years that have passed since it was expected that U.S. immigration laws would take effect following the end of the trusteeship, have been long enough. It is time that we provide certainty and stability to this process.

Coming from Alaska, being born there when it was still a territory, I am, along with Senator Akaka and Senator Inouye, among the relatively few in the Senate that understand the frustration that residents feel when their futures are determined by lawmakers who are far away and in some cases have never even seen the lands they are regulating. That was almost always the case for Alaskans prior to 1959.

I am sympathetic to the impacts that immigration reform will have and want to help reduce the negative effects on the CNMI. But I think it is high time that we advance this legislation. I look forward to reading all the testimony that will arise since I most likely will be unable to attend most of this hearing because of conflicting hearings before the Foreign Relations, Indian Affairs and Health, Education, Labor and Pensions Committees—all scheduled for the same time.

Thank you Mr. Chairman.

STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

Senator AKAKA [presiding]. Thank you. Thank you very much, Mr. Chairman. I want the chairman to know that I really appreciate and we do appreciate his leadership here in our country, as well as leader of this committee.

I want to begin by extending my aloha and my best wishes and my warm welcome to all of our witnesses, who have come a long way to attend this hearing. I want to tell you that we really appreciate your presence and look forward to your testimonies here today.

For me and for us here, we're looking at this as trying to get information that can help us put together a kind of bill that will be helpful. So let's do this and work this out together.

In February the committee held a hearing on the immigration labor law enforcement and economic conditions in Northern Marianas and found that conditions still exist which justified extension

of the U.S. immigration laws to the CNMI as provided for in the covenant. It was also clear that this must be done in a way that is sensitive to the islands' special circumstances and to the current economic turndown.

Accordingly, Senators Domenici and Bingaman wrote to the administration and asked that they revise the bill that was passed by the Senate in the year 2000 to include the recommendations that were made in the February hearing by the administration witness and by the resident representative from CNMI. Today the committee will receive testimony on this revised bill, which is S. 1634.

It would extend U.S. immigration laws, but with special provisions designed to meet the islands' special circumstances. For example, it would provide a CNMI-only guest worker program, a CNMI-only investor program, a CNMI-only visa waiver program, and a CNMI-only waiver from caps on non-immigrant worker visas.

This legislation provides a foundation for us to build upon. Although the Governor has expressed to me his concern that passage of Federal legislation will add to the islands' current economic troubles, I sense that the economic crisis in CNMI is not a reason to defer legislation. Instead, I believe that the current challenges underscore the need to establish a stable and sustainable labor and immigration framework for the CNMI's future and to establish a stable relationship between the United States and CNMI.

So I look forward to this hearing and for your input. Again, I want to invite, welcome all of you. You've heard the reasons that the chairman won't be here all the time, but we'll continue with the hearing. I want to welcome one that we've worked with so closely and who's done a good job in working with us on behalf of the administration—David Cohen. He's the Deputy Assistant Secretary for Insular Affairs for the Department of the Interior, accompanied by Mr. James Benedetto, Department of the Interior Labor Ombudsman. Also with us is of course the Governor of CNMI, Mr. Fitial; Mr. Pedro Tenorio, Resident Representative of the Commonwealth of the Northern Mariana Islands; and Mr. Juan Guerrero, President of the Saipan Chamber of Commerce.

Although the statements are limited to 5 minutes, I want all of our witnesses to know that your entire statements will be included in the record.

So, Mr. Cohen, will you please proceed with your statement?

STATEMENT OF DAVID B. COHEN, DEPUTY ASSISTANT SECRETARY FOR INSULAR AFFAIRS, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY JAMES BENEDETTO, LABOR OMBUDSMAN, DEPARTMENT OF THE INTERIOR

Mr. COHEN. Aloha, Mr. Chairman.

Senator AKAKA. Aloha.

Mr. COHEN. In previous hearings I've described at length the impressive progress the CNMI has made to improve working conditions there since the 1990's. As I've said repeatedly, the CNMI should be congratulated for this progress. The CNMI doesn't get the credit it deserves for the progress it has made. However, the following serious problems still plague the CNMI's immigration system.

First, the CNMI has no effective pre-screening process for aliens entering the Commonwealth. Continued local control over the CNMI's immigration system presents significant national security and homeland security concerns.

Second, we have serious human trafficking concerns. While we congratulate the CNMI for its recent successful prosecution of people who pressured women into prostitution, human trafficking remains far more prevalent in the CNMI than in the rest of the United States. During the 12-month period ending April 30, 2007, 36 female victims of human trafficking were served by the Guma' Esperansa Women's Shelter on Saipan. All of these victims were in the sex trade. Secretary Kempthorne personally visited the shelter last month and met with a number of women who were underage when they were trafficked into the CNMI for the sex industry. He found their stories heartbreaking.

The State Department estimates that a total of 14,500 to 17,500 victims are trafficked into the United States each year. With a CNMI population of roughly 70,000 and a U.S. population of roughly 300 million, these numbers suggest that human trafficking is between 8.8 and 10.6 times more prevalent in the CNMI than it is in the United States as a whole. This most likely makes the CNMI look better than it really is. The victims counted for the CNMI include only actual female victims in the sex trade who were served by Guma Esperansa. This is compared with a U.S. estimate of human trafficking victims of both genders, not limited to the sex trade. In an apples-to-apples comparison, the CNMI would fare worse.

A number of people have come to the Federal ombudsman complaining that they were promised a job in the CNMI after paying a recruiter thousands of dollars, only to find upon arrival 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 obtain help in the Federal ombudsman's office.

We're also concerned about recent attempts to smuggle Chinese nationals from the CNMI into Guam by boat. A woman was recently convicted 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.

Third, we have very serious concerns about the CNMI's administration of its refugee protection system, which was established pursuant to a memorandum of agreement signed by former Governor Babauta and me. Establishing a refugee protection system in the CNMI was important to U.S. compliance with international treaties on refugees and torture. Under the MOA, the CNMI has established its own refugee protection system with the assistance of the Department of Homeland Security and financial support from my office.

Recently, the chief of the Asylum Division, U.S. Citizenship and Immigration Service, Department of Homeland Security, inquired about a group of cases which were of concern to the United States due to evidence of efforts by a foreign government to improperly interfere in those cases. Astonishingly, the CNMI attorney general

refused the requested information and accused the Departments of Homeland Security and State of attempting to, "imbalance the scales of justice," by inquiring about these cases and by expressing concerns about evidence of foreign attempts at interference.

The attorney general's failure to distinguish between possible foreign attempts to improperly influence a refugee protection proceeding and attempts by the United States to monitor and protect the integrity of a refugee protection program raises serious doubts about the CNMI's capacity to adequately carry out the program. With this uncooperative stance from the CNMI, there is no way for the Federal Government to confirm that the United States remains in compliance with important international treaty obligations.

The circumstances described above present us with a dilemma. If we can't verify that the CNMI is administering its refugee protection program consistent with U.S. international treaty obligations, then extending the protections of U.S. law to aliens in the CNMI may be the only way to ensure compliance. However, making aliens in the CNMI eligible to apply for protection in the United States is a potentially serious problem if the CNMI continues to determine which aliens and how many are able to enter the CNMI. Under that scenario, the United States could be required to provide refugee protection to aliens that have been admitted to the CNMI through a process controlled, not by the Federal Government, but by the CNMI. The United States would be subjecting itself to potential costs and other consequences of decisions made by the CNMI.

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. S. 1634 is generally sound legislation that embodies the concept of flexible federalization; that is federalization of the CNMI system in a manner designed to minimize damage to the CNMI's fragile economy and maximize the potential for economic growth. The administration supports S. 1634 subject to our request that certain changes be made. These changes are mostly technical in nature and are described in my written statement.

We also note that 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.

Finally, Mr. Chairman, we again point out that the people of the CNMI must participate fully in decisions that will affect their future. As I've said in the past, a better future for the people of the CNMI cannot be imposed unilaterally from Washington, DC, ignoring the insights, wisdom, and aspirations of those to whom this future belongs.

Although the administration supports S. 1634, subject to the suggestions in my written statement, we're concerned about the message that would be sent if Congress were to pass this legislation while the CNMI remains the only U.S. territory or commonwealth without a delegate in Congress. 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, we hope that Congress

will consider granting them a seat at the table at which their fate will be decided.

Thank you.

[The prepared statement of Mr. Cohen follows:]

PREPARED STATEMENT OF DAVID B. COHEN, DEPUTY ASSISTANT SECRETARY FOR INSULAR AFFAIRS, DEPARTMENT OF THE INTERIOR

S. 1634, THE NORTHERN MARIANA ISLANDS COVENANT IMPLEMENTATION ACT

Mr. Chairman and members of the Committee, thank you for the opportunity to testify on S. 1634, the Northern Mariana Islands Covenant Implementation Act. 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. As I have said repeatedly, the CNMI should be congratulated for this progress. We do not believe that the CNMI gets the credit that it deserves for the progress that it has made. However, serious problems continue to plague the CNMI's administration of its immigration system, and we remain concerned that the CNMI's rapidly 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, 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 is supposed to consult 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 finger prints 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 victims were in the sex trade. 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 lack of response by the CNMI to USCIS's requests for cooperation.

Most recently, the Chief of the Asylum Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, inquired about a group of cases which were of concern to the U.S. Government due to evidence of efforts by a foreign government to improperly interfere in those cases.

Astonishingly, the CNMI Attorney General refused requested information and accused the Department of Homeland Security and the Department of State of attempting to "unbalance the scales of justice" by inquiring about these cases and by expressing concerns about evidence of foreign attempts at interference.

The CNMI Attorney General's failure to distinguish between possible foreign attempts to improperly influence a refugee protection proceeding within the U.S. and attempts by the relevant U.S. agencies to monitor and protect the integrity of a refugee protection program which impacts U.S. compliance with its international obligations raises serious doubts about the CNMI's capacity to adequately carry out the refugee protection program. It is particularly troubling that such a posture is being taken by the CNMI Attorney General, the official who ultimately supervises the refugee protection hearing officers and to whom refugee protection decisions are appealed. With this uncooperative stance from the CNMI, there is no way for the Federal Government to address its very serious concerns and confirm that the U.S. remains in compliance with important international treaty obligations. The concerns that we have about the CNMI Attorney General's letter are very serious and would not be mitigated if the CNMI were to issue decisions in the pending cases that the U.S. Department of Homeland Security found to be appropriate given the facts and applicable law.

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 S. 1634 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 S. 1634 reflects the principles previously spelled out by the Administration as those that should guide the federalization of the CNMI's immigration system. Therefore, the Administration supports the Northern Marianas Covenant Implementation Act, subject to the following:

- *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 make visa waiver decisions in the national interest We would also recommend consideration of authorizing integration of the proposed CNMI visa waiver 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 in 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. We applaud the Senate for taking this step, and urge Congress to carefully consider the results of this analysis in the continued development of this legislation.

It is important to remember that S. 1634 deals with a unique situation, and hence does not establish any precedents that are relevant to the discussion of national immigration reform. S. 1634 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, Mr. Chairman, 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. Although the Administration supports S. 1634, subject to the

suggestions outlined above, we are concerned about the message that would be sent if Congress were to pass this legislation while the CNMI remains the only U.S. territory or commonwealth without a delegate in Congress. 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, we hope that Congress will consider granting them a seat at the table at which their fate will be decided.

Thank you.

Senator AKAKA. Thank you very much, Mr. Cohen, for your testimony.

Now we'll hear from the Governor of CNMI, Governor Fitial.

STATEMENT OF HON. BENIGNO R. FITIAL, GOVERNOR, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Mr. FITIAL. Hafa Adai and aloha.

Senator AKAKA. Hafa Adai.

Mr. FITIAL. I'm pleased to have this opportunity to appear before you to discuss Senate Bill 1634. I've been Governor since January 2006, about only 18 months to make a dent in the Commonwealth's problems which have been accumulating for several years. My people are suffering and I have a plan for recovery. But I fear that this legislation will devastate my recovery effort.

My plan has two overall objectives; to reduce government expenditures, and to address the serious economic decline in my community. In order to bring government expenditures under control, I have reduced government employment by 10 percent; I have instituted an austerity program of two unpaid Fridays each month. I've cut government expenditures in nearly every department. I have adopted revised budgets for 2006 and 2007 that reflected the decline in government revenues from a peak of $248 million in 1997 to an estimated $163 million in this fiscal year, a decline of about 34 percent.

Our budget for this year seeks to protect essential public services and does not add to the substantial deficit which I inherited. We have more than doubled electricity rates to cover the actual cost of this service. I have a reduction-in-force plan in place to use if necessary during fiscal year 2008.

My point is simply this: I am making the necessary hard choices, something none of my predecessors were willing to do. Mr. Chairman, I need the understanding of this committee.

My second major objective is to stimulate growth in an economy that has suffered external blows beyond our control. Because of changes in WTO rules, the apparel industry in the Commonwealth is declining. The number of factories has declined from 34 to 15, with more closures anticipated for later this year. The number of alien workers in this industry has declined from 16,000 to 6,000. Taxes and fees paid to the government have declined by more than 60 percent.

For entirely different reasons, our second major industry—tourism—has also experienced a serious decline. Visitor arrivals are down 40 percent in the last decade. Discontinuation of direct flights to the Commonwealth from Japan by Continental Airlines and Japan Airlines in 2005 has seriously impacted this most important tourist market.

Our plan for rebuilding the economy will take time—18 to 24 months perhaps. I have made more than 15 trips to Japan, Korea,

China, to encourage new investment and increased airline seat capacity. This process, Mr. Chairman, is a very personal one. Potential investors from these countries want to know who they are dealing with, who makes the decisions, and who will take their telephone calls when a problem develops.

We have had some success already with the airlines. We have obtained a major increase in flights from Korea beginning last May, and we expect to double this number by the end of the year. We have some new short-term commitments from Continental Airlines for this summer. We have increased charter flights from China and we have a commitment from Northwest Airlines for new flights from Japan beginning later this year.

We have attracted new industries to our islands that do not depend so heavily on alien workers. In particular, we have educational institutions being established in the Commonwealth to teach a variety of subjects in English to students primarily from Korea, China, and other Pacific Rim countries.

The success of this new industry depends critically on our unique visa programs for students and their parents. Just a few weeks ago, I attended the groundbreaking for the first new resort hotel on Saipan in 20 years, being built by a major Korean company at a total cost of more than $300 million. Kumho Asiana, the parent company of Asiana Airlines, has committed to the construction of a ten-story condominium building and other facilities on a Saipan golf course involving many millions of dollars. These companies and future investors are worried that their employment needs will not be met under this proposed bill.

I have been successfully marketing the CNMI while at the same time increasing enforcement of our labor laws. I have resolved more than 3,400 of my predecessor's labor cases within the last 6 months.

This legislation will cripple our recovery efforts. It creates uncertainty throughout the economy. This uncertainty is real. It leads potential investors and current investors to reevaluate the benefit of investing in the Commonwealth. S. 1634 threatens the continued use of the special visa programs vital to the visitor industry, the educational industry, and retirement facilities for Asian retirees. It creates a cumbersome bureaucracy of Federal departments which presents a formidable challenge for any investor. It deprives me and my administration of the tools needed to rebuild the economy, enforce the laws, and restore hope to my people.

The legislation imposes substantial new burdens on the local community by changing the status of about 8,000 alien workers, about 25 percent of the resident U.S. citizens, by giving them the right to reside permanently in the United States and in the CNMI. This legislation is based on outdated facts, allegations, and assumptions.

This is why we have the GAO study, and we thank you, Mr. Chairman, for supporting such a study. Now that the GAO study is under way, I ask this committee not to act on this bill until the study is done. Certainly it would be better to evaluate the likely impacts of S. 1634 before, rather than after, it is enacted.

Mr. Chairman, there is one point that I do wish to make clear. My people are loyal and patriotic U.S. citizens. We have provided

more soldiers per capita than any other State in the United States, and unfortunately several of my people have given their lives in Iraq. The Commonwealth welcomes Federal support to assist in the control of our borders. We are ready and eager to have the additional safeguards that would come from utilization of Federal data bases to ensure that no alien entering the CNMI presents a security risk to the United States. We are prepared to work with you and the committee to accomplish this objective.

In my written testimony I have addressed in detail the following: our reasons for believing that the bill is predicated on outdated information; the extent of our economic decline and our plan for recovery; and the specific deficiencies of the proposed legislation.

Thank you, Mr. Chairman, for the opportunity to appear today and I stand ready for any questions from the committee.

[The prepared statement of Mr. Fitial follows:]

PREPARED STATEMENT OF HON. BENIGNO R. FITIAL, GOVERNOR, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Hafa Adai, Mr. Chairman and Members of the Committee, I am pleased to have this opportunity to appear before you to discuss Senate Bill No. 1634. I regret that I was unable to appear in person during your hearings last February, when Lt. Governor Villagomez appeared in my place.

Since the February hearings, Committee representatives have visited the Commonwealth to discuss proposed legislation dealing with the immigration and labor laws of the Northern Mariana Islands. In response to those discussions, we submitted a Memorandum to this Committee dated March 19, 2007. We have repeatedly asked that this Committee request the Government Accountability Office to conduct an economic study of the Commonwealth before approving any legislation such as Senate Bill 1634.

I wish to thank Chairman Bingaman and Senator Domenici for joining Members of the House of Representatives in a letter of May 4, 2007, requesting such a study. We agree that the Committee needs current and objective information about the Commonwealth—its economy, workforce, and changing population—before deciding whether, and to what extent, the federal immigration laws should be extended to the CNMI. We are now in communication with GAO representatives regarding their schedule and study.

Before I address Senate Bill 1634 in particulars, I would like to make one very important point. The people of the Commonwealth are loyal U.S. citizens. Our young men and women continue to serve with distinction in the American military forces. Several have lost their lives in the Iraq conflict.

We share the desire of the Members of this Committee to protect the borders of the United States, including the Commonwealth. We are prepared to invite oversight by the Department of Homeland Security. We are ready and eager to have the additional safeguards that would come from utilization of federal data bases to ensure that no alien entering the Commonwealth presents a security risk to the United States. We are ready to have federal immigration officials assigned to work in the CNMI to improve the training and performance of CNMI personnel.

Our concerns with Senate Bill 1634 are totally unrelated to national security. We oppose the bill in its present form for three fundamental reasons. First, it is based on outdated facts, allegations, and assumptions. Second, we believe that this legislation will frustrate our comprehensive plan to address the Commonwealth's serious economic depression. Third, the bill's provisions authorize an unprecedented extension of federal authority and will deny the Commonwealth's elected leaders any meaningful role in the management of its economy.

SENATE BILL NO. 1634: MISCONCEPTIONS RATHER THAN FACTS

Our concern that S. 1634 lacks any meaningful relationship to the Commonwealth of today is not fanciful. We have seen the summary prepared by the Committee staff and distributed to the Members of this Committee. Every single fact cited in the summary description of the CNMI is more than five years out of date. Repeatedly the summary cites a 1997 report from the U.S. Commission on Immigration Reform, a 1997 report from the Department of the Interior, a 1998 report from the Immigration and Naturalization Service, 1999 data on wages, a 1999 statement by the INS

General Counsel, 2000 data on unemployment, and a 2002 report from the Department of Justice.

Not surprisingly, the summary's conclusions based on these outdated facts are simply not true. We believe that any judgment by this Committee about the need for legislation such as S. 1634 should be based on the facts and circumstances that exist today in the Commonwealth. Let me give some examples:

- The summary states that there is a two-tiered economy in the CNMI. That is not true. The economic model that prompted this Committee to act in 2000 no longer exists in the Northern Marianas. The closures of most of the apparel factories in the CNMI, and the repatriation of their alien workers have substantially reshaped the economy and population mix of the Commonwealth. This process is likely to continue over the next few years.
- The old allegation that the "bloated" CNMI Government is an employer of last resort for local residents also fails to acknowledge the facts of life in today's Commonwealth. With a ten percent reduction in government payrolls—and the likely need for more reductions in the next year—we are compelled to work harder to train and place our U.S. citizens in the private sector.
- The summary suggests that there is systemic abuse of workers and aliens in the CNMI. That is not true. There is no current data to support this conclusion. In fact, current data show that more than 3,400 pending labor cases have been completed in my Administration. In almost all of these cases, the worker filed the case in order to stay in the Commonwealth beyond the time legally permitted under their entrance visa. They did so because the work environment in the CNMI and the earning potential are much more favorable than in their home country. The statistics show that there were relatively few cases of wage disputes—far lower than the comparable statistics in most States—and there were only two cases involving claims of on-the-job injuries.
- The summary alleges "weak border control" in the CNMI. This is not true. I have appointed a Director of Immigration with 29 years of experience in the federal immigration system. In many respects the entrance requirements for the Commonwealth are more stringent than those in place for Guam or other U.S. destinations. As pointed out in earlier submissions to the Committee, the CNMI and federal immigration authorities have cooperated effectively in many substantial trafficking and other immigration violations in recent years.
- The summary dismisses a recent effort by the Commonwealth to identify and repatriate illegal aliens as having a "65% error rate." This is not true, and manifestly unfair. As part of its accelerated enforcement of its labor and immigration laws, we published in January 2007 a list of alien workers who, according to CNMI records, were ineligible for employment. The published notice asked those on the list to report to the Labor Department with appropriate documentation. This effort turned up more than 350 illegal aliens, nearly all of whom have since departed the Commonwealth. It also turned up some employers who had failed to file the necessary paperwork, and some employees who had failed to report changes in their immigration status. We intend to continue publication of such lists as required.
- The Committee staff suggests that alien workers have caused "degradation" of the Commonwealth's environment. We do not know exactly what the staff had in mind by this allegation. But we do know that the CNMI's guest worker program was essential to the economic growth of the Commonwealth during the late 1980s and 1990s. As pointed out by the GAO report of 2000, this growth provided jobs and other benefits to the U.S. citizen residents of the Commonwealth. It is true that the CNMI has serious infrastructure needs but, with the assistance of the federal government, we are addressing them in an orderly fashion.

We believe that the Commonwealth—and this Committee—deserve better information before taking action on the proposed bill. This is why an independent study is required before the Committee acts on S. 1634—to present the current facts in an objective and fair manner.

Believe it or not: The Commonwealth does have an effective guest worker program in place to meet our current and future needs for alien workers.

- We have substantially reduced our dependence on alien workers. With the closures of most apparel factories and the decline in the local economy, the number of alien workers has fallen from its peak of about 30,000 a few years ago. We expect the figure to be approximately 20,000 by the end of this year, and decrease further to about 15,000 in 2008.

- Over the past several years we have increased the opportunities for our local resident workforce—both in the public sector (teachers and health care personnel) and in the private sector. I have insisted on more rigorous enforcement of our present labor laws. Our legislature is currently considering a new comprehensive labor law, with several provisions aimed at increasing the training of local residents so that they can replace alien workers in the private sector.
- We have an effective and fair system for handling complaints by alien workers against their employers. The backlog of individual cases, some 3,400 in number, has now been eliminated. Hearings were provided for all those cases where monetary claims were contested by the employer. New procedures and the increased use of mediation have enabled us to handle new cases in a timely manner.
- We have achieved the repatriation of several thousand alien workers. We have both the capacity and the commitment to enforce our labor laws by identifying the alien workers who need to be repatriated or, if necessary, deported.

THE CNMI ECONOMY AND THE PATH TO RECOVERY

This Committee is generally aware of the economic circumstances that have adversely affected the Commonwealth over the past several years. Attachment 1 to this testimony sets forth the details documenting the extent of this depression and its impact on government revenues and our budget. Let me touch on some of the main points:

- Apparel Industry:
  - —The number of apparel factories has declined from 34 to 15—with additional closures anticipated later this year or early next year.
  - —The number of alien workers in apparel manufacturing has declined from 16,000 to 6,000.
  - —The value of apparel sales has declined from $1.06 billion in 1999 to $489 million in 2006.
  - —The taxes and fees paid by the apparel industry to the CNMI fell from $80 million in 2001 to an expected $30 million in 2007.
- Visitor Industry:
  - —Visitor arrivals are down 40% since 1996.
  - —The causes were obvious: the Asian financial crisis (1997), 9/11 attack, SARS, and increased fuel costs.
  - —The discontinuation of flights to Saipan by JAL and Continental in 2005–6 were a serious blow to our most important tourist market—Japan.
  - —The decline in arrivals has led to the closure of hotels and tourist-oriented businesses.
- Government revenues have declined from a peak of $248 million in 1997 to an estimated $163 million in 2007—a decline of about 34%.
- Increased unemployment.
- Dozens of closed businesses in the CNMI.

The Commonwealth does have a program for recovering from this depression. In my State of the Commonwealth speech last April, I emphasized five major points: (1) continued effective law enforcement; (2) creating new work opportunities for our citizen labor force; (3) improved utility operations and service; (4) expansion of the base for our visitor industry; and (5) continued efforts to secure new investment. This overall plan has the endorsement of both the Legislature and the private sector. (A copy is attached to this Statement as Attachment 2).

We have made some significant progress towards achieving these objectives.

- We have a revised 2007 budget that reflects our declining revenues, protects essential public services, and does not add to the deficit that we inherited.
- We have reduced government employment, enforced an austerity program, and are ready to implement a reduction in force if that becomes necessary.
- To deal with the need to increase airline seat capacity for the CNMI, we have obtained a major increase in flights from Korea that began last May, some short-term commitments from Continental for this summer, increased charter flights from China, and a substantial commitment by Northwest for renewal of flights from Osaka beginning in December 2007. I am personally engaged in discussions with Japanese, Chinese, and Korean officials and airline executives regarding our need for increased flights from those countries.
- As the apparel manufacturing business has declined, we are having some success in attracting different kinds of new industries—financial services compa-

nies and educational institutions offering English-language training and other courses primarily to foreign students.

- We have attracted major new investments from Japanese companies (Sumitomo and NTT DoCoMo Inc.) and Korean companies. Kumho Asiana, the parent of Asiana Airlines, has purchased one of our golf courses and is committed to major renovations and improvements involving several hundred million dollars. Just a few weeks ago, I attended the groundbreaking ceremony at the future site of a $300 million hotel and villa complex on Saipan undertaken by the KSA Group of Korea—the first new hotel on Saipan in many years. These were two of the many projects described in my State of the Commonwealth address—most of them scheduled to begin within the next 6–12 months.

Let me state the obvious: there is no quick fix for the Commonwealth's current problems. Because of the delay in implementing new airline commitments and the need for additional such commitments, we are unlikely to see any substantial increase in visitor arrivals for about 18 months. The benefits of the recent—and scheduled—investments in hotels and other tourist attractions will also take time to develop. Although the construction activity on such projects produces some needed stimulus to the economy, substantial increase in revenues for both the private and public sectors takes more time. But we do have a vision. And, with all due respect for our critics, we prefer our vision to that of government bureaucrats 8,500 miles away.

The ability of the private sector and my Administration to deal with our economic crisis has been complicated by the recent imposition of the federal minimum wage on the Commonwealth. We appreciate the assistance this Committee provided in seeking a lower increase for the Commonwealth. The first fifty cent increase is mandated for next week—July 25, 2007. Federal and local labor officials have been collaborating in preparing for as smooth a transition as possible given the short time frame for compliance and the variety of questions presented by employers and employees. Employers throughout the Commonwealth are concerned by the uncertainty under the federal law with respect to additional yearly increases in 2008 and beyond and the difficulty in planning ahead under these circumstances. We will be monitoring the impact of this first increase and will be requesting the Committee's assistance as appropriate.

The enactment of S. 1634 will seriously damage the CNMI economy. It will drastically change the rules under which investors commit their funds to the Commonwealth. It generates uncertainty throughout the economy. This uncertainty is real. It is important. It leads potential investors to reexamine the profitability of investment in the Commonwealth. It leads committed investors to reexamine the nature and timetable for implementing their plans. It raises serious questions regarding the continuation of the special visa programs vital to the visitor industry, the educational industry, and retirement facilities for Asian nationals.

Once the several federal departments begin to exercise their responsibilities under S. 1634, an entirely new element of uncertainty is created. It will be clear that no Northern Marianas Governor will be able to make the kind of commitments necessary to attract investment to the Commonwealth from predominantly Japanese, Korean, and other Pacific Rim companies. In order to appraise investment prospects in the Northern Marianas, potential investors will have to deal with a new bureaucracy of five departments in Washington. To whom should such investors go for guidance regarding the future course of the CNMI economy? Department of Homeland Security? Department of State? Department of Justice? Department of Labor? Or the Interior Department? Or all of the above? Why should they bother—if there are other areas in the Pacific of equal promise which provide greater certainty and security which major investors reasonably demand?

Enactment of S. 1634 will almost certainly result in increased financial dependence on the federal government by the CNMI. The Commonwealth will soon thereafter be on the dismal course being experienced by the freely associated states and most island communities in the Western Pacific—a course featuring outmigration, remittances, government payrolls, and foreign aid. This was not the objective of the United States and Northern Marianas negotiators of the Covenant. They envisioned and promised a self-sufficient local economy, to the extent possible, and a standard of living comparable to that of the average American community. In recent years the federal government has failed to honor these commitments to the Northern Marianas—such as the failure to reimburse the CNMI for the $200 million in costs incurred by the Commonwealth providing public services to Micronesians from the other former districts of the Trust Territory of the Pacific Islands. Coming so soon after the imposition of the federal minimum wage, enactment of S. 1634 would be

another serious blow to the Commonwealth—its economy and its U.S. citizens, who lack even a token vote in the U.S. Congress.

We do not understand why our concerns are being dismissed before a credible economic study has been conducted and presented to the Committee. We urge this Committee not to act on S. 1634 until the GAO completes its analysis and reports to the Committee.

SPECIFIC DEFICIENCIES OF S. 1634

Attached to this Statement is a section-by-section analysis of S. 1634 (See Attachment 3). Let me draw your attention to a few of its most important deficiencies.

S. 1634: A New Federal Bureaucracy

Senate Bill No. 1634 creates a new federal bureaucracy composed of five separate departments to implement the bill's provisions. It is unclear that any of these departments—with the probable exception of the Interior Department—wants to add these new responsibilities to their already full dockets. The Department of State is so overwhelmed by passport applications that it has assigned more than one hundred of its consular officers on an emergency basis to deal with these demands. The same is true of the Department of Homeland Security, as evidenced by the recent reports of its backlogs with respect to visa applications. A few weeks ago, a conflict between the Department of State and the Department of Homeland Security resulted in the reversal of a commitment to provide work-based visas to thousands of well-educated, highly skilled, legal immigrants, with long experience in the country. A spokesman for Homeland Security acknowledged that there had been a failure of communication between his department and State. (New York Times, July 6, 2007, p. A9) Does anyone seriously believe that the needs of the Commonwealth—8,500 miles from Washington without a vote in the Congress—would get a higher priority?

We note that only Interior has been asked to testify regarding S. 1634. We believe that the Committee should hear directly from the four other agencies given duties under the bill before it is enacted. S. 1634 raises significant issues of funding, personnel, expertise, and agency coordination that should be addressed before—not after—the bill is passed.

The Senate bill provides only a year for the five departments to consult with each other and the Commonwealth, and produce the many sets of regulations required by the bill. After the effective date of the legislation, all CNMI immigration and labor laws are expressly preempted by the legislation, with no failsafe provision in the event that the federal agencies are not ready at that time to enforce the new law. It would be only prudent to anticipate such a possibility and provide for it in the proposed legislation.

S. 1634: AN UNPRECEDENTED ASSERTION OF FEDERAL AUTHORITY

This proposed legislation imposes a federally designed and controlled guest worker program on a single community of U.S. citizens within the United States. It purports to pay deference to the promise of local self-government in the Covenant, but its terms are quite clear: all critical decisions regarding the future economy of the Commonwealth will be in the hands of federal officials. They will decide which industries or new investments will be entitled to access to alien workers. They will decide which special visa programs will be available to the Commonwealth's critical visitor industry. They will decide what incentives or sanctions are required to stimulate businesses to employ local workers. To the Members of this Committee who have served in local or State government, we pose a single question: How would you have responded if Congress authorized five federal departments to descend on your community and supersede local authority over the local economy?

In a further break from established immigration policy, S. 1634 declares which non-U.S. citizens will be given permanent legal status and permitted to stay in the CNMI. S. 1634 expressly grants a form of amnesty to nearly 8,000 alien workers in the Commonwealth by granting them nonimmigrant status and the privilege of living and working anywhere in the United States. The bill's drafters chose to ignore that such an enhanced status was not permitted or contemplated when these workers elected voluntarily to come to the CNMI many years ago to enjoy the economic opportunities available in the CNMI. The recent Senate debate on immigration suggests that such a provision would never have been supported on the national level—either because it looks like an amnesty provision or because it imposes an enormous burden on the Commonwealth of permanent alien residents numbering about 25% of the local United States citizen population. The drafters of S. 1634

seemingly have no concern about the impact of this provision on the integrity and vitality of the indigenous Carolinian and Chamorro peoples in the Commonwealth.

S. 1634: NOT AUTHORIZED BY THE COVENANT

Section 503 of the Covenant does permit the application of the U.S. immigration and immigration laws to the Northern Mariana Islands after the termination of the Trusteeship Agreement. It does not authorize the mandatory guest worker program specified by S. 1634, accompanied by the preemption of the Commonwealth's local labor laws and dictating the nature and extent of future economic development in the CNMI. We believe that S. 1634 raises very significant legal issues under both the U.S. Constitution and the Covenant. We believe this Committee should satisfy itself as to the legal validity of this bill's provisions before enacting it.

Thank you for the opportunity to appear before this Committee.

ATTACHMENT 1.—SUPPLEMENTARY STATEMENT SUBMITTED BY HON. BENIGNO R. FITIAL

This Statement is submitted by Governor Fitial on behalf of the Commonwealth of the Northern Mariana Islands for inclusion in the printed record of the hearings conducted by the Senate Committee on Energy and Natural Resources on July 19, 2007. It will address issues raised by Deputy Assistant Secretary of Interior Cohen in his testimony and some of the questions by members of the Committee to me and other witnesses.

THE NEED FOR THE GAO STUDY

In the hearings before this Committee in February and July the Commonwealth has emphasized the need for a careful and professional study of the Commonwealth before enactment of legislation such as Senate Bill 1634. We are pleased that members of the Senate and the House of Representatives have requested the Government Accountability Office to undertake this task. Such a study would necessarily focus on two objectives of central importance to the consideration of S. 1634: (1) to provide current and reliable information about the Commonwealth as it exists today—its economy, workforce, and changing population; and (2) to assess the economic, political, and social consequences of preempting the Commonwealth's immigration and labor laws and substituting a federally designed and managed guest worker program in the CNMI.

The need for current and objective information about the Commonwealth is apparent from the provisions of S. 1634 and the questions posed by Senate Akaka. In our earlier statement we spelled out in detail the deficiencies in the data, assumptions, and allegations set forth in a briefing paper for the members of the Committee. Based on that information, the Clinton Administration ten years ago and this Committee seven years ago acted to impose the federal immigration laws on the CNMI. In answer to a specific question addressed to Governor Fitial by Senator Akaka: We oppose S. 1634 notwithstanding these earlier federal efforts because the underlying facts in the Commonwealth today no longer require such drastic and unprecedented legislative action. Whether we are right or wrong in this regard, the Committee will surely benefit from GAO's assessment of the current situation.

The GAO study is also needed to assess the impacts of federalization on the Commonwealth's economy and community. We have set before the Committee our detailed plan for economic recovery and candidly expressed our fears that the federal bureaucracy and program mandated by S. 1634 will have immediate and adverse consequences on our recovery program. We have stressed the uncertainty already expressed by present and potential Asian investors on whom the CNMI has necessarily depended over the last two decades. The existing backlogs at the Departments of State, Labor, and Homeland Security with respect to their existing responsibilities will undoubtedly make it difficult for local CNMI concerns to be addressed as contemplated by S. 1634. We hope that the GAO study will take a serious look at these issues.

Under these circumstances we do not understand why the supporters of S. 1634 are urging action before GAO reports its findings to Congress. Deputy Assistant Secretary Cohen in his written testimony urged "Congress to carefully consider the results of [the GAO] analysis in the continued development of this legislation." When asked by Senator Akaka whether the legislation should be delayed pending receipt and consideration of the GAO study, Mr. Cohen stressed the need for legislative action and indicated that the study should not be used as an excuse for delay and that it could be used in evaluating the effects of the legislation after it is enacted. As discussed later in this supplementary statement, we believe that Mr. Cohen's

sense of urgency is largely self-generated and that there is no good reason for acting on a matter of this importance without all the relevant information that would be developed by a GAO study.

HUMAN TRAFFICKING

As evidence of the need for immediate approval of S. 1634, Mr. Cohen stressed the seriousness of the human trafficking problem in the Commonwealth. Based on a statistical analysis featuring the 36 female victims of human trafficking within a recent 12-month period in the CNMI, he concluded that "human trafficking remains far more prevalent in the CNMI than it is in the rest of the U.S." Using a figure of between 14,500 and 17,500 human trafficking victims brought into the United States each year, and then comparing the number of victims with the size of the resident population in both the CNMI and the United States, he concluded "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."

Cohen's analysis is a textbook example of misuse of statistics. We are concerned here with the comparative performance of two immigration systems—the federal system operating in the United States and the CNMI immigration system. Accordingly, the incidence of trafficking victims must be related to the number of entrants into the two areas rather than the population of residents in each area. Analytically, the size of a community is not related either to the number of entrants seeking admission into that community or the number of immigrants victimized in this manner. According to a professor of statistics at the Northern Marianas College, Cohen's analysis commits the statistical offense of creating a sample outside the population.

As one might anticipate, a more appropriate statistical analysis produces a dramatically different result. In the last few years the number of visitors entering the CNMI has been about 450,000. The number of entrants into the United States in 2005, the last year for which statistics were fully available, was 33,675,808—the total of 1,122,373 permanent legal residents, 32,003,435 non-immigrant admissions, and 550,000 illegal immigrants. (The first two figures are from the DHS annual yearbook for 2005 and the number of illegal immigrants annually is the middle of the range of 400,000 and 700,000 calculated by GAO.) The results of the analysis: CNMI—one trafficking offense for each 12,500 entrants; United States—one trafficking offense for each 1,924 entrants. The United States figure is six and one-half times the CNMI figure.

What is disappointing about Mr. Cohen's statistical analysis is not that it was so wrong, but that he felt it was necessary to generate a heightened sense of urgency to persuade the members of the Committee to enact a bill without having all of the relevant information before them. The Commonwealth is committed to investigating all allegations of human trafficking and to cooperating fully with the local United States Attorney and his staff. We know that many communities in the United States in recent years have had major criminal prosecutions involving dozens of immigrants brought into their area for illegal sexual or other criminal activity. Identifying the CNMI as a major offender in this regard was an unnecessary and inappropriate accusation by a Department of the Interior official and we believe that Mr. Cohen owes us an apology.

REFUGEE PROTECTION

On this subject, we believe that Mr. Cohen has made several important observations which we in the CNMI take very seriously. We do recognize the international obligations of the United States under the treaties cited in Mr. Cohen's testimony. We realize that the appropriate officials in the Department of Homeland Security are entitled to monitor and protect the integrity of a refugee protection program which impacts U.S. compliance with these international commitments. We regret that a recent exchange of letters between DHS officials and the CNMI Office of the Attorney General was politicized rather than resolved in discussions between the two agencies.

As Mr. Cohen pointed out in his testimony, the terms of the Memorandum of Agreement permitting the CNMI Office of the Attorney General to share information regarding protection applicants and their claims expired on September 26, 2006. In the absence of such an agreement, under the provisions of the CNMI immigration regulations, which were approved by USCIS, compliance with the request for information pertaining to pending protection applications would have violated these regulations and the privacy provisions of the CNMI Constitution.

This Administration supports the Memorandum of Agreement under which the CNMI has established its own refugee protection system with the assistance of USCIS and would welcome the renewal of that Memorandum. We believe that the

system has worked well over the past few years, during which 32 refugee cases were initiated—two in 2004, 13 in 2005, 14 in 2006, and three to date in 2007. The Commonwealth has followed the same policies and practices throughout this period; no changes were made by my Administration. So far as I am aware, no serious differences of opinion developed during this period between CNMI and USCIS officials regarding the administration of the program. To the contrary, I have been advised that the consultants provided by USCIS provided valuable assistance to the CNMI participants in the processing of these claims.

I do not believe that we should let an exchange of letters detract either from this past record of cooperation or our mutual interest in enforcing the treaty obligations of the United States. I understand that the Attorney General is consulting with USCIS officials regarding an appropriate agreement about the assistance that USCIS has offered to provide to the CNMI. I am confident that these officials can negotiate in good faith to achieve a mutually satisfactory accommodation. I am prepared to consider such additional steps as may be necessary to achieve our common objectives in this area of refugee protection. In my opinion, it is in the interest of both the United States and the Commonwealth for the CNMI to administer a refugee protection program in a manner that accords with applicable treaty obligations.

BORDER SECURITY

Mr. Cohen and I both discussed the issue of border security in our written statements, which prompted questions on the subject. With respect to the authority of Congress to enact S. 1634, the Commonwealth recognizes that the Covenant does permit application of the U.S. immigration laws to the CNMI after termination of the Trusteeship Agreement. However, S. 1634 is far more than an immigration law. It imposes an unprecedented federal guest worker program on the Commonwealth; it preempts all local labor laws relating to the use of alien workers in the CNMI; and it replaces local decision-making with respect to economic development with a federal bureaucracy of five departments. No other community is the United States has been subjected to such a federal intrusion into local matters.

The Commonwealth believes that border control can be addressed separately from control of the local guest worker program or the special visa programs essential to the CNMI visitor industry. With respect to the guest worker program, the decisions regarding the nature and extent of economic development could be left to locally elected leaders, where such a responsibility belongs, but no guest worker would be admitted before his or her name was checked against the federal databases to ensure that the guest worker did not present a security risk to the United States. With respect to the special visa programs used by the Commonwealth to attract visitors from destinations such as China and Russia, the CNMI could similarly follow its usual procedures, which were outlined in Lt. Governor Villagomez's testimony before the Committee in February, and then rely on the federal databases to provide an additional level of protection against security risks.

Mr. Cohen contends in his written statement that only the federal government can implement an effective, pre-screening process for aliens wishing to enter the Commonwealth. He describes the federal procedures in some detail and contrasts them with the procedures followed by CNMI officials. In fact, the screening procedures used by the CNMI in its Visitor Program are quite rigorous. Most aliens seeking admission to the Commonwealth require a sponsor. The sponsor must supply documentation identifying the visitor, the intent of the visit, contact information for the alien and the sponsor while the visitor is in the CNMI, and an affidavit of support. In this affidavit, the sponsor must promise to support the visitor if necessary, that the visitor will not become a charge to the community, and that the sponsor will reimburse the CNMI for all expenses incurred as a result of the visitor becoming a deportable alien, including detection, detainment, prosecution, and repatriation. Selected tour agencies are allowed to gather information regarding prospective visitors, fill out applications, and submit them to the CNMI Division of Immigration. Each agency has posted a $500,000 bond which is subject to forfeiture in the event of a breach of the operating agreement between the CNMI and the travel agency or tour operator.

The comparative merit of the federal and CNMI systems rests ultimately on the number of aliens who manage to subvert the system and gain entry illegally into the United States or the Commonwealth. We know the federal results: about 550,000 illegal entrants each year and a total of some 11.5 million illegal immigrants in the United States. A study conducted last year in the CNMI found that out of 334,195 entries during the period from March 2006 through October 2006 only six "overstays" were found—people for whom CNMI records revealed no depar-

ture, no extensions, no adjustment of status, no pending claims, and no detention status. Because of lack of enforcement in previous administrations, the Commonwealth is now dealing with guest workers who no longer have legal status to remain in the CNMI. These efforts have resulted in a substantial number of voluntary repatriations, including most of the alien workers who previously had jobs in apparel factories that have closed during the past two years.

The Commonwealth believes that its enforcement system can be more effective in this community than a federal system administered from Washington. The small size and island character of the Commonwealth facilitates an effective immigration system—both in excluding illegal entrants and in identifying and deporting persons no longer qualified to remain in the community. However impressive the resources of the United States appear in the abstract, the federal performance in this distant location almost always falls far short of expectations. This certainly has been the experience in the Northern Marianas, even after the Senate hearings in 1998-99 when the Chairman of the Senate Committee on Energy and Natural Resources chastised the federal law enforcement authorities for failing to implement their responsibilities in the CNMI. It is reflected today in the performance of federal agencies responsible for handling labor cases under federal laws, where there are substantial backlogs, and in the underfunding of essential border protection agencies. A case in point is the U.S. Coast Guard operation in the CNMI, whose three personnel lack even a single boat to patrol the 400 mile chain of the Northern Mariana Islands and to act in a timely fashion to apprehend smugglers or other criminals.

CONTINUITY IN POLICY MAKING

Federal legislation such as S. 1634 is frequently advocated on the basis that it will bring stability and certainty to the CNMI. In this connection, Members of the Committee have commented that governors and legislators in the Commonwealth are subject to the electoral process, which generates uncertainly about the continuity of current labor and immigration policy.

It is certainly true that no elected governor or legislator in the CNMI can promise that their successors will subscribe to the same public policies as they have. Indeed, the voters' selection of new leaders may be predicated on the desire for a new policy direction. But this is inherent in the democratic process and is reflected as well in the changing policies of the federal government. In fact, the most drastic change in policy affecting the Commonwealth in recent years resulted from the U.S. election in November 2006, which turned control of the U.S. Congress to the Democratic Party. As a result, the Commonwealth has been faced with a series of Congressional hearings and proposed legislation that has not been on the Congressional agenda for several years and comes at a time when the limited resources of the CMNI have been stretched to their limits in dealing with our serious economic situation.

Conceding the uncertainties of the democratic process, there are factors influencing political choices in the Commonwealth that will limit future elected leaders in the CNMI—just as they have influenced the decisions of my Administration. The reduced revenues resulting from the simultaneous decline in the Commonwealth's two major industries impose a necessary discipline on expenditures and the size of the Commonwealth government. The loss of government jobs and the decline in the reliance on guest workers require new programs to increase the number of local resident workers in the private sector. The need for new investment and industries dictates that the Commonwealth's elected leaders shape an economy and community that are receptive to investors. In addition, the continued oversight of the Commonwealth by federal officials and members of Congress provides an additional safeguard that CNMI leaders will not ignore the realities of their situation and seek to return to the self-indulgence that the prosperous 1990s encouraged.

More fundamentally, uncertainty regarding the future governance of the Commonwealth does not justify enactment of S. 1634. There are ways short of legislation to deal with federal concerns about the CNMI's performance. In Lt. Governor Villagomez's testimony in February we suggested the use of negotiated benchmarks to assess the Commonwealth's performance in such areas as financial management, size of government, job opportunities for local residents, educational programs and standards, reliance on guest workers, and management of a labor market that provides fair treatment and procedural guarantees for all CNMI workers. At the very least, development of such benchmarks by the Interior Department and the CNMI under the oversight of the U.S. Congress would respect the Covenant's promise of local self-government and would avoid the very considerable risks associated with the complicated and worrisome provisions of S. 1634.

PROPOSED AMENDMENTS TO S. 1634

The Committee has asked for our views regarding amendments to S. 1634 proposed by Resident Representative Tenorio and Mr. Cohen. They are as follows:

1. Section 6(a)—Immigration and Transition.—In the Section by Section Analysis of S. 1634 attached to my July 19, 2007 testimony, I expressed our concerns about the one-year period provided for planning before the effective date of the legislation. We proposed either a period of two years or, in the alternative, providing for an extension in the legislation to be used in the event it was needed. The Resident Representative seconded these concerns and suggested an approach that would provide for an extended transition period if needed.

2. Section 6(c)(2)—Family-Sponsored Immigrant Visas.—Resident Representative Tenorio recommended that this provision be eliminated because it is already covered by Section 506(c) of the Covenant. We agree.

3. Section 6(c)(3)—Employment-Based Visas.—We recommended deletion of this provision in our Section by Section Analysis. Both Mr. Cohen and the Resident Representative have reached the same conclusion.

4. Section 6(d)—Nonimmigrant Investor Visas.—We recommended that this section be amended to provide that CNMI investors be entitled to the same immigrant status as provided to alien workers under the proposed legislation, which would also be more comparable to the U.S. citizenship afforded under the United States investor program. Resident Representative Tenorio recommended "that this section include language that would allow for easy processing of new investors into the CNMI." We reiterate our recommendation and support the Resident Representative's suggestion.

5. Section 6(h)—Long Term Status to Temporary Workers.—Mr. Cohen advised that "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." Resident Representative Tenorio expressed concern about the provision in his written statement, and proposed in his oral testimony that, if such a provision were enacted for guest workers who had been in the CNMI for five years and met the statutory requirements, they would not be allowed to leave the CNMI for another five years without their employer's permission. We believe that this suggestion is both impractical and unenforceable. In our Section by Section Analysis we expressed strong opposition to the provisions of Section 6(h). The proposal has generated unrealistic expectations among the guest worker population in the CNMI, stimulated boycotts of commercial enterprises because of the Chamber of Commerce's opposition to the provision, and contributed to increased divisiveness between guest workers and the indigenous peoples of the Commonwealth. We recommend that the provision be eliminated from S. 1634.

6. Visa Waiver Program under Section 3(b).—Resident Representative Tenorio emphasized the importance of the visa waiver program to the CNMI, but makes no recommendation regarding the relevant provisions of S. 1634. Mr. Cohen appears to be indicating that the Secretary of Homeland Security wants to be ensured that he "have full authority to make visa waiver decisions in the national interest." We believe that the Secretary already has excessive authority under S. 1634 and would oppose any amendment that would enable the Secretary to disregard the economic importance of such programs to the CNMI and to terminate any visa waiver program in the CNMI at his sole discretion, without any opportunity for the Commonwealth's interests to be considered. In our earlier submissions to the Committee we have advised that the Guam visa program is less stringent than the Commonwealth's. Accordingly, we would consider carefully the pros and cons of any combination of the two programs as is apparently being considered by the Interior Department.

7. Section (d)(3)—Payment of Fees by Employers.—Resident Representative Tenorio recommended that this provision be terminated because it is contrary to Section 703(b) of the Covenant. This Covenant provision provides for "cover over" or transfer of certain taxes and fees collected by the United States to the CNMI Government. We have three problems with this provision. First, if the fees are set at the level used in Guam (three times the current fees charged by the CNMI), the result will be a devastating burden on CNMI employers. Second, the preemption of local laws contemplated by S. 1634 would deprive the CNMI Treasury of the approximately five million dollars annually in employer fees immediately upon the effective date

of the law. Third, the Department of the Treasury has contested every "cover over" claim advanced by the CNMI Government under Section 703(b) in recent years so that the ultimate recovery of these fees is very uncertain in the absence of a specific legislative directive by Congress. We continue to believe that, if compelling federal interests require enactment of a law such as S. 1634, then the costs should be fully borne by the federal government (not by local employers) and it is the responsibility of the agencies involved to calculate those costs and present them to Congress before it enacts the legislation.

NON-VOTING DELEGATE FOR THE CNMI

The Committee has asked whether the Commonwealth would support S. 1634 if a provision were added authorizing a non-voting delegate for the Commonwealth in the House of Representatives. Such a provision does exist in H.R. 3079 under consideration by the House Committee on Natural Resources.

We strongly support the proposal for a non-voting delegate for the CNMI. It is a disgrace that the U.S. Congress has for years denied the Commonwealth the same privileges as have been afforded to the other insular areas. However, we believe that legislation providing for a non-voting delegate should be considered on a stand-alone basis. Notwithstanding our strong support for such a proposal, therefore, its inclusion in S. 1634 will not temper our conviction that enactment of S. 1634 will cause serious and irreversible damage to the economic development of the Commonwealth.

Furthermore, as Mr. Cohen observed in the closing paragraph of his prepared statement, legislation as important to the CNMI as S. 1634 should not be enacted by Congress until the Commonwealth has a representative in the House of Representatives to participate in its development and consideration.

ATTACHMENT 2.—FINANCIAL HIGHLIGHTS

The Commonwealth of the Northern Marianas (CNMI) continues to experience severe economic challenges. Tourism, the major industry responsible for more than fifty percent of government revenues, has not recovered from a series of adverse external events such as the SARS epidemic, Asian financial crisis, the 9/11 attack, and the Iraq war. It has been made worse by the withdrawal of Japan Airlines' direct flights in 2005 which accounted for approximately 40% of the tourist arrivals. The apparel industry, the second largest contributor to the local economy, has been in the decline since the lifting of import quota restrictions from World Trade Organization (WTO) member countries. The inability of this industry to compete globally, coupled with increasing costs of production and overhead (higher wages, more expensive utilities, higher fuel and shipping costs), has affected levels of production which resulted in accelerated closure of many local manufacturing operations.

In the midst of the declining economy and decreasing government revenues, the new CNMI administration adopted a policy of living within its means while ensuring essential public programs and services are maintained and provided. To this end, the unrealistic revenue budget for fiscal year 2006 was immediately reduced and the extraordinarily generous expenditure budget was drastically cut. The result was a new and more realistic appropriations law to guide and control government operations and related expenditures. The discussion in the following paragraphs essentially describes the results of this effort.

A. Compliance with the Single Audit Act

For the first time since the enactment of the Single Audit Act, the CNMI has, for fiscal year ended September 30, 2006, complied with the filing requirement for the timely submission of audited financial statements. For fiscal year 2005, the current administration filed the required financial statements within the 30-day extended filing period. For many years, the CNMI lagged way behind in meeting this fundamental requirement.

While the CNMI did not get a clean opinion in its financial statements from the independent auditors, the CNMI is committed and focused in addressing the issues identified by the auditors, such as inadequacies in the accounting system and related internal control weaknesses over financial reporting. The CNMI expects to resolve many, if not all of these issues in the upcoming fiscal year 2007 audited financial statements.

B. Results From Operation—Fiscal Year 2006

Revenues and expenditures (budgetary basis) for the CNMI General Fund for fiscal year 2006 shows actual expenditures of $192,746,565 exceeding actual revenues of $192,660,289, resulting in a slight operating shortfall of $86,276. Other financing

sources exceeded other financing uses by $137,859. The combined effect of these two items resulted in revenues and other financing sources exceeding expenditures and other financing uses by $51,581. This is a marked improvement from the previous fiscal year where expenditures exceeded revenues on the same budgetary basis by $12,419,374.

The total budgetary deficit also showed significant signs of improvement, from $169,047,484 in fiscal year 2005, to $163,551,688 in fiscal year 2006. This reduction in the budgetary deficit was due primarily to significant decrease in reserves, as well as from the overall positive effect of the results from operation described in the preceding paragraph. The unreserved fund deficit (budgetary basis) increased from fiscal year 2004 to 2005 by $25,312,466.

C. Net Assets

Unlike the fund balance measure which focuses on assets available for current period expenditures and liabilities due and payable in the current period as reported in the governmental funds, the net assets measure for the governmental activities includes capital assets and long-term liabilities using the accrual basis of accounting.

For fiscal year 2006, the CNMI's net assets deficiency increased from $38.1 million to $49.4 million, an increase in net deficiency of $11.3 million, or 29.6% from previous year. This indicates the CNMI's financial condition, as a whole, has not improved much from previous year, although the rate of deficiency has slowed. The decline in net assets for fiscal year 2005 alone was $19.5 million.

The primary factor for the decline in net assets in fiscal year 2006 is the disbursement of $6.7 million in payments for land claims from bond proceeds received in 2004 and not included in the offsetting revenues for the year. Additionally, the liability to the Northern Mariana Islands Retirement Fund (NMIRF) increased by $16.1 million, due to the suspension of General Fund employer contributions beginning March 1, 2006.

D. General Fund Deficit

For the year ended September 30, 2006, the CNMI General Fund's total fund deficit on a GAAP basis increased by $16.4 million or 11.9%, to a total fund deficit of $152.1 million. The total unreserved fund deficit in the general fund increased by $2.9 million, or 1.7% of the total unreserved fund deficit of $177.2 million.

E. Fiscal Year 2007

The previously enacted budget for fiscal year 2007 was $193.285 million, Public Law 15-28. After careful review of the revenue collection trends, and taking into account current and relevant economic data, the fiscal year 2007 budget has recently been amended by reducing total government appropriations to $163,285 million, a $30 million budget reduction. The reduced budget required a 5% reduction from identified essential programs and activities, such as health services, police protection, public school system, etc. It also mandated budget reduction of at least 15.9% for all other budget activities, including the legislative and judicial branches.

Major features of the amended fiscal year 2007 operating budget:

- Budget for the year reduced by $30 million
- Budget for essential programs reduced by 5 percent
- Budget for other programs reduced by 15 percent
- Potential lapses identified and reprogrammed to cover potential shortfalls
- Austerity Holiday in effect every other Friday
- No hiring for the remainder of the fiscal year
- Continued freeze on travel and other expenditures
- Continued ban on overtime compensation except emergency and health care personnel.

F. Fiscal Year 2008 Budget

Fiscal year 2008 budget is currently being compiled. The total resources to be reported for the fiscal year is expected to be generally the same as the current budget at $163 million. Cost containment and expenditure controls will be strictly enforced.

ATTACHMENT 3.—SECTION BY SECTION ANALYSIS OF S. 1634

The Commonwealth of the Northern Mariana Islands is opposed to enactment of S. 1634 for the reasons set forth in the testimony of Lt. Governor Timothy P. Villagomez on February 8, 2007, before the Senate Committee on Energy and Natural Resources, the Memorandum dated March 19, 2007, submitted to the Committee, and in the testimony of Governor Benign R. Fitial before the Committee on July 19, 2007.

In summary, the Commonwealth's opposition is based on the following contentions: (1) Congress should defer any action on the bill until the Government Accountability Office has completed the study requested by Members of Congress; (2) the proposed legislation relies on outdated assumptions and facts and fails to reflect the current operation and capacity of the CNMI's labor and immigration programs; (3) the bill proposes a cumbersome bureaucracy of five separate federal departments that promises to be dilatory, expensive, and dismissive of local concerns; (4) the imposition of a federal guest worker program on the Commonwealth raises substantial legal questions under both the U.S. Constitution and the Covenant; (5) the bill is virtually certain to deter new investment in the Commonwealth, to cause irretrievable damage to the local economy and community, and to increase the CNMI's reliance on federal funds; and (6) the bill is not necessary to address legitimate national security concerns in the Western Pacific.

If the Committee decides to consider S. 1634 at this time, we submit the following specific suggestions for its consideration.

Section 6(a). Immigration and Transition.—This provision states that the effective date for the ten-year transition program will be approximately one year after enactment of the legislation. We have two comments.

First, we have serious doubts that the five agencies involved can complete the tasks assigned to them under the bill within a single year. It specifies that during this period "the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of the Interior, shall establish, administer, and enforce a transition program to regulate immigration to the Commonwealth" as set forth in subsequent provisions of the bill. These provisions require the promulgation of appropriate regulations and interagency agreements. In addition to this drafting responsibility, the agencies would be required to recruit, train, and relocate personnel.

It currently takes about one year for the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security to process a simple adjustment of status for an Immediate Relative (IR) in the CNMI. In addition, both the Department of Homeland Security and the Department of State are experiencing highly publicized difficulties in executing their present responsibilities with respect to both passports and visas. Under these circumstances it seems highly unrealistic that DHS could accomplish all that must precede initiation of the transition program within one year.

Our first recommendation is to set the effective date for two years after enactment of the legislation. This would also provide additional time for the CNMI to recover from its current economic depression. If this is not done, it seems only prudent to anticipate the need for a possible extension of the effective date for the transition program and specifically to authorize consideration of such an extension at some point (perhaps nine months) after the bill's enactment. It would be extremely damaging to the CNMI and the United States if the Commonwealth's own programs were preempted before the federal agencies were fully funded, staffed, and prepared to assume their responsibilities under S. 1634.

Second, we recommend reconsideration of the concept of a ten-year transition program. Any transition period seems of questionable merit. The proposed bill certainly will deprive the CNMI of its ability to respond effectively and promptly to the economic and alien workforce changes resulting from international trade challenges, a declining tourist market, and other macroeconomic factors. Instead of an arbitrary ten-year deadline, the transition period should terminate only after the CNMI has attained measurable economic milestones on the road "to achieve a progressively higher standard of living for its people as part of the American economic community and to develop the economic resources needed to meet the fmancial responsibilities of local self-government." Covenant, Section 701. Because S. 1634 threatens to undermine this fundamental tenet of the Covenant, it should contain provisions protecting the CNMI from the severe adverse impacts that might result from its enactment. At the very least, Congress needs to recognize the risk that its legislation may have serious, and unintended, adverse consequences on the Commonwealth and accept financial responsibility expressly for addressing those consequences.

Section 6(b). Numerical Limitations for Nonimmigrant Workers.—This provision permits an exemption from the numerical limitations for H-2B temporary workers, but only for the ten-year transition program. The assumption that the CNMI could operate without access to such temporary workers is wholly unrealistic for such a small island community, where the economy is very different from communities of similar size on the Mainland, which can draw on a work force of citizens and aliens (legal and illegal) from a much larger area and population. If any transition were based on measurable economic and infrastructural benchmarks reflecting progress towards the American standard of living as envisioned in Covenant Section 701, the

limit of the use of temporary workers might be gradually adjusted in a more rational and measured manner.

Section 6(c)(2). Family-Sponsored Immigrant Visas.—This provision opens the door for more family-sponsored immigrant visas than appropriate for the CNMI. Leaving these decisions to federal officials, even after "consultation" with CNMI officials, raises considerable risk. If family-based immigrants are not employed, they will generate more demand on the Commonwealth's public services, most of which are not reimbursed by the federal government to the same extent that they are in the 50 states. To the extent that the new immigrants sought and obtained jobs, they could be impeding the development of the skills of the indigenous peoples. This is an example where federal control is wholly unnecessary. Any legitimate federal interest here could be met by letting the Commonwealth decide how many family-sponsored immigrants should be admitted subject to appeal to federal authorities if the CNMI acted in an arbitrary and capricious manner.

Section 6(c)(3). Employment-Based Visas.—This provision for employment-based immigrant visas links permanent legal residence in the United States with the entry of alien workers for legitimate employment needs in a way that radically departs from the principles underlying the federal immigration laws.

Under the federal laws even skilled workers are admitted on a nonimmigrant basis without any assurance that ultimately the worker will obtain lawful permanent residence. The most familiar example is the H-1B category which permits employers to hire nonimmigrants in specialty occupations. These visas are valid for the period of employment of up to three years. The visa can be renewed, in which event the worker can have H-1B status for a maximum continuous period of six years, after which the worker must remain outside the U.S. for one year before another H-1B petition can be approved.

There is no reason why the CNMI should be limited to fulfilling its employment needs, for skilled or semi-skilled workers, with only immigrants admitted for lawful permanent residence in the United States. S. 1634 overlooks various practical aspects of any such employment-based immigrant program. For example, if one employer has invested in hiring an employee in this category, transfer to another employer should be restricted to some extent. In addition, what is the employer to do if the immigrant worker proves to be incompetent, dishonest, or simply lazy? If permanent residence has already been granted, what enforcement mechanisms exist to ensure that the expectations of both the employer and the community are met? Problems of this kind illustrate the troublesome nature of this unprecedented program and argue strongly for meeting the employment needs of the CNMI separately from the decision as to who should be entitled to the status of lawful permanent resident of the United States.

Section 6(d). Nonimmigrant Investor Visas.—S. 1634 provides that long-term investors in the CNMI may be entitled to nonimmigrant investor visas under the federalized program. This contrasts with the immigrant status afforded to the alien workers employed by these investors. Under the United States investor program, U.S. citizenship is available for investors who make particular kinds of investment in the United States. There is no reason for discriminating against the comparable investors in the CNMI. If they wish it, they should be entitled to the same lawful permanent resident status in the United States as the employees entering the CNMI.

Section 6(f).—This section provides that the proposed legislation shall, on the transition program effective date, supersede and replace all laws, provisions, or programs of the Commonwealth relating to the admission of aliens and the removal of aliens from the Commonwealth. This scope of this provision is uncertain. The creation of a federally controlled guest worker program under S. 1634 would seem to preempt all CNMI laws and regulations relating to the workforce in the Commonwealth. It is also confusing with respect to the CNMI special visitor visa programs, which are expected to continue under the terms of S. 1634.

Section 6(h).—This provision of S. 1634 defines a category of long-term employees who will be entitled, along with their spouses and children, to lawful nonimmigrant status. This status will enable these persons, if they meet certain other background and medical tests, to establish residence as a nonimmigrant anywhere in the United States and its territories and possessions.

This is one of the most troubling provisions in S. 1634. It is based on the assumptions that these "workers" who have resided in the CNMI for five years have contributed to the economic development of the CNMI; that they have accordingly built up "equities" that entitle them to remain in the CNMI if they wish (or move to other parts of the United States); that they have nowhere else to go and therefore are subject to exploitation in the Commonwealth; and that the federal government should

intervene on their behalf and let them remain in the Commonwealth if they wish to do so.

The Commonwealth basically disagrees with these assumptions. The contention that these alien workers have "no place to go" and therefore are entitled to remain in the CNMI is no more true than with respect to the Samoans who work in the tuna factories of American Samoa or the Mexicans who work in the fields or cities of the United States. These aliens are always free to return to their country of origin. In fact, many of the long-term Filipino workers in the Commonwealth regularly visit their families in their home country.

Section 6(h) imposes on the indigenous peoples of the CNMI a non-indigenous population that may amount to as many as eight thousand persons—approximate one-fourth of the number of local U.S. citizens in the Commonwealth. Discussion of this proposal has elicited two main concerns.

One concern addresses the problems that may arise if many of these new lawful alien residents elect to stay in the Commonwealth. Some of them may no longer be employed, or employable, and will therefore present the same kind of financial burden on the Commonwealth as has been the case with the Micronesians who moved to the CNMI under the Compact provisions agreed to by the United States without consultation with the CNMI. If this provision remains in S. 1634 and is enacted, the Congress should expressly provide that the Commonwealth will be reimbursed annually for the costs associated with providing public services to this group of residents.

The second concern emphasizes the likelihood that all in this group who can afford to leave the CNMI will do so—for the greater range of jobs and higher wages in Guam or the Mainland. If so, many employers expect to have a sudden and extensive need for new employees to fill these vacancies and believe it will be unlikely that these positions can be filled with suitable replacements from the local resident workforce in the near term.

In order to address these concerns, this provision should be amended to reduce the number of the persons ("workers") given this new status. One way to accomplish this would be to provide that the term of lawful residence in the CNMI should be fifteen years rather than five.

Visa Waiver Program under Section (b).—The visa waiver provisions contained in S. 1634 are seriously defective. Ultimate control rests with the Department of Homeland Security and the statutory provisions requiring consultation among the various federal agencies will prevent the CNMI from responding promptly to new visitor industry initiatives.

In addition, these provisions are based on the Guam visa waiver program, which is more lenient than the current CNMI waiver program. For example, Guam allows waivers for two countries that have militant groups hostile to the United States. The Guam program is also unable to deal with those aliens who enter under its waiver program but do not depart as required under the terms of their entry.

The proposed bill permits an alien to stay in the CNMI for only 30 days. But visitors to Guam and the rest of the United States can have long-term visitors that help their economy. There is no rational basis for denying the Commonwealth the same opportunity.

The proposed bill requires a bond for every alien visitor. This is far too restrictive. The CNMI visitor program has less than a one percent violation rate; it is far more effective than the federal program, which has a 40% violation rate.

Section (d). Special Provision to Ensure Adequate Employment; Northern Mariana Islands-Only Transitional Workers.—This section provides the details regarding the transitional program during the ten year transition period. Subsection (2) gives the Department of Homeland Security broad discretion to decide on the number, terms, and conditions of permits "to be issued to prospective employers for each nonimmigrant worker who would not otherwise be eligible for admission under the Immigration and Nationality Act." Even assuming this Department has the necessary expertise to make these judgments, the provision indicates the kind of micromanagement of the CNMI economy by federal officials that is unnecessary and unprecedented. An alternative, more respectful of the Covenant's guaranty of local self-government, would be to authorize the Governor of the Northern Mariana Islands to decide these matters subject to review by DHS to ensure that its national security concerns have been suitably addressed.

Section (d)(3).—This subsection provides that the Secretary of Homeland Security is authorized to establish and collect appropriate user fees from the employer of such an alien. In short, the federal officials not only replace local decision-makers on these critical economic matters but also appropriate the fees that under the current system are paid to the Commonwealth in a very significant amount (about five million dollars). If the costs of the transitional program are to be fully covered by

the fees paid to the Secretary of Labor, the result will be devastating to local businesses. The fees currently required of employers in Guam are about three times the amount required under CNMI laws. If compelling federal interests require enactment of a law such as S. 1634, then the costs should be fully borne by the federal government (not by local employers) and it is the responsibility of the agencies involved to calculate those costs and present them to Congress before it enacts the legislation.

Section (d)(5)(A).—This subsection permits temporary workers in the transition program to transfer between jobs without the permission of the employee's current or prior employer. This provision is a significant departure from the U.S. laws governing H-2B nonimmigrant temporary workers on the Mainland, which make transferring to another employer nearly impossible. If transfers are freely granted without the sponsoring employer's consent, petitioning employers could spend significant resources to locate, recruit, and process suitable employees, only to have them quickly transfer to another employee. We see no reasoned basis for discriminating against the CNMI in this fashion.

Section (d)(5)(B).—This provision assigns to the sole discretion of the Secretary of Homeland Security the decision whether a business in the CNMI is legitimate and to what extent it may require alien workers. States in the United States are allowed to enact their own laws defining lawful businesses and the CNMI should have the same right to local self-government.

Senator AKAKA. Thank you very much for your testimony, Governor.

Now we'd like to hear from Mr. Guerrero.

STATEMENT OF JUAN A. GUERRERO, PRESIDENT, SAIPAN CHAMBER OF COMMERCE

Mr. GUERRERO. Hafa Adai, Mr. Chairman.

Senator AKAKA. Hafa Adai.

Mr. GUERRERO. I'm Juan T. Guerrero, current president of the Saipan Chamber of Commerce. I represent the chamber's 167 members. I'm honored to testify before this committee a second time concerning the potential extension of Federal immigration laws to the Commonwealth of the Northern Mariana Islands.

When I testified before this committee in February of this year, I discussed the concerns of the Commonwealth business community with regard to the application of Federal immigration laws to the islands and I appealed for an opportunity for the Commonwealth to work together with the Federal Government to address Federal concerns in a manner that recognized local realities. At the same time, Lieutenant Governor Timothy P. Villagomez asked this committee for a careful and independent study of the CNMI by the Government Accountability Office. The Resident Representative to the United States, Pedro A. Tenorio, also asked this committee that a joint congressional, administrative, and Congress study group be formed to enable careful study, deliberation, and consultation prior to the enactment of Federal legislation affecting the Commonwealth's immigration policies. I'm even informed that some Senate members have expressed a desire for such a study prior to the enactment of any Federal law.

But such a study is not happening and the chamber must object to that. A few Congressional staff members visited the islands for a few days after the February hearings. They solicited comments. They told us that there was no draft immigration legislation for us to review or comment on at that time. They told us to hurry up with any suggestion we may have because, as they phrased it, "the train is leaving the station." The visit made headlines, but it was

not the serious study that so many have asked for, that the people of the Commonwealth deserve.

The reason that a careful study prior to the implementation of Federal legislation is so important is that there is so much rhetoric, so much false accusation, and so much emotion associated with what is granted the CNMI under the covenant and how our local economy was developing. It is critical at this moment in the Commonwealth's history that the U.S. Congress put the brakes on a process that seems to be plowing ahead with regards for facts or consequences.

There is absolutely no compelling reason why immigration reform of this massive scope must take place on a few tiny islands in the middle of the Pacific Ocean without the Federal Government first commissioning a dispassionate and careful study of the program and processes currently in place in the Commonwealth, a review of what is working and what is not, and consideration of how to best fix what may need repair without needlessly destroying our economy and our way of life.

There has been over the past 2 decades an enormous amount of inflammatory information published in the national and international media concerning the CNMI. This information has formed world opinion of the Commonwealth. It may even help form some of your or your colleagues' opinions of the Commonwealth. The vast majority of it is simply wrong. You must not allow a process predicated on such misinformation to proceed unchecked.

The chamber is sympathetic to the homeland security concerns of the Federal Government. We absolutely do not object and in fact we welcome Federal voter protection in the Commonwealth. We will also be happy to have Federal officials work with our local government to increase the effective enforcement of our local labor law and immigration laws. We believe this can be accomplished without Federalization and we believe it can be accomplished within the letter and the intent of the covenant.

While the chamber is sympathetic to the plight of many nonresident workers whose standards of living in their home countries may cause a desire for local non-immigrant status in the United States, we must urge that no such status be granted anyone without careful contemplation of the economic consequence of allowing tens of thousands of foreign individuals the right to a long-term residency. The Federal Government cannot expect the Commonwealth to shoulder what would be an enormous financial burden created solely by virtue of Federal legislation.

The granting of Federal immigration status to a group of almost 8,000 long-term employees in the Commonwealth also raises the very likely possibility that legislation purporting to aid the local industry would actually have the opposite effect. The Commonwealth law was never developed with the potential grandfathering of thousands of workers and tens of thousands of their family members as lawful immigrants in mind. It is simply wrong to impose this on the people and the businesses of the Commonwealth in the retroactive manner contained in the draft legislation.

We are currently experiencing dramatic and emotional debate in the Commonwealth as a result of the particular proposal which was introduced by the Federal Government. It is unfair to the em-

ployers and citizens of the Commonwealth, as well as nonresident workers, to ignore the very real and dramatic effect that immigration status will have on tens of thousands of human lives. I am very sympathetic to the plight of the nonresident workers.

For this, if for no other reason, you must stop and weigh the heavy consequences of your action with regard to this section of the proposed legislation before proceeding further down the path.

It isn't fair that certain Federal officials created and raised the issue of likely Federal immigration status for nonresident workers in an effort to bolster support for Federal immigration control in whatever quarters they would. This has taken, Mr. Chairman, a life of its own back home.

I once again plead with this committee to study the likely impact of this legislation before it is enacted, and not after. It is manifestly unfair to the people of the Commonwealth, United States citizens, for this Congress to impose a law on the islands that would not only wreak havoc with our labor pool and our tourism industry, but will also dramatically alter the quality and nature of life, the demographic makeup, and the right to local governance, over issues that we negotiated and agreed to in the covenant.

The chamber will be pleased to provide more information and answer questions that might be of assistance to this honorable committee. Si Yu'us Ma'ase and thank you, Mr. Chairman.

[The prepared statement of Mr. Guerrero follows:]

PREPARED STATEMENT OF JUAN T. GUERRERO, PRESIDENT, SAIPAN CHAMBER OF COMMERCE

Hafa Adai, Mr. Chairman and Members of the Committee. I am Juan T. Guerrero, current president of the Saipan Chamber of Commerce. I represent the Chamber's 167 members and am honored to testify before this Committee a second time concerning the potential extension of federal immigration law to the Commonwealth of the Northern Mariana Islands.

INTRODUCTION

When I testified before this Committee in February of this year, I discussed the concerns of the Commonwealth business community with regard to the application of federal immigration law to the islands, and I appealed for an opportunity for the Commonwealth to work together with the federal government to address federal concerns in a manner that recognized local realities. At the same time, Lieutenant Governor Timothy P. Villagomez asked this Committee for a careful and independent study of the CNMI by the Government Accountability Office. Resident Representative to the United States Pedro A. Tenorio also asked this Committee that a joint congressional, administrative, and CNMI study group be formed to enable careful study, deliberation, and consultation prior to the enactment of federal legislation affecting the Commonwealth's immigration policies. It saddens me to report that the apparent response to our testimony and our requests was a few-day visit to the islands by three congressional staffers, one of whom has a well-documented and long-standing history of animosity towards the government of the Commonwealth, and a new Senate bill, 1634, that does little to address the concerns of those of us whose lives and livelihoods hang in the balance.

DISCUSSION

Over the past 24 years, the Commonwealth has administered a labor and immigration program, that was designed and agreed upon by the federal and local governments to address the unique labor and tourism needs of the islands, consistent with the letter and intent of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. This program was not, and is not, intended to be parallel to or wholly consistent with the federal immigration and naturalization policies and objectives of the United States. The Covenant, and related laws, contemplated and provided for

unique treatment of tourism and labor issues singular to the Commonwealth. Now, 29 years after the implementation of the Covenant, the Commonwealth is being taken to task by staff members of the United States Congress for not fulfilling some apparently unstated objectives of the federal government and for allegedly abusing this system in a manner that has not violated the Covenant, or the federally-approved CNMI Constitution, or federal laws, or local laws.

There was an observation in 1998 that the CNMI labor and immigration system "is broken and cannot be fixed locally." This has been proven wrong. As more fully addressed in my February testimony, Lieutenant Governor Villagomez's February testimony, as well as the CNMI government's response to the "24 questions" in March of this year (attached as Appendix I to the February 8, 2007 hearing transcript of this Committee on Conditions in the Commonwealth of the Northern Mariana Islands), the Commonwealth has made great strides in proactively discouraging labor and immigration abuses, as well as in the investigation and prosecution of alleged abuses. In comparison with the unmitigated immigration control failures of the mainland United States during the same time frame, the marked improvements in the locally-administered Commonwealth immigration program should be acknowledged and fostered.

There is a reason that you have heard many requests for serious study of the overall issues facing the Commonwealth before the United States Congress continues to legislate our future—requests from the Chamber of Commerce, from the local administration, from our Resident Representative, and in written form from individuals, as well as a local group that collected hundreds of signatures of both United States citizens and non-resident workers. The reason that there is much clamor for such a study is that so many people believe it is impossible for this Committee or the United States Congress to formulate sound policy, or even to determine if federal policy needs to be formulated at all, without the benefit of an impartial, unbiased, and current review of the Commonwealth's strengths and weaknesses. All of the testimony you have heard and read, including my own, comes from specific viewpoints and with certain hopes and expectations. If you do not have access to underlying facts, how can you move forward in a fair fashion? While we appreciate the congressional staffers' brief visit to the Commonwealth following the last hearing, we doubt it yielded much more than additional opinion. What is needed before Congress can continue is the serious and comprehensive study that has been asked for from many quarters—not additional opinion.

While media reports might lead the uninformed to believe otherwise, the CNMI government and its agencies have worked closely with various agencies of the federal government for 24 years, in an attempt to ensure that programs designed to stimulate economic growth did not condone, promote, or tolerate labor abuses. The Commonwealth's foreign worker program solves a labor shortage problem with respect to many job categories and provides attractive employment opportunities for foreign workers who earn many of times what they would earn in their home countries, at salaries that are affordable to local businesses struggling to survive in an isolated and depressed economy, and which jobs would be unattractive to mainland workers at the prevailing wages. Workers are free to transfer to different employers with the consent of their current employer, or may unilaterally choose to transfer at the end of their contract period (which is usually one year). Workers enjoy all legal protections available to United States citizens, and in some respects, even more. All employers are required to provide medical coverage for non-resident employees, and are also required to provide return airfare to each non-resident employee's country of origin at the termination of each employee's contract term if that employee desires to return home. All of this information has been disclosed on many occasions, in many forms, by many individuals and groups. There is little more that I can add to the detailed testimony offered by the local administration, the Chamber, and others at the February hearing, as well as in other forums with federal officials, other than a plea that you study and consider facts and not tired, biased, and demonstrably false allegations.

Allen Stayman has referred to our local immigration and labor departments as "essentially organized crime." To suggest that trafficking, prostitution, or other human rights abuses are the result of the policies, procedures, or efforts of the CNMI government is irresponsible, false, and unbecoming of a federal official. As I pointed out in February, there occurs, in the mainland United States, frequent and well-publicized human trafficking, with related prostitution and human rights abuses. No one, including me, would suggest that these terrible acts, committed by criminals, are somehow the fault of the Immigration and Naturalization Service, or that law enforcement agencies are turning a blind eye. It is unfair and disingenuous for Mr. Stayman to ascribe broad criminal intent and/or behavior to our local government as a result of similar individual unfortunate events that may occur in the

Commonwealth. There will always be bad people who commit criminal acts. The most we can expect of any government is that best efforts are made to deter such behavior, and vigorous prosecution occurs whenever such behavior is uncovered. That is what happens in the Commonwealth, both at the local and federal levels.

While there has been much discussion that "federalization" is the only option, there is simply no empirical evidence that the Commonwealth's immigration system can be more effectively run through federal offices than by retaining local control for purposes of administering a tourism-based and employment-based immigration program. Our economy is small and fragile. The much-improved processes and procedures in the Commonwealth allow for nimble adjustment to the ever-changing needs and requirements of the countries from which workers and tourists originate. Unlike the mainland United States, the Commonwealth will not have the luxury of waiting for federal machinery to gear up and effectuate changes required by any country or in response to the needs of that country's citizens—those travelers will simply opt to travel to another Pacific-rim tourist destination with less onerous and time-consuming visit requirements for vacationing. If the well-publicized visa delays currently being experienced by many visitors to the United States were to occur in the CNMI, the results would be disastrous to the tourism industry and the business community as a whole.

It has been suggested that the Chamber, in February, opposed any "U.S. action" with respect to improving our local labor and immigration processes. In the Chamber's written testimony, we averred, "across-the-board imposition of federal law . . . will [not] solve any problems, real or perceived, that may exist in the CNMI." More importantly, I stated that the Chamber "look[s] forward to an opportunity to work with federal officials to reach agreement on these important issues in ways that answer the concerns of all interested parties without destroying our local economy." And while I agreed with the Honorable Chairman's characterization that the Chamber opposed any legislated changes with regard to federal authority over local immigration policy, the Chamber has never opposed, but in fact has and does support, working with the federal government to address any legitimate concerns. The testimony submitted in February, and answers I gave, were made in the absence of any draft immigration legislation and under the assumption that any "federalization" would be pursuant to Section 503 of the Covenant, which seems to permit the application of existing federal immigration and naturalization laws to the Commonwealth, but not the crafting of new federal law specific solely to our island community. The Chamber did and does object to any such across-the-board imposition of federal immigration law to the CNMI, especially in the absence of any serious consultation and study.

The Chamber fully supports the enforcement of border protection by the federal government. This is a component of an overall immigration program that is distinct from the Commonwealth's ongoing need to control locally the admission of foreign workers as well as visitors. The federal government's border patrol obligations are explicitly contemplated in the Covenant. Federal control of local visa programs is not.

The "grandfather clause" contained in the Senate bill contemplates allowing workers who have lived in the Commonwealth for more than five years prior to the enactment of the law the right to "lawful nonimmigrant" status. Such action allows these individuals the right to remain in the Commonwealth (or, for that matter, relocate to the mainland United States) for purposes of living and working. This action would allow the right to immigrate family members to the Commonwealth under "immediate relative" status. Such status would be renewable by those individuals every five years. They would not be eligible to vote or to receive federal entitlements, such as Medicaid/Medicare, federal scholarships, and the like. We have estimated that approximately 8,000 current workers in the Commonwealth would qualify for such status. There are two possible outcome scenarios under this grandfather clause, and neither is good. The implications of allowing almost 8,000 individuals, who are currently required to return to their countries of origin when they are no longer able to obtain employment in the islands, to remain—and to immigrate immediate relatives to join them, for the long-term—are profoundly negative for the Commonwealth. These tens of thousands of lawful nonimmigrants would be given the same preference for local jobs that this Senate has repeatedly claimed to be attempting to protect for United States citizens. These lawful nonimmigrants and their families would prove an immense burden on the local infrastructure in a way, and to a degree, that was never contemplated by—nor allowed—under the Commonwealth's existing guest worker program. In addition to our objection to the apparent intent to amend the Commonwealth's Covenant-sanctioned immigration program ex post facto, we note that there seems to be absolutely no congressional contemplation

of the funding for the enormous costs that would certainly be shouldered by the Commonwealth in such an event.

There is another possibility concerning these individuals who would be granted lawful nonimmigrant status and who would be able to travel freely to and work in the mainland. They could simply move to the continental United States in search of higher-paying job opportunities than exist in the Commonwealth, thereby depriving the vast majority of local employers of the qualified and experienced labor pool that they have, for years, paid and treated fairly in accordance with CNMI law under the provisions of the Covenant. Aside from the implications for the United States of allowing the immigration of thousands of foreign nationals to the mainland, which is not the concern of the Commonwealth government or business community, it would prove a tremendous blow to business in the Commonwealth. While we have heard your staff's concerns with "fairness issues," we believe (except when employers violate the law), that the business community and the local government have treated these individuals fairly. Non-resident workers are hired for limited-duration contracts, which may be, and usually are, renewed on an annual basis. There has never been any promise of permanent residency, or any other federal immigration status. These workers have, for the most part, elected to remain in the Commonwealth and work for wages, and under conditions superior to other alternatives they have. Those who have received better offers have left. "Unfairness" has been created by federal officials who raised the issue of "likely" federal immigration status for non-resident workers in an effort to bolster support for federal immigration control in whatever quarters they could.

To a large degree, our most serious reservation with the Senate bill is that it appears to legislate through yet-to-be-determined regulation. While we have no doubt that this Committee and this Congress have only the best intentions, and the best interests of the Commonwealth at heart, we must object to any legislation that places so much power with so little congressional direction in the hands of future cabinet secretaries.

In January of this year, David Cohen spoke at the Chamber's inaugural dinner and noted,

> I was at a meeting the other day, and one of our local legislative leaders remarked that at most, only 20 percent of the Members of Congress have even heard of the CNMI. And I thought to myself, 'That's the good news; the bad news is that that 20 percent has only heard about the CNMI because they read Ms. Magazine.' Most Americans who have any sort of impression at all about these islands have the wrong one.

Mr. Cohen's apt comments about the power and impact of biased and misleading reporting sum up my feelings about the negative and untrue publicity that continues to parade as "fact." We have asked for serious study by an independent government agency, the General Accountability Office, before the finalization of any legislation. What we received instead was no study by anyone and a bill apparently not based on our current reality that commits significant issues to future determination by unknown appointed federal officials.

CONCLUSION

I, once again, plead with this Committee to study the likely impact of this legislation before it is enacted, and not after. It is manifestly unfair to the people of the Commonwealth—United States citizens—for this Congress to impose a law on the islands that will not only wreak havoc with our labor pool and our tourism industry, but will also dramatically alter the quality and nature of life, the demographic make-up, and the right to local governance over local issues that we negotiated for and agreed to in the Covenant.

The Chamber would be pleased to answer any questions or provide further information that might be of assistance to this Committee.

Si Yu'us Ma'ase, Olomwaay, and Thank You.

Senator AKAKA. Thank you very much, Mr. Guerrero, for your statement.

Now we'll hear from Pedro Tenorio and your statement.

STATEMENT OF PEDRO A. TENORIO, OFFICE OF THE RESIDENT REPRESENTATIVE, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Mr. TENORIO. Aloha, Senator, and Hafa Adai from the people of the Commonwealth. Thank you for this opportunity to share with you my thoughts on this most important piece of legislation, which will have profound effects on the Commonwealth of the Northern Mariana Islands. Before I get into the specifics, I would like to express my deep appreciation to this committee, the Secretary of the Interior, and the Office of Insular Affairs for their hard work and for including our recommendations in the drafting of this bill. While I have a few comments, overall I believe that this bill is a significant step forward in addressing the concerns I outlined before this committee's February 8 oversight hearing.

As I stated at that hearing, there has been no improvement in our economic condition and the outlook remains gloomy. We are bracing for more garment factory closures, layoffs in public and private sectors, and government revenue and tax collections continue to decline. We have few options for improving our economy with outside assistance. I request on behalf of our people for your generosity and understanding of our plight.

The implementation of section 503 of the covenant is expected to bring long-term benefits and stability. Specifically, it will provide stability and confidence to investors, secure current and future tourist markets, provide for a closely monitored transition program that will ensure we have uninterrupted access to the needed skilled work force.

As a member of the Marianas Political Status Commission which negotiated the Covenant, I can say with great confidence that it was our intention that nonresident workers would be employed only to supplement our local work force. Unfortunately, however, it has become obvious that nonresident workers have supplanted our local work force in the private sector, creating a wholly unsustainable economy.

When we were negotiating the Covenant, we were concerned about immigrants to the U.S. overrunning our indigenous population, but our control of immigration has led us to this end. I hear reports daily about overstaying workers and phony employment scams. I do not believe that our track record speaks to an effective system of monitoring a nonresident work force or providing protections for our resident work force. We need a major course correction to protect the indigenous population from losing the promise of achieving the American dream entrenched in our Covenant.

Implementing this act will fulfill our joint commitment and obligation to the Covenant. The Covenant was entered into in good faith and I as a negotiator intend to honor that commitment. Many people in the CNMI fear the outcome of Senate bill 1634. They fear political and social elimination as well as the loss of their homeland. However, I feel in reality we face this already. If things do not change, we are at the greatest risk of losing our culture, our way of life and control over our own destiny, if we have not already.

Many local families are leaving the CNMI for Guam, Hawaii, or the U.S. mainland because just surviving in the CNMI is too dif-

ficult. I have recently learned that every year, nearly half of our high school graduating seniors enlist in the U.S. armed services. Many of them enlist out of a deep sense of duty and patriotism, but some of them enlist because there are simply no employment options for them in their homeland.

Mr. Chairman, I see this bill as a mechanism for restoring the CNMI to the Chamorrans and Carolinians who have always called it home. I believe that Senate bill 1634 is a good beginning. However, I have a few suggestions, which you can find in my written testimony. These are to strengthen the bill so that we can regain the CNMI as the homeland for its indigenous population.

Today I will mention just three. I want to emphasize the critical importance of section 3(e) of the bill. There's no doubt that we need to invest in training for residents to prepare them for jobs currently held by nonresidents. While this is included in the current language of the bill, I would like to see specific funds dedicated to areas that require formal training that leads to certification in the various trades and technical fields.

We must invest in our educational system to produce skilled workers from our own people. Without these funds and this training, I feel that this legislation will also lead to a failed policy in the CNMI.

Second, I would like to see throughout this bill a greater role for the CNMI government before, during, and after this transition period. I fear that decisions made here in Washington will not thoroughly embrace the needs and true situation being faced in the CNMI. I therefore urge your committee to conserve and promote maximum local self-government by a direct engagement of our own government in deciding what is needed and what is best for us.

Third, as you know, unlike the other territories, we do not have a delegate in the House. Since this bill is named the "Covenant Implementation Act," perhaps it could address other areas of the Covenant that are yet unfulfilled, such as section 901, and add language in this bill that would provide for a nonvoting delegate in the House of Representatives.

Mr. Chairman, in addition I have attached a letter to Senators Bingaman and Domenici from a majority of the members of the CNMI legislature in support of the seven items I delineated in my February 8 testimony, a supportive statement from an additional CNMI senator, as well as Senate Joint Resolution 15–17 in support of a nonvoting delegate for the CNMI, and a letter from a fellow former Covenant negotiator are also attached.*

I believe that the people of the CNMI are ready for positive change and to work in partnership with the Federal Government to turn our Commonwealth around and rebuild a Chamorro and Carolinian homeland. Thank you, Mr. Chairman, and I'm ready for questions.

[The prepared statement of Mr. Tenorio follows:]

PREPARED STATEMENT OF PEDRO A. TENORIO, OFFICE OF THE RESIDENT REPRESENTATIVE, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Hafa Adai, Mr. Chairman, Senator Domenici, and Members of the Committee. Thank you for this opportunity to share with you my thoughts on this most impor-

*Attachments have been retained in committee files.

tant piece of legislation which will have profound affects on the Commonwealth of the Northern Mariana Islands. Before I get into the specifics, I would like to express my deep appreciation to this committee, the Secretary of the Interior and the Office of Insular Affairs for their hard work and including our recommendations in the drafting of this bill. While I have a few comments, overall I believe that this bill is a significant step forward in addressing the concerns I outlined before this committee's February 8th oversight hearing.

As I stated at that hearing, there has been no improvement in our economic condition and the outlook remains gloomy. We are bracing for more garment factory closures, layoffs in both the public and private sectors, and government revenue and tax collections continue to decline. We have few options for improving our economy without outside assistance. I request on behalf of our people, for your generosity and understanding of our plight.

Although many individuals in the CNMI will be making more due to the implementation of federal minimum wage, many families will be losing a wage earner due to the loss of jobs. I am greatly concerned about the ongoing degradation in the quality of life in our islands. The cost of living continues to increase and we lack common American social welfare safety nets such as unemployment benefits and Temporary Assistance to Needy Families. While the implementation of Section 503 of the Covenant is expected to bring long term benefits and stability, I would like to bring to the Committee's attention, that the immediate future offers little hope in improving the livelihood of our people.

As a member of the Marianas Political Status Commission which negotiated the Covenant, I can say with great confidence that it was our intention that non-resident workers would be employed only to supplement our local workforce. Unfortunately, however, it has become obvious that non-residents have supplanted our local work force in the private sector, creating a wholly unsustainable economy. When we were negotiating the Covenant we were concerned about immigrants to the U.S. overrunning our indigenous population, but our own control of immigration has led us to this end. I hear reports daily about overstaying workers, and phony employment scams. I do not believe that our overall track record speaks to an effective system of monitoring a non-resident workforce or providing protections for our resident workforce. We need a major course correction to protect the indigenous population from losing the promise of achieving the American dream entrenched in our Covenant.

Many people in the CNMI fear the outcome of Senate Bill 1634. They fear political and social alienation as well as the loss of their homeland. However, I feel in reality we face this already. If things do not change we are at the greatest risk of losing our culture, our way of life, and control over our own destiny, if we have not already. Many local families are leaving the CNMI for Guam, Hawaii, or the mainland because just surviving in the CNMI is too difficult. I have recently learned that every year nearly half of our high school graduating seniors enlist in the U.S. armed services. Many of them enlist out of a deep sense of duty and patriotism, but some of them enlist because there are simply no employment options for them in their homeland.

We are eagerly awaiting the results of the many studies and assessments that are currently being conducted or are scheduled to be conducted in the near future. Not only do I think they will reveal the dire state of our economy, but I am hoping they provide insight into ways that we can overcome and correct our economic problems and improve the living conditions of the people of the CNMI.

Mr. Chairman, I see this bill as a mechanism for restoring the CNMI to the Chamorro and Carolinians who have always called it home. I believe that S. 1634 is a good beginning; however I have a few suggestions. These are to strengthen the bill so that we can once again regain the CNMI as the homeland for its indigenous populations.

1. The New Section 6(a) of the Covenant—Immigration and Transition.—The bill currently calls for a transition period to begin one year after enactment. This seems a little ambitious, and I would suggest including language that would allow for a possible delay, if needed, to the beginning of the transition period, so as to ensure that regulations are not rushed and that everyone is prepared and responsive to the changes.

2. The New Section 6(c)(2) of the Covenant—Family Sponsored Immigrant Visas.—I believe that this section is already covered by Section 506(c) of the Covenant and one or the other should be deleted.

3. The New Section 6(c)(3) of the Covenant—Employment Based Visas.—This section would allow skilled workers to enter the CNMI as U.S. legal permanent residents outside of INA caps. While this would be an asset in helping us attract doctors and nurses, I see that it will become a revolving door for immigrant health care pro-

fessionals entering the U.S. I would suggest that other provisions in the bill could be utilized to bring in these professionals and that this section be deleted.

4. The New Section 6(d) of the Covenant—Nonimmigrant Investor Visas.—With the current on-going economic downturn in the CNMI, I respectfully request that this section include language that would allow for easy processing of new investors into the CNMI.

5. The New Section 6(h) of the Covenant calls for a one time grandfather provision for certain long-term employees. This is probably the most controversial and discussed section of this bill, and while there are no compromises that will make everyone happy I would like to share a few thoughts on this topic.

I appreciate OIA's and the committee's intent to preserve the political and cultural rights of the indigenous populations in the CNMI, but I do not feel that this section truly addresses the problems at hand. We need these long staying non-resident workers as much today as we did when they were hired. The change of status for potentially thousands of these workers early in the transition period could leave us without a workforce if they exercise their option to leave immediately. Although this bill allows for a temporary guest worker program, I would like to see the transition period utilized to train and place as many indigenous persons into our private sector as possible. During this time I hope that we can refocus our educational system on training and skill development for our local people so they are ready to assume jobs currently held by non-residents, stabilize our economy, and build the Commonwealth we envisioned when we negotiated the Covenant.

6. Section 3(b) would grant a visa waiver program for the CNMI. This is vital to begin the recovery of our tourism economy. While countries are not specifically named, this would allow tourists from China and Russia to visit the CNMI the two potentially promising new markets that the Marianas Visitors Bureau has worked so hard to develop. I would like to take this opportunity to make the committee aware of the continued bilateral talks between the Peoples Republic of China and the United States. As more and more Americans wish to travel to China including to the 2008 Olympic Games to be held in Beijing, there is increased pressure for Chinese citizens to visit U.S. destinations. In recent bilateral talks the Chinese delegation expressed its desire that the U.S. Government make modifications in visa policy and procedures to promote travel to the United States including the CNMI by Chinese citizens. The Chinese delegation said such modifications would be conducive to expanding the bilateral air services agreement with a view to reaching full liberalization of air transport between China and the United States as the ultimate objective. I am attaching documents relating to these recent talks.

The CNMI plays a vital role in meeting the U.S. obligations in this bilateral agreement. Allowing us to include China in a visa waiver program will help the U.S. meet its obligation under this agreement.

7. Section 3(d)(3).—This section calls for the collection and use of appropriate user fees from employers of aliens during the transition period. I believe that this section is contrary to Section 703(b) of the Covenant, and should therefore be deleted.

8. Section 3(e) Technical Assistance Program.—There is no doubt that we need to invest in training for residents to prepare them for jobs currently held by non-residents. While this is included in the current language of the bill, I would like to see specific funds dedicated to areas that require formal training that leads to certification in the various trades and technical fields. We must invest in our education system to produce skilled labor. Without these funds and this training, I feel that this legislation will also lead to a failed policy in the CNMI.

9. I would like to see throughout this bill a greater role for the CNMI Government before, during, and after this transition period. I fear that decisions made here in Washington will not embrace the needs and true situation being faced in the CNMI.

10. As you know, unlike the other territories, we do not have a Delegate in the House, so all of us in the Commonwealth appreciate your courtesy and willingness over the years in affording the Resident Representative an opportunity to speak on behalf of the United States citizens residing almost half way around the world. Since this bill is named the Covenant Implementation Act, perhaps it could address other areas of the Covenant that are yet unfulfilled, such as Section 901, and add language to this bill that would provide for a non-voting Delegate in the U.S. House of Representatives.

Mr. Chairman, Senators, in addition I have attached a letter to Senators Bingaman and Domenici from a majority of the members of the CNMI Legislature in support of the seven items I delineated in my February testimony. A supportive statement from an additional CNMI Senator, as well as Senate Joint Resolution 15-17 in support of a non-voting Delegate for the CNMI, and a letter from a fellow former Covenant negotiatior are also attached. I believe that the people of the CNMI are ready for positive change and to work in partnership with the federal government

to turn our Commonwealth around and rebuild a Chamorro and Carolinian homeland.

Si Yuus Masse, Ghilisow, Thank you.

Senator AKAKA. Thank you very much, Mr. Tenorio, for your testimony.

I'd like to begin the questions by first addressing one to Mr. Cohen. In his testimony, Mr. Cohen, the Governor has emphasized the progress that his administration has made in responding to the labor and immigration concerns of the Federal Government. Do you recognize this progress, and if so, why do you believe legislation is still needed?

Mr. COHEN. Thank you, Mr. Chairman. We definitely recognize the very significant progress that has been made in the CNMI. In previous testimony before this committee, I went point-by-point listing a number of very significant developments. In summary, the labor situation in the CNMI in no way resembles the labor situation that existed in the late 1990's, several years ago, when you and other Senators went out to see things for yourselves.

So we at the Office of Insular Affairs have been the first to stand up to defend the CNMI when people try to tarnish its image with old information. We're very sympathetic to that. But all of the challenges that were listed in my testimony are current challenges and, notwithstanding all the progress that's been made, there are significant challenges that still remain, and it's getting harder and harder for the CNMI to properly address those challenges, properly administer an effective labor and immigration system that can crack down on abuse and make sure that there is proper investigation and then prosecution of wrongdoing, simply because their government revenues are plunging so precipitously that it's becoming difficult for them to properly operate all sorts of government services, not only the labor and immigration system.

So the CNMI is suffering from a lot of developments that are beyond its control and because of this and other reasons we strongly believe that it is imperative for the Federal Government to step in and take control of the labor and immigration system.

Senator AKAKA. Mr. Cohen, in your written testimony that we received, on page 6 you say that one of the administration's principles for considering legislation is that it should be carefully analyzed for its likely impact before implementation. Is the fact that studies are ongoing a reason for the committee to delay consideration of this bill?

Mr. COHEN. Mr. Chairman, we would not recommend that the committee delay consideration of the bill. The bill that you introduced—as you know, the way it's drafted—it provides a framework within which there is considerable flexibility through the promulgation of regulations and the development of specific policies. There's considerable flexibility to have a significant influence on how the labor and immigration system will actually function under your legislation.

So these studies are very important and very valuable. If this body is still considering this legislation at the time when some of these studies are completed, then certainly that could influence the legislation itself. But the intention is to put in place a flexible

framework and the studies can inform the regulatory process that will really determine how all of this works.

The top priority for this administration is homeland security and national security issues, and we're extremely sympathetic to the economic issues as well. Those are following closely behind. But homeland security and national security trumps everything in a post-9/11 environment. The justifications that we have raised for Federalization mostly focus in the homeland security, national security realm, and that's why we think it's imperative to move quickly with the legislation.

It's also imperative to move quickly, frankly, because of points that were raised by the other witnesses, that uncertainty retards economic development. Since this is raised, since the bill has been introduced, and since many have called for Federalization, as long as that is hanging out there and people don't know what the ultimate rules of the game are going to be, that creates a type of uncertainty that is harmful to economic development. I think the business community—the potential investors—they would rather know quickly what the rules are going to be over the next few years, than to delay this process.

Senator AKAKA. Mr. Cohen, on your written testimony on page 7 you emphasize that the people of the CNMI must participate in the decisions that affect their lives. Do you believe that this committee has provided properly for the participation and consideration of this bill?

Mr. COHEN. Yes, sir. I think this committee has made excellent efforts to gauge the wide spectrum of opinion that exists in the CNMI. I'm gratified to hear that your counterpart committee in the House is actually going to go to the CNMI, and that will provide an opportunity to reach a lot more people and to hear a lot more voices, and I know you're going to get the input from your colleagues in the House.

But one thing, if I could reiterate something that I stated in my testimony, that needs to be done in order to make sure that the people of the CNMI are properly represented in this body is to grant them a nonvoting delegate to Congress. We've heard arguments against it, some suggesting that somehow the CNMI doesn't deserve to have a delegate in Congress, and frankly many of us find those arguments offensive. It suggests that an entire people is not worthy of the same representation that all other communities in this country have, certainly all other territories and commonwealths, at a time when, as I said, young men and women from these communities are sacrificing their lives much more frequently in our current wars than people from the 50 States.

So we don't believe in collective punishment. You know, if certain people have a problem with certain policies or things that occurred in the CNMI, we don't see how that provides a justification for denying the good citizens of the CNMI the voice they so desperately need, especially at a time when Congress is considering such important legislation that will affect the future of the CNMI.

Senator AKAKA. Thank you. Thank you very much for your responses.

Governor Fitial, you have said you accept that mistakes were made in the past, but that your administration is committed to re-

forms, and you've mentioned that eloquently, to have, "zero tolerance," for criminal behavior. However, one problem for the United States is that CNMI Governors and legislative leaders change, and with them the policies and commitment to reform change. You have come in and you have done certain things already.

Don't you agree that Federal legislation would establish more stable policies?

Mr. FITIAL. I always believe in doing the right thing, and when I first became Governor the very first month or even within 2 months I abolished an agency in the government that was involved in so much abuses, so many abuses. That's the Marianas Public Land Authority. So I abolished that because they were wasting public funds for personal interests, and I established instead the Department of Public Lands and that is now directly under me.

I also reorganized the Labor Department because that was also a source of abuses. So that's the way I am, Mr. Chairman. Whenever I see something wrong, I always take corrective action.

My mission is to establish a new trend of administration for local government, a new trend that will replace the trend of abuses from previous administrations. I hope that whoever succeeds me will continue the trend that I now want to establish in the local government.

Senator AKAKA. Governor, on page 11 of your statement you say that this bill is an unprecedented extension of U.S. authority. Don't you agree that the United States and CNMI specifically agreed in the Covenant to the extension of U.S. immigration laws?

Mr. FITIAL. I believe in the spirit of the Covenant in allowing the CNMI to have a self-government that will be supported by the Federal Government. These principles came from the trusteeship agreement between the United States and the United Nations. The United States was tasked under the trusteeship agreement to promote the quality of life in the Northern Marianas. We were given the right to self-government. And if the Federal Government wants to support us, we welcome that support and assistance.

But if the Federal Government wants to do my job, then there's no more reason for me to exist. I would like to ask the Federal Government to help me and not to supplant me or replace me, because I believe that we, the local people, would do better or best in correcting or solving our local problems. All we need is the assistance of the Federal Government and that's all I ask.

Senator AKAKA. Governor, I wanted to follow up on something that has been mentioned here, and that is to provide a delegate from CNMI. What are your comments about that?

Mr. FITIAL. I support that, Mr. Chairman, because I believe that is good, and anything that is good I always support.

Senator AKAKA. Thank you.

Representative Tenorio, in your recommendation No. 5 you express concern that granting permanent non-immigrant status to the estimated 8,000 long-term workers in the CNMI could leave the CNMI without a work force because these workers can go to the United States. You did mention that many already have left the islands and gone elsewhere for jobs. Would you support an amendment to require that these workers remain in the CNMI for, say, 5 years before they could enter the United States?

Mr. TENORIO. Thank you, Mr. Chairman. I agree with any proposal that would keep these non-immigrant workers who would be grandfathered to stay in the United States or the CNMI for a period that would provide for the business community to prepare itself toward phasing in local workers that will be trained during this period. I don't feel that the ability or the authority of the workers to be extended immediately after their status is granted is the right thing to do, because that would just allow them to move out as quickly as possible. Once they have enough funds for plane tickets, they would probably go to Guam or go to Hawaii or go to the U.S. mainland. What will happen then is a huge drain, an immediate drain of the local work force who happen to be nonresidents, and at the same time there is an absence of a trained local work force that can take the jobs immediately. This is why I think an amendment to obligate these new non-immigrant workers to stay longer, for some period until the business community can adjust itself, aimed at phasing in the newly trained local workers or other means of employing the work force that is needed.

Senator AKAKA. I know in your testimony you did mention about a delegate from CNMI. Do you have any further comment about that?

Mr. TENORIO. I'm just very pleased to note, Mr. Chairman, that H.R. 3079 was just introduced last night by Chairperson Christiansen of the House Insular Affairs Subcommittee and also the Chairman of the House Resources Committee, Congressman Rahall. I did have some discussions in the past with the members of the committee and I'm gratified that the bill now has been introduced in the House as of last night.

Senator AKAKA. Well, I again think that this is something that we need to consider.

Mr. Guerrero, on page 2 of your testimony it reads, and I quote: "The CNMI has administered a labor and immigration program that was designed and agreed upon by the Federal and local governments." My question to you is: how do you reconcile this statement with the history of U.S. opposition to CNMI labor and immigration policies, that in 1986 the Reagan Administration called for—and I'm quoting from that—"timely and effective action to reverse the influx of alien workers"? In 1997, the Clinton Administration recommended legislation to extend U.S. immigration, and this committee has three times reported such reform legislation.

So I'd like to hear a response to this, Mr. Guerrero?

Mr. GUERRERO. Thank you, Mr. Chairman. That is a very loaded question. In a very small island community such as the Commonwealth of the Northern Marianas, with a very limited local population work force, unless a careful study can be conducted, my statement at this point in time would be just guessing, or anybody's statement for that matter would be a guess.

We know for a fact that, based on the number of the local work force, that we would not be able to sustain at the peak of the Commonwealth. At that peak we had close to over 30,000 work force that are nonresident workers and now we have seen that decline and it will further decline probably down to 15,000 in numbers.

If the effort of the Federal Government or if the effort and policies of the Federal Government and the CNMI government are to

promote economic development so that it can be a sustainable economy, the only way that we can see our island, the Northern Marianas Islands, to progress forward is to allow for it to continue until such time as we see that the local work force would replace nonresident workers.

Again, I hope that that answered clearly and provides for trying to allow the Government Accountability Office to conduct a precise, unbiased report so that it can provide us a mechanism to make a reasonable study of the reality of what the CNMI economy should be and where the nonresident worker can be totally taken out of the picture at that point.

Senator AKAKA. Mr. Guerrero, the Governor's testimony states that the nonresident labor needs are expected to drop from a high of 30,000 a few years ago to about 15,000 in 2008. This legislation proposes to fill much of that need by granting non-immigrant status to about 8,000 of the CNMI's most experienced workers. On page 10, you object to this provision, in part because these workers would, and I'm quoting, "simply move to the continental U.S.".

If the bill were amended to require that these non-immigrant workers would need to remain in the CNMI, as in my question to Mr. Tenorio, say 5 years, would you still object?

Mr. GUERRERO. Mr. Chairman, thank you again for that question. Again, only a study will be able to determine at what point in time the need for nonresident workers should decrease. I agree with the Governor's statement that it is decreasing. At the same time, that is decreasing because of our economic situation right now. We have seen the exodus of airlines. Japan Airline has stopped servicing the Commonwealth. Therefore, the number of tourists coming to the island has decreased. Japan Airline, for example, represented about 40 percent of Japanese tourists coming to Saipan. When numbers decline, then the need to employ would decline.

But the Governor at the same time in our discussions the other day indicated that there are new hotel developments that are coming in, that are breaking ground. If we were to block and deny these new investors to develop so that we can have a sustainable economy, then we would not be able to fill those positions without providing for flexible nonresident workers in the Commonwealth.

The question on the extension to 5 years, to limit nonresident workers at this time to 5 years, again I certainly would like to see more study put into that so that we can be able to guess at a better level, so that we can say that it's OK, in 5 years they can be allowed to exit to the United States.

Senator AKAKA. Well, I won't leave you out. I'll ask you the question, too. What's your comment about a delegate from CNMI?

Mr. GUERRERO. Mr. Chairman, the chamber of commerce basically would endorse probably the delegate seat for the purpose that it would provide for a better relationship. It will provide for our commonwealth to be heard on the U.S.-CNMI floor and it will provide for a better relationship in terms of legislation passing this Congress, so that in the future whatever would affect the Commonwealth can be, we have a representative that is here in Congress that can speak on behalf of the Northern Marianas, unlike what it is now today where we are denied that process. We are the only

territory or commonwealth in the entire umbrella of the United States that is denied this delegate seat in Congress.

Again, I think that we would be very honored with, and the Governor and our people in the Commonwealth would be very honored if that were to materialize in the very near future.

Senator AKAKA. Thank you very much for that comment.

We haven't heard from Mr. Benedetto. I know you're accompanying Mr. Cohen, but Mr. Benedetto, last March you reported that, and I quote, "A number of serious problems have yet to be effectively addressed". You provided the committee with copies of letters sent to CNMI authorities urging action on specific cases.

My question to you is, has the CNMI responded adequately in following up on those and other more recent cases? If you can be specific, give us some specific examples.

Mr. BENEDETTO. Thank you, Senator. Generally speaking, there hasn't been a lot of cooperation or communication concerning specific cases. The reason is that many of the cases that were referred to were referred—we requested that they open compliance agency cases.

I have to go back and give you a little background on this, but basically there's two kinds of cases. One is an individual labor complaint. So a worker may not be paid and we might assist that worker in filing an individual labor complaint. When the Governor said that 3,000-plus or 3,400-plus of those cases had been cleared, that's a tremendous accomplishment and I have to take my hat off to the administration for that accomplishment.

However, there are another 1,500 of these compliance agency cases and these are the kind of cases that are a little bit more difficult to resolve. They require a little bit more investigation. Typically, the ones that I've requested in the last 5 years have been cases that may involve criminal conduct by the employer, cases where multiple workers are affected; for instance, if it is alleged that at the work site, that all employees have not been paid for 6 weeks or 12 weeks or whatever. If the employer is a chronic violator and it looks as though the general, regular individual complaint process is not going to actually resolve the problem, or cases in which it is alleged or suspected that a government official is involved in the violation.

The fact of the matter is that those cases have not been investigated, and that's why the Commonwealth hasn't been able to get back to me to report on progress in those cases. So while I do acknowledge the tremendous accomplishment in clearing the backlog and I have to also acknowledge the work of the hearing office, at the same time that they were clearing the old cases dating all the way back to 1997 the hearing officers, Hearing Officers Hershbein and Cody and Sole, have been pulling out all the stops to deal with the labor complaints that come in on the front end. So they're making sure that the mediations are timely and the adjudications are timely, so that another backlog is not created.

But there need to be some additional investigators. The two things that I would recommend to improve the situation at this point are, No. 1, they need more inspectors, because as we all know an ounce of prevention is worth a pound of cure, and if they have some people going out to the work sites and checking on these

things they can actually get a lot more bang for their buck and actually prevent violations. They need to double the amount of investigators that they have.

In the absence of a sufficient number of properly trained and supervised investigators in the investigations section, it won't be long before they have another backlog comprised of these complex cases.

Senator AKAKA. Well, thank you for your response.

I'd like to, on this same question, ask the Governor to make any comments he would like, and then finally ask Mr. Cohen on this same question for any comments that you may have. Governor.

Mr. FITIAL. Thank you very much, Mr. Chairman. I would like to make just a brief comment. I had to create a special task force to accomplish what Mr. Benedetto just talked to, the closing of more than 3,400 pending labor disputes that I inherited from my predecessors within a 6-month period. I am told now by my special task force, comprising of the hearing officers and investigators, that all these other pending labor cases that Mr. Benedetto mentioned will be closed by the end of September this year. Believe me, 6 months, 3,400; less than 3 months, 1,500.

I'm on top of this, Mr. Chairman. That's why I created that task force, because I'm personally involved in closing these pending labor cases that I inherited from my predecessor.

Senator AKAKA. Thank you for your comment.

Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman. First of all, I'd like to add my voice of congratulations to the Governor and his team for clearing the backlog of over 3,000 cases. I agree it was a tremendous effort.

I'd also like to acknowledge that Jim's Federal Ombudsman's Office staff, especially Sophie Chin, Ripon Ahmed, I believe—I don't know if others helped out as well—worked with the Governor's team for translation and other services to help achieve that milestone.

I would also echo what Jim has said, that we continue to have concerns about the compliance agency cases. As Jim said, they are the more difficult cases. The 3,000 that were cleared were generally individual complaints. But where there is the pattern of systematic abuse, those tend to be the compliance agency cases.

I welcome the Governor's commitment to clear those in a timely fashion. It's going to take a lot of effort. It's going to take a lot of resources, including the investigative resources that Jim has mentioned, in order to achieve that. Although very serious problems remain that we're discussing and that the Federal Ombudsman's Office and the CNMI Department of Labor deal with every day, I think our concerns have shifted somewhat from the big garment factory abuses—for one thing, the garment factories are on their way out—and the concerns that originally got the attention of Senators like yourself and Members of Congress and others in what was going on in the CNMI—a lot of those have significantly improved or are no longer as pressing concerns as they once were. They've been overtaken by events.

The concerns that we really focus on now are more along the lines of what I testified to, the human trafficking issues, people being recruited and then showing up and having no job and being

pressured into prostitution. These are the things we're looking very closely at now, and we welcome the cooperation of the Governor and the CNMI administration to make sure that these problems can be properly addressed.

Senator AKAKA. Mr. Cohen, let me further ask you: on your testimony on page 3, you raise concerns regarding CNMI's administration of the refugee protection system and conclude, and I quote, "This is a strong argument in favor of Congress taking legislative action." Would you elaborate on that?

Mr. COHEN. Certainly, Mr. Chairman. I need to give a little bit of background, and I hope I'm not going to be too lengthy. But shortly after I came into office, I worked with my colleagues in the Federal Government to get the Northern Marianas Islands to institute a refugee protection program. That was a very important Federal priority because the CNMI is part of the United States for the purposes of our treaties, even though it's deemed to be outside of the United States currently for the purposes of the Immigration and National Act.

So even though aliens who are admitted into the CNMI have no right to travel on to the rest of the United States, they are entitled to the same refugee protection rights that all the parties to those international treaties are entitled to. So there was a gap in our system because the CNMI did not have a refugee protection program. So we worked with the CNMI to impress upon the prior administration the importance of implementing this type of system and then running that effectively.

They did that. We signed the MOU. My office paid for the establishment of the program. It's up and running. The Department of Homeland Security has provided all of the very valuable technical expertise to get the regs drafted. We got a human trafficking law drafted and passed. The Department of Homeland Security has provided training both at its own expense and at my office's expense.

So we've worked very hard to get that program going. The problem is, if the Federal Government cannot monitor how that CNMI system is being operated to confirm it's being operated properly, then we, the Federal Government, are in danger of slipping out of compliance with these international treaties to which we're a party. In other words, the United States is responsible for ensuring that the CNMI has the proper refugee protection system, and if we don't get the type of cooperation that we need to monitor that that is indeed the case, then the only alternative we can think of is to bring aliens in the CNMI under the protection of the U.S. system.

But that creates a real problem because then the CNMI is controlling the front door. They're deciding which aliens get in, how many, from which countries. But the United States Federal Government has the responsibility at the back end. If they let in too many people from high-risk asylum places, for example, the Federal Government's going to have to bear that burden and assume that cost.

So if we can't confirm that the CNMI has a properly administered refugee protection program, then we're, No. 1, in danger of slipping out of compliance with important international treaties, and if we take over the asylum system—or the refugee protection

system, and leave the CNMI in control of its immigration system, then it's an open-ended commitment that the Federal Government is subjecting itself to, because the Federal Government would be responsible for bearing the cost of decisions that it has no control over, decisions that are made solely by the CNMI.

So that's led us to this conundrum that's not a tenable situation from the standpoint of the Federal Government.

Senator AKAKA. Thank you, Mr. Cohen, for that explanation.

Governor, you have said that you welcome U.S. participation in border control, but not in the guest worker program. However, in order to establish effective border control Federal authorities must decide who may enter U.S. territory and who may not. As a practical matter, Governor, how can you separate a guest worker program from immigration?

Mr. FITIAL. Thank you very much, Mr. Chairman.

Before I answer your question directly, let me just say that we are very happy to continue to provide the services that we are providing now under the refugee protection program. That program was just instituted during the last administration. We have never had that program before. But we are willing to continue providing that service and we believe that we are doing a good job in providing that service. But if the Federal Government wants to take over that service, we will not object to the Federal Government taking over that service.

Now, with respect to the guest worker program, I created the guest worker program in 1982 when we severed our relationship with the trust territory government in 1978. I understand that there was no private sector development during the trust territory days because the Federal Government would not allow us under Title 33 of the trust territory code.

So when I initiated the investment program and the guest worker program in 1982, that was to grow the private sector in the CNMI. So we have a law that governs the guest worker program in the CNMI and we believe that that law is working very well to our advantage to grow the local economy.

So if the problem is with border control, we will welcome the Federal Government to assist us in patrolling our borders or controlling our borders. But we would prefer to continue administering the guest worker program as we are doing now, because I believe that, since I was the one that authored that program, I know best how to enforce it.

Senator AKAKA. Thank you, Governor.

Let me ask two questions of Mr. Tenorio. In your recommendation No. 7, you oppose the Federal collection of fees from employers for the operation of the guest worker program. Given that the CNMI currently charges employers for processing guest workers and the United States charges employers for processing employment visas, why is it not appropriate in this case?

Mr. TENORIO. Thank you, Mr. Chairman. I want to refer the committee to section 703 of the Covenant, which provides for the cover over of fees and taxes collected pursuant to the Covenant agreement, revenues or fees collected in the CNMI, to be covered over to the local government. There's a current agreement under section 703 of the Covenant. I would like the committee to use that as the

basis for providing or rebating to the CNMI any fees and other types of cash requirement that is to be collected from the operation of the immigration office under the new proposal, respecting the spirit of that section 703.

At the same time also, we have to be realistic that the Northern Marianas is suffering from a very serious financial shortfall and it's going to take time for our government, our economy, to pick up to the point where we can let go of any funds that could be usefully provided to the government for its own operations. So in a way, again there's a need for funds for the government to survive. I know that you would agree with me that the Federal Government needs that fund less than the CNMI does.

Thank you.

Senator AKAKA. You say that, Mr. Tenorio, you say that this bill has a mechanism for restoring the CNMI to the Chamorro and Carolinians who call the islands home. Your statement suggests a tension between those who seek economic development, even if that requires a large permanent class of guest workers, and those who value preservation of the indigenous community over economic growth.

My question is: do you think that this tension—and now that I think of it, I'm going to ask the Governor to respond, too, to that—do you think that this tension is behind the problems in the CNMI? How should it be resolved and where do you think the responsibility of this committee lies?

Mr. TENORIO. Thank you again, Mr. Chairman. I personally feel that there is a tension between or among the local population and the guest workers that are there. But I believe as well that by providing appropriate training and education of the local work force, who can then be phased into jobs that are presently being occupied, I think that the overall situation would greatly improve.

Where might the committee be helpful? I also mentioned in my written testimony the fact that I would be requesting training funds, and I'd like the committee to support a request for availability of training funds to establish technical and vocational education programs and institutions in the Commonwealth. So that way there is a realistic approach to solving this shortfall of manpower and skilled absence in the Commonwealth.

I feel that without funds being made available from the U.S. Government to set up training institutions similar to what Guam has now and other States, like Hawaii for example, to train the local workers in new kind of skills and to then begin to phase into those jobs that are presently being occupied by nonresident workers—I feel this is what I meant by taking back our homeland, taking back the opportunity that was created because of the Covenant agreement with the United States, and just so that we don't completely lose out. I feel that Congress needs to be very much engaged in this process, especially in the area of appropriating funds to improve our vocational educational system in the CNMI.

Senator AKAKA. Thank you, Mr. Tenorio.

Governor, for your comments.

Mr. FITIAL. Thank you very much, Mr. Chairman. I think we have a guest worker program that is working pursuant to law, statute. These guest workers came in to work and they signed con-

tracts where the terms and conditions are spelled out very clearly. None of these terms and conditions include the opportunity for them to become permanent residents and eventually become U.S. citizens.

So I strongly feel that if they want to come in to become permanent residents and U.S. citizens, then they should just comply with the U.S. Federal law on becoming a U.S. permanent resident and naturalization.

But we will continue to support the guest worker program because we need the guest workers to help grow the economy. But I personally do not support the idea of giving them permanent residence and eventually to allow them to bring in their families so that they can become U.S. citizens eventually. I don't think that the other States in the Union would also support that idea.

Senator AKAKA. Well, I want to thank you, Governor, and all of our witnesses, for your responses, your testimony, and for being here at this hearing.

I want to thank Chairman Bingaman for his leadership on this issue and for scheduling today's hearing. While I understand that concerns have been raised—and you've done a job in letting us know that—I look forward to collaboratively working with the vested stakeholders to refine this legislation and to move forward with a balanced proposal that is sensitive to the needs of the CNMI. I want you to know that we really appreciate what you've said and again look forward to working with you.

So the hearing record will be open for 2 weeks here for other members to provide any statement they may have or questions they may have as well and to hear from them as well.

Again, I want to tell you that for me this hearing has been very valuable and it'll help us to look at this bill and see what we can do, as I said earlier, to refine the bill so it can be helpful to the CNMI as well as to take care of the kind of responsibilities we have for the CNMI. I just feel that together we need to set a greater vision for our Pacific Islands and I look forward to trying to bring that about.

So with that, I want to say Hafa Adai and aloha to all of you, and this hearing is adjourned.

[Whereupon, at 11:12 a.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSES OF PEDRO A. TENORIO TO QUESTIONS FROM SENATOR BINGAMAN

Question 1a. Your recommendation No. 4 is to amend the provision in S. 1634, which would grandfather current alien investors, in order to permit the entry of new alien investors.

Are you familiar with the U.S. foreign investor program and are there features of that program that should, or should not, apply in the CNMI?

Question 1b. What standards do you think should be used for alien investors to enter the CNMI in the future?

Answer. I have reviewed the federal foreign investor programs and have for the most part found them adequate in regard to the standards that they establish for potential foreign investors.

I suggest that we do not limit CNMI investment to just countries that the U.S. has treaties with and that the CNMI be allowed investors from countries which we receive tourists, especially those countries included in the CNMI visa waiver program. It is only logical that we encourage investments from those countries that we receive tourists, as these businesses could support the continuation and expansion of those tourist markets. Therefore, investors should be included as a component of the visa waiver program allowing them the flexibility to come and go from the CNMI as needed to support their investments. In addition, due to the critical condition of our economy and the tremendous need to attract new employers to the CNMI, I think that it is appropriate for DHS staff, who can expedite the processing of these investor applications, be present in the CNMI.

I would request the standards outlined for the visa waiver investors be positive inducements and encourage investment. The standards outlined for Treaty Investors would seem to be appropriate due to their flexibility, and should be applied in a manner respectful of the CNMI's economic realities.

I would invite the Committee to consult with individuals knowledgeable about foreign investor programs and territories to determine what is working and what is not.

Question 1c. How many alien investors are their in the CNMI now, and what do you believe is a reasonable number of future investors to be admitted to the CNMI annually?

Answer. Unfortunately at this time I cannot tell you how many foreign investors we have in the CNMI or what a reasonable number of new investors should be admitted annually into the CNMI. However, I encourage you to refer this question to Governor Fitial and the Strategic Economic Development Committee who jointly hold the reigns on our economic development plans.

Question 2. Do you have any reasonable estimate of the number of people who may be in the CNMI, "out of status"?

Answer. I have no reasonable estimate of the number of people who may be in the CNMI "out of status." Again this is a question appropriate for Governor Fitial and the LIDS system.

I appreciate your ongoing willingness to perfect this bill and provide the CNMI with a system that meets the ongoing needs of our business community and economy. I look forward to continuing working with committee staff on this bill.

RESPONSES OF HON. BENIGNO R. FITIAL TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. What are your views regarding amendments to S. 1634 proposed by Resident Representative Tenorio and Mr. Cohen?

Answer. They are as follows:

1. Section 6(a)—Immigration and Transition.—In the Section by Section Analysis of S. 1634 attached to the Governor's July 19, 2007 testimony, we expressed our concerns about the one-year period provided for planning before the effective date of the legislation. We proposed either a period of two years or, in the alternative, providing for an extension in the legislation to be used in the event it was needed. The Resident Representative seconded these concerns and suggested an approach that would provide for an extended transition period if needed.

2. Section 6(c)(2)—Family-Sponsored Immigrant Visas.—Resident Representative Tenorio recommended that this provision be eliminated because it is already covered by Section 506(c) of the Covenant. We agree.

3. Section 6(c)(3)—Employment-Based Visas.—We recommended deletion of this provision in our Section by Section Analysis. Both Mr. Cohen and the Resident Representative have reached the same conclusion.

4. Section 6(d)—Nonimmigrant Investor Visas.—We recommended that this section be amended to provide that CNMI investors be entitled to the same immigrant status as provided to alien workers under the proposed legislation, which would also be more comparable to the U.S. citizenship afforded under the United States investor program. Resident Representative Tenorio recommended "that this section include language that would allow for easy processing of new investors into the CNMI." We reiterate our recommendation and support the Resident Representative's suggestion.

5. Section 6(h)—Long Term Status to Temporary Workers.—Mr. Cohen advised that "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." Resident Representative Tenorio expressed concern about the provision in his written statement, and proposed in his oral testimony that, if such a provision were enacted for guest workers who had been in the CNMI for five years and met the statutory requirements, they would not be allowed to leave the CNMI for another five years without their employer's permission. We believe that this suggestion is both impractical and unenforceable. In our Section by Section Analysis we expressed strong opposition to the provisions of Section 6(h). The proposal has generated unrealistic expectations among the guest worker population in the CNMI, stimulated boycotts of commercial enterprises because of the Chamber of Commerce's opposition to the provision, and contributed to increased divisiveness between guest workers and the indigenous peoples of the Commonwealth. We recommend that the provision be eliminated from S. 1634.

6. Visa Waiver Program under Section 3(b).—Resident Representative Tenorio emphasized the importance of the visa waiver program to the CNMI, but makes no recommendation regarding the relevant provisions of S. 1634. Mr. Cohen appears to be indicating that the Secretary of Homeland Security wants to be ensured that he "have full authority to make visa waiver decisions in the national interest." We believe that the Secretary already has excessive authority under S. 1634 and would oppose any amendment that would enable the Secretary to disregard the economic importance of such programs to the CNMI and to terminate any visa waiver program in the CNMI at his sole discretion, without any opportunity for the Commonwealth's interests to be considered. In our earlier submissions to the Committee we have advised that the Guam visa program is less stringent than the Commonwealth's. Accordingly, we would consider carefully the pros and cons of any combination of the two programs as is apparently being considered by the Interior Department.

7. Section (d)(3)—Payment of Fees by Employers.—Resident Representative Tenorio recommended that this provision be terminated because it is contrary to Section 703(b) of the Covenant. This Covenant provision provides for "cover over" or transfer of certain taxes and fees collected by the United States to the CNMI Government. We have three problems with this provision. First, if the fees are set at the level used in Guam (three times the current fees charged by the CNMI), the result will be a devastating burden on CNMI employers. Second, the preemption of local laws contemplated by S. 1634 would deprive the CNMI Treasury of the approximately five mil-

lion dollars annually in employer fees immediately upon the effective date of the law. Third, the Department of the Treasury has contested every "cover over" claim advanced by the CNMI Government under Section 703(b) in recent years so that the ultimate recovery of these fees is very uncertain in the absence of a specific legislative directive by Congress. We continue to believe that, if compelling federal interests require enactment of a law such as S. 1634, then the costs should be fully borne by the federal government (not by local employers) and it is the responsibility of the agencies involved to calculate those costs and present them to Congress before it enacts the legislation.

Question 2. The Committee would like information regarding various aspects of the Commonwealth's population and guest worker program.

Answer. In the Commonwealth's testimony before the Senate Committee in February and July, we provided estimates regarding the CNMI's overall population and the current number of alien workers in the community. Based on the closure of apparel factories over the last several years and the current economic decline, we estimated that the number of alien workers has declined from a peak of about 30,000 to 25,000 in 2006 and an estimated 20,000 by the end of 2007. In anticipation of more business closures, we estimate that the figure may fall as low at 15,000 by the end of 2008. With these figures before us, and taking into account the new businesses coming into the CNMI, we have estimated that the overall population in the Commonwealth may fall to the 60,000-65,000 range by the end of 2008.

We recognize that more reliable figures are necessary for the economic studies to be conducted by GAO and the Burger & Comer team, which recently contracted with the CNMI to conduct the economic impact study funded by the Interior Department. We decided at a meeting on August 3 to complete the statistical work on a 10% sample survey (Household Income and Expenditures Survey) conducted in 2005. We believe that the processing of these data and the submission of the tabulations can be completed within 45-60 days for use by the CNMI and provided to the GAO and the Burger & Comer personnel involved in their studies. We have requested permission from the Office of Insular Affairs to expend a small portion of the funds previously allocated to the CNMI Department of Commerce for this purpose. We will simultaneously pursue other lines of investigation, especially with respect to the alien worker and freely associated state populations, so that we can update the figures generated by the 2005 sample survey to reflect developments over the past two years.

We have addressed the backlog of proceedings at the Department of Labor in order to clarify the status of the alien workers involved in those cases. Because of certain problems in the enforcement of CNMI laws in the last Administration, these cases were allowed to accumulate, which in turn allowed many alien workers to remain in the CNMI because they had a pending labor case. We have now eliminated the backlog of some 3,400 complaints filed by individual workers. Whenever a hearing was requested by the worker, it was granted. These hearings resulted in decisions by a hearing officer as to such matters as the worker's entitlement to a transfer order, reimbursement for unpaid wages, payment of the fare necessary for repatriation, or a temporary work authorization. All such decisions by hearing officers may be appealed, and the statutory time period for appeal has now passed. The Labor Department's procedures require one additional public notice with respect to complaints that have been dismissed, and that is in process. After all the procedural requirements have been met, the Department of Labor will be able to determine with increased confidence which of these alien workers are no longer entitled to remain in the CNMI and, if necessary, deportation proceedings will be initiated.

Similar action is now being taken with respect to the backlog of so-called agency cases—about 1,350 in number. We are hopeful that these cases will be completed, with hearings as required, by the end of September as represented by the Governor at the July 19 hearing before the Senate Committee. The last remaining backlogs then will be pending requests for renewals or transfers, and we have scheduled those for reduction in the current year.

The Commonwealth issued its first list of overstayers in January 2007 on what was called a NO HIRE list. As we have reported to the Committee, publication of the list prompted several hundred voluntary repatriations. It also stimulated employers and employees alike to make certain that the Labor Department records accurately reflected the worker's current status. The Department of Labor and the Division of Immigration are working on a second such list, dealing with aliens from 2004 who may no longer be entitled to remain in the CNMI.

The Department of Labor procedures for dealing with the recent closures of apparel factories have been very effective in processing the affected workers. With the

cooperation and assistance from the Federal Ombudsman Office, for example, the Department efficiently handled the closure of the Concorde factory early this year, which affected about 1,400 workers. An informational hearing was provided for all the workers; they were advised of the procedures for paying wages due until the closedown date and for asserting any wage or other claim or for seeking a transfer to another job; and they were told of the procedures for repatriation. Only a handful of the 1,400 pursued wage claims; and a somewhat larger number were able to get jobs elsewhere in the CNMI. But the overwhelming majority, perhaps as many as 1,200, were promptly repatriated at their election. The Department has detailed records regarding the handling of this and other recent closures.

We are optimistic that these efforts, plus improvements in our computer systems, will give us the increased ability to provide up-to-date information about the alien worker population in the CNMI. By the time the two economic studies are completed, we anticipate that we will have provided data with respect to overstayers in the CNMI that is very current, and we will have in place procedures for ensuring that the number will continue to decrease in the future.

We hope this information is of assistance to the Committee.

RESPONSES OF DAVID B. COHEN TO QUESTIONS FROM SENATORS BINGAMAN AND DOMENICI

Question 1. We recognize the Administration does not yet have a position with respect to the long-term status of temporary workers. In developing your position please address whether the Administration would have any objection if the provision dealing with the status of temporary workers was amended to restrict workers who may obtain nonimmigrant status under a new section 6(h) to the CNMI for several years.

Answer. Dialogue about this provision should continue and we are open to constructive ideas.

Question 2. In his testimony, Resident Representative Tenorio made ten suggestions for changes to S. 1634. Please provide, in addition to your recommended changes, the Administration's position on the ten suggestions provided by Resident Representative Tenorio in his written testimony before the Committee.

Answer. The Administration appreciates and values Resident Representative Tenorio's constructive suggestions. More specifically, here are our comments on them:

Suggestion 1: The bill should include language allowing a delay, if needed, to the beginning of the transition period.

Response: We agree that some additional reasonable flexibility provided to the Federal Government to delay the beginning of the transition period would be appropriate.

Suggestion 2: Proposed section 6(c)(2) of the Covenant Act, relating to family-sponsored immigrant visas, is already covered by section 506(c) of the Covenant, and one or the other should be deleted.

Response: We agree that proposed section 6(c)(2) is not necessary. Regarding section 506 of the Covenant. we would note that section 506 provides for very limited applicability of certain provisions of the Immigration and Nationality Act (INA) to the Commonwealth, as an exception to the general current inapplicability. Section 503 of the Covenant recognizes that Congress can by law make applicable to the CNMI U.S. immigration and naturalization laws that are currently inapplicable by virtue of the Covenant. As S. 1634 would generally apply the INA to the Commonwealth as of the transition period effective date, section 506 would be superseded.

Suggestion 3: Proposed section 6(c)(3) of the Covenant Act, relating to employment-based permanent immigration to the Commonwealth, should be deleted. Response: We agree with this suggestion.

Suggestion 4: Proposed section 6(d) of the Covenant Act should include language that would allow for easy processing-of new investors into the Commonwealth.

Response: The bill as introduced includes a "grandfather" provision for certain investors already present in the Commonwealth. In addition, it includes authority to establish additional Commonwealth-only nonimmigrant categories, including for investors. We believe these provisions adequately address this concern.

Suggestion 5: Expresses some concerns about the provision of the bill to provide nonimmigrant status to alien workers in the Commonwealth who have resided there for at least five years, including concern that they may leave the Commonwealth immediately if granted status, but does not suggest specific changes to the provision.

Response: Dialogue about this provision should continue and we are open to constructive ideas.

Suggestion 6: China should be included in any Commonwealth visitor visa waiver program.

Response: We understand the Commonwealth's interest in promoting Chinese tourism. All potential candidates for inclusion in a Commonwealth visa waiver program, including China, should be fully considered on their merits in the totality of the circumstances. We would strongly oppose, however, any provision that directed the inclusion of any specific country in the program or otherwise limited the authority of the Federal Government to make decisions regarding the scope of such a program.

Suggestion 7: Section 3(d)(3), regarding collection and use of user fees from employers, should be deleted as contrary to section 703(b) of the Covenant.

Response: Section 703(b) of the Covenant currently provides that immigration fees collected in the Commonwealth should he paid over to the Commonwealth government. It is our position that if immigration becomes a Federal responsibility in the Commonwealth, the fees paid for those Federal immigration services should he available to cover the costs of those services, as they are in the rest of the United States generally.

Suggestion 8: Specific funds from the technical assistance program provisions should be dedicated to areas requiring formal training leading to certification in the various trades and technical fields.

Response: We have no objections to using technical assistance funds for formal training. We believe, however, that technical assistance should not be hamstrung with prescribed requirements, For example, should there he a requirement for formal training, and after a period of time we find that such prescribed training is not producing the skills that employers need, we might need to change to an apprenticeship program that is conducted by the employers themselves. Omitting legislative requirements will provide the flexibility necessary for a successful technical assistance program.

Suggestion 9: Throughout the bill there should he a greater role for the Commonwealth government before, during and after the transition period.

Response: We agree that consultation with the Commonwealth government throughout this process is not just appropriate, but vital to its success, while also recognizing that the Federal responsibility over immigration provided by this bill would require the Federal Government to be the ultimate decisionmaker in immigration matters relating to the Commonwealth, as elsewhere in the United States.

Suggestion 10: Language should be added to the bill to provide for a non-voting Delegate for the Commonwealth in the U.S. House of Representatives. Response: We strongly agree that the Commonwealth should have a Delegate in the U.S. House of Representatives on the same terms as other United States Territories. We would defer to Congress as to the inclusion of language relating to the House of Representatives in a bill introduced in the Senate and currently pending before a Senate committee.

Question 3. Both the Governor and the Resident Representative have expressed concern over the number of agencies that would be involved in implementing this bill, the role of the CNMI government, and that one year may not be enough time to promulgate the necessary agreements and regulations.

Please briefly describe how this program would be coordinated, whether you believe the bill should establish a coordinating structure, a requirement for further consultation with the CNMI, or provide authority to delay the implementation date, if necessary.

Answer. S. 1634 calls for implementation of its provisions to begin slightly more than one year after the date of enactment. Five Federal agencies would be given responsibilities under the provisions of S. 1634: the Departments of Homeland Security, Interior, Labor, State and Justice. In 2003, President Bush re-established the Interagency Group on Insular Areas (IGIA). A primary duty of the IGIA is to coordinate issues that involve several Federal agencies. CNMI immigration, with the involvement of five Federal agencies, is tailor-made for coordination by the IGIA. With such an institution in place, we believe that it would be redundant to create another coordination mechanism.

While S. 1634 provides CNMI immigration would be administered by Federal authorities, the CNMI governor will he consulted in a number of instances. The Administration believes that the amount of consultation is appropriate and is targeted at areas where local input will be helpful.

Assuming immediate action by the IGIA and interested agencies, officials in the Administration believe that one year will be sufficient to implement the provisions

of S. 1634. The Administration, however, would not object to a mechanism that would allow a short delay in implementation if it would aid proper administration of the program.

Question 4. In his testimony, the Governor states that the need for guest workers is declining from a high of 30,000 a few years ago, to an estimated 15,000 next year. Are you confident that the CNMI is able to repatriate these excess workers in an orderly fashion?

Answer. This past spring, officials of the government of the CNMI explained that the repatriation of foreign workers had gone well to that date, and that they did not foresee problems in the future. They indicated that the CNMI government had funds for cases where such employers did not fulfill their obligations to repatriate workers. The Governor was likely referring to the number of legal foreign workers. We do not have knowledge of CNMI plans for repatriating illegal foreign workers, including overstays. Immigration and Customs Enforcement would need to assess the federal response to this issue during the transition period.

Question 5a. The Committee has received conflicting information on population trends in the CNMI and the extent to which aliens are "out of status." Briefly describe the Department's efforts to get better information on population and workforce trends in the CNMI.

Answer. The 2000 census is the latest information on population and workforce trends related to legal workers in the CNMI. The Government of the CNMI sought to conduct a mid-decade census, but the $2 million cost was beyond its means. The Office of Insular Affair also was not able to bear the cost. Immigration and Customs Enforcement would need to assess the number of illegal aliens, the information that is available and how it may be improved during the transition period.

Question 5b. Do you believe there is a significant problem with visitors and workers being "out of status"? If so, do you have a reasonable estimate of the number?

Answer. For years, people have guessed at the number of illegal aliens in the CNMI. Census numbers deal with the numbers of legal foreign workers. Census has not counted nor estimated the number of illegal aliens in the CNMI.

Question 6. In his testimony, Resident Representative Tenorio states that while the extension of federal immigration law is expected to bring long term benefits, the immediate future offers little hope for improving conditions.

Please describe the steps the Federal government should undertake in the short term to address the current economic and fiscal conditions in the CNMI.

Answer. In the first instance, the Government of the CNMI is responsible for economic and fiscal conditions in the CNMI. Currently, the Governor of the CNMI is cutting the local government's revenue outlook and cutting compensation paid to government employees. More fiscal belt-tightening will be in order. In the long-term, the CNMI will benefit from this austerity by gaining a more lean government.

At present, options for Federal aid to the CNMI are limited. For fiscal year 2007, the CNMI received approximately $11 million for capital improvement projects and $891,000 in technical assistance funding. These funds help cushion the currently contracting CNMI economy, and are intended to aid in building a foundation to make the CNMI an attractive place for future investment.

In the last six years, a major initiative of the Office of Insular Affairs in the economic sphere has been the organization of three business opportunity conferences in Washington, D.C., Los Angeles, and Honolulu. and the organization of business opportunity missions to U.S.-affiliated islands in the Pacific and Caribbean. A fourth business opportunity conference recently concluded in Guam. Besides U.S. mainland and Pacific participation, Interior marketed the conference in East Asian nations. All of the U.S.-affiliated Pacific islands were showcased, including the CNMI, and a number of conference participants traveled the short distance to the CNMI to view opportunities there in person. We believe that the Interior conferences arc the most effective way to attract economic attention to the U.S.-affiliated islands.

Question 7. Please provide the Committee with a cost estimate for implementation of this bill including a breakdown of the cost estimate for each department and agency, and the task(s) for which they would he responsible. Please then describe the anticipated source of funding to cover each of the cost elements, such as fees, existing appropriations, or new appropriations.

Answer. The Administration has no calculated cost estimates for implementation of the bill by Department and agency based on the tasks for which they would be responsible, and considers it premature to do so at this time.

APPENDIX II

Additional Material Submitted for the Record

July 12, 2007.

Senate Committee on Energy and Resources, 304 Dirksen Senate Building, Washington, DC.

DEAR CHAIRMAN BINGAMAN: I am requesting that the attached statement be included in the Congressional Record as testimony for the July 19, 2007 Senate Hearing on the U.S. Commonwealth of the Northern Mariana Islands. I am unable to attend the hearing because I am a foreign contract worker in the U.S. Commonwealth of the Northern Mariana Islands.

Sincerely,

The Undersigned CNMI foreign contract workers.

ATTACHMENT.—STATEMENT OF THE FOREIGN CONTRACT WORKERS OF THE U.S. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

S. BILL 1634—THE NORTHERN MARIANA ISLANDS COVENANT IMPLEMENTATION ACT

Dear Chairman Bingaman: We are foreign contract workers in the United States Commonwealth of the Northern Mariana Islands (CNMI). We have lived and worked in this community for 5, 10, 15, or 20 or more years. We have served the community as nurses, security guards, technicians, mechanics, accountants, engineers, farmers, domestic workers, entertainers, construction workers, fishermen, hotel workers, garment workers, restaurant workers, office staff, and other positions. We were invited here to work and have contributed much to the community. We are the threads that hold the economic fabric of the CNMI together.

We make up the majority of the population in the CNMI, but we have no vote. We pay taxes and many of us have social security and Medicare taxes taken from our pay, yet most of us will never receive those benefits. We are often victims of criminal acts, but we cannot serve on juries. We are voiceless.

The illegal alien workers in the mainland United States have had their voices raised by the U.S. Senate who created a bill to raise their status. As legal nonresident workers also laboring and living on U.S. soil don't we deserve to have our voices raised by the United States Senate also? An estimated 3,000 of us are documented as having United States citizen children who have lived in the CNMI all of their lives. Presently, we have no way to be United States citizens ourselves. Once we have completed with our contracts we are forced to return to our home countries. How will we be able to provide our U.S. citizen children with education, healthcare, and nutrition?

We do believe CNMI is not only a part of the U.S., but is really U.S. soil. As workers, we have seen that the U.S. Constitution is not followed here in the CNMI. We do not understand this. The U.S. Constitution states that all residents of the United States are treated equally and given freedom, liberty, and the pursuit of happiness. The CNMI and United States are one country, but has two systems—one democratic and one that supports indentured servitude and refuses to enforce U.S. law.

We need to have federalization of U.S. immigration laws. For years we have suffered with an insecure status and are in the islands only as indentured servants. Many of us have been victims of illegal recruitment and labor and human rights abuses. Many of us had labor cases that have never been resolved, back wages never recovered, and criminal attacks never prosecuted. We were told that the United States was a democracy, but we do not live in a democratic society here. We urge you to pass legislation that would federalize immigration and help us to achieve the stability and United States citizenship we deserve.

STATEMENT OF WENDY L. DOROMAL, HUMAN RIGHTS ADVOCATE

Thank you for the opportunity to express my views to the Senate Committee on Energy and Natural Resources, which has jurisdiction over matters affecting territories of the United States. From 1984 to 1995 I lived and worked as a teacher in the U.S. Commonwealth of the Northern Mariana Islands (CNMI). I witnessed appalling labor and human rights abuses of contract workers who came from their homelands to work in the United States. They came from the Philippines, China, Bangladesh, Nepal, India, Sri Lanka, Russia, Pakistan, and other Asian countries. They sold their land, houses, and businesses to pay up to $7,000 in recruitment fees for a chance to live the American dream. But too many of these workers lived a nightmare instead. In 1993, I wrote a report that detailed the labor and human rights abuses in the CNMI and offered solutions. It was submitted to CNMI officials, to selected U.S. members of Congress, congressional committees, and the U.S. Departments of Labor, Justice and State.

My family left the islands in 1995 due to threats and terrible harassment that came about because of our human rights work on behalf of these victims. I testified before the Senate Energy and Natural Resources Committee in May 1995 and submitted an updated report on the status of the guest workers and problems with the CNMI labor and immigration laws.

Before I left the CNMI, I promised the workers that I would continue to appeal to U.S. government leaders to extend United States minimum wage, immigration, labor and customs laws to the CNMI. I am ashamed to tell you that 12 years after I made this promise I continue to plead with U.S. government officials to fulfill this promise and finally put an end to the abuses and systemic corruption, and to give a voice to the foreign contract workers. That is why I am in the CNMI this month to evaluate the current status and conditions of the foreign contract workers.

The United States Congress has known about the seriousness of the labor and immigration problems in the CNMI for two decades. Although there have been attempts over the years to enact effective reform legislation, ultimately the Congress has failed again and again its responsibility to ensure human rights and enforce U.S. law on United States soil. Legislation is long overdue, and S. 1634 offers some solutions to the existing problems. With needed revisions, it could be effective in addressing ongoing problems in the CNMI.

The United States needs to have one cohesive immigration policy for the United States mainland and its territories to ensure just treatment of guest workers and immigrants, to provide security for its borders, and to guarantee that the democratic values of our nation are upheld on U.S. soil. The current CNMI immigration policy has led to serious problems not only for the CNMI, but also for the security and reputation of the United States.

ECONOMIC AND SOCIAL CONSEQUENCES

Under the Covenant between the CNMI and the United States, the CNMI was given local control of its immigration with the CNMI leaders claiming they did not want to become a minority in their land similar to Hawaii. However, under the locally controlled immigration system, the CNMI has welcomed the cheap labor and essential skills provided by thousands of guest workers. The indigenous people in the CNMI have, by conscious choice, become the minority in their small island nation.

Census figures reveal that the nonresident worker population has grown from 3,709 or 22% of the total population in 1980, to 39,089 or 56% of the total population in 2000. Today there are an estimated 84,000 people in the CNMI and only 20,000, or one-third of the adult population, can vote. The last time guest workers with no voting privileges or political rights outnumbered the citizens on U.S. soil it was called slavery.

There are other dire consequences of the population explosion. The 2000 census revealed that the CNMI has a 46% poverty rate. It is most likely much higher than that today. Furthermore, according to statistics and recent news articles, of the 8,373 households in the CNMI, 2,735 or 32.66% are on food stamps, with two-thirds of the islands' children receiving federal assistance. U.S. citizens make up 80% of the public sector workforce with the higher paying salaries, while nonresident workers make up 80% or more of the private sector workforce where the salaries are much lower, starting at the minimum wage of $3.05 an hour. In fact, the minimum wage of $3.05 is not a living wage for the residents or the nonresident workers.[1] Workers have told me that they do not have enough food and cannot afford elec-

[1] President George W. Bush signed into law on May 25, 2007 legislation that will raise the minimum wage in the CNMI to the U.S. level over a period of time.

tricity on their meager wages. Hours for many of the overseas workers have been cut from 40 hours to 32 hours weekly so their meager incomes have been further reduced.

Other problems are associated with the influx of huge numbers of foreign contract workers. The rapid and enormous increase in population over the years has resulted in the decay of the infrastructure and decline in the quality of public services including the school system, health care, electricity, and water. CNMI government offices are not fully staffed, including the CNMI Department of Labor. The huge backlog of unresolved labor cases has been blamed on the lack of personnel including trained inspectors and case hearing officers. Other indicators of the failing economy are witnessed in the government enacted austerity holidays cutting government workers' hours, the failure of the government to be able to contribute to the CNMI government retirement fund, and delays in issuing tax rebates.

PROBLEMS FOR FAMILIES OF U.S. CITIZEN CHILDREN

A significant number of U.S. citizens in the CNMI are children of nonresident worker-parents. The Dekada Movement conducted a survey in March 2007[2] and registered an estimated 1,813 U.S. citizen children with over 2,173 or more nonresident worker-parents of U.S. citizen children who were born in the CNMI.[3]

There are numerous problems for nonresident worker-parents of U.S. citizen children, and for the children themselves. Nonresident parents have difficulties obtaining visas and travel documents to accompany a U.S. child to Hawaii or the mainland for emergency surgery or treatment for serious medical conditions. A Bangladeshi professional who worked for the World Bank, the United Nations, and the CNMI government stated that both of his sons were scholars in the CNMI. When it came time to compete and represent the CNMI in a school competition on Guam, immigration laws prohibited the nonresident parents from travelling with their U.S. citizen children.

A Nepalese worker told me that although his one-year-old U.S. citizen daughter would most likely qualify for food stamps and Medicaid, he would not go to the offices to apply because other workers have had so much difficulty qualifying. Filipino worker-parents said they indeed had difficulties with the six-page application, and felt that there was discrimination with processing paperwork. Two women stated that they are not offered assistance in completing forms. There are no translators at the offices. One guest worker said that it was common knowledge that priority is given to the local population, and applications of U.S. citizen children with nonresident parents find their way to the bottom of the pile. In fact, one woman stated that she made five trips to the offices over a six-month period trying to qualify for assistance, then gave up and withdrew her application.

Guest workers who have expired contracts must repatriate to their home countries with their U.S. citizen children. Many of them have lived and studied in the CNMI for all of their lives. The parents told me that they worry continually about not being able to provide adequate education, healthcare, food, and other necessities for their children if they are deported to their third world countries where there are few opportunities to prosper. Furthermore, the workers expressed that to find a job in their country would be nearly impossible, and if they were lucky to find one, the salary back home would not be enough to support their families. How does the U.S. Congress morally justify the possible exile of thousands of U.S. citizens who are innocent children?

A guest worker couple that has been in the CNMI for 27 years has three U.S. citizen sons, two of who are presently in the U.S. military.[4] One of the young men has recently returned from a tour of duty in Iraq. The parents of these young men have lived legally on U.S. soil longer than they have lived in their homelands. It does not seem right that they can give their sons to the U.S. military to fight for democracy, yet they have no pathway to become U.S. citizens themselves. Clearly the nonresident parents of U.S. children must be granted U.S. citizen status.

HEALTHCARE

Medical expenses can put extreme hardship on individuals and families. While sponsoring employers are liable for a guest workers' healthcare, they are not liable for the healthcare of children. A visit to the emergency room for one guest worker's

[2] Dekada Statistics Table is attached.

[3] Boni Sogana, the President of Dekada, told me that not all nonresident workers registered their children, and he estimates that the survey actually reflects less than half of the actual U.S. citizen children with foreign parents.

[4] Carmelita G. Ramos' statement to the Senate Committee is attached.

child resulted in a bill just over $400, equivalent to two week's pay. A hospital stay for another child was over $1,000. A Nepalese guest worker apologized for his front tooth, which had decayed. He could not afford the dental work to repair the tooth that was reduced to a short rotting stub, and his employer has not paid for the dental procedure.

Workers whose employers are not willing to bear their healthcare costs or who are out of a job agreed that most try to treat themselves or their U.S. citizen children using herbal remedies or over the counter medications because they cannot afford the expenses of a physician. Two Filipino guest workers stated that they are diabetic, but cannot afford the medication so they watch what they eat. Another stated that since he lost his job he couldn't afford to buy medication that was prescribed for his high blood pressure. A recent newspaper article stated that a guest worker received expired medication at the Commonwealth Health Center pharmacy.[5] There are major implications for the overall well being of the guest workers, their U.S. citizen children and the general community with the current practices of healthcare.

LABOR PROBLEMS

There are numerous labor problems that guest workers face with the main one being nonpayment of wages. Attorneys and guest workers told me that there is a rush to deport workers even though they have valid outstanding labor complaints, and are not in violation of laws. Often the CNMI Department of Labor resolves outstanding labor cases administratively, but not justly. Workers have related that they are told to sign a release stating that they will accept dismissal of their labor case before they will be allowed a transfer to another employer. Once they are issued a transfer authorization, they must locate a new employer within 45 days. If they cannot find another employer (and it is nearly impossible with the current economy in ruins), then they must return to their homeland.

Other workers have stated that after they receive a CNMI Administrative Order on their labor case, the case is considered closed by the CNMI Department of Labor. However, the majority of the workers I met with stated that they never received the back wages that they are owed, whether they were owed a few hundred dollars, or tens of thousands of dollars. For example, I met with four workers on July 15, 2007, from Rota whom I assisted with labor cases in 1993, fourteen years ago. None had their cases resolved; none have received thousands of dollars of back pay owed to them. Even if the CNMI Department of Labor considers their cases closed, the workers do not. One man told me, "My case will be closed when I receive the money the boss owes me." There is a pervasive lack of enforcement for unpaid awards. Under the CNMI Labor Code, the CNMI Attorney General's Office can go into court to enforce awards, but it rarely has. Too often the judgments and administrative orders from the CNMI Department of Labor are nothing more than meaningless sheets of paper.

One guest worker I interviewed, Francisco, handed me a file of paperwork and stated that he is owed over $25,000 by the now closed Business Protection Services, which was owned by the Former CNMI Chief of Police, Antonio Reyes. In 1996, the U.S. Department of Labor ruled in favor of the employees ordering that Reyes pay back wages. The employer filed bankruptcy. Francisco received only a couple of checks in 12 years and found other employment, but recently has found himself without work. The CNMI Department of Labor expects him to find a new employer within 45 days or he must leave the CNMI without his pay. He asked me why the U.S. Department of Labor did not sell his former employer's land or assets to pay the workers. Why he was being punished, but his employer was free to enjoy his life. I had no answers for him, but perhaps the Senators could respond to why he and hundreds of others are in this position. There needs to be a law that bankruptcy cannot be the cause of discharging a labor case in the CNMI.

Frustration in collecting wages can be witnessed in the case of workers attempting to get back pay from the now defunct Island Security Services owned by Joaquin V. Deleon Guerrero, son of the late CNMI Governor Lorenzo Guerrero. Ten years after filing initial labor complaints, the employees still have not received back wages totaling $108,931, even though a judgment was issued demanding that the employer pay this amount and an additional identical amount in liquidated damages.[6] I met with two of the former guards, Sisenando and George, who are owed $4,686.62 and

[5] Marianas Variety, "CHC Gives Alien Worker Expired Medicine", by Emmanuel T. Erediano, July 6, 2007.

[6] Marianas Variety, "Employer ordered to pay $216K for 83 workers' back wages, fines", by Haidee V. Eugenio, June 13, 2007. Saipan Tribune, "Security firm told to pay 82 workers $216K", by Ferdie de la Torre, June 14, 2007.

$7,246.52 respectively. They told me when they went to the department to collect the wages they were told that their powerful employer had hired an attorney to appeal the decision, even though he had admitted at mediation that he did owe the employees the back wages. Now the men have up until next week to find a new employer before their temporary work authorizations expire.

Recent articles in the CNMI newspapers, and pages of documents I received from guest workers have revealed that hundreds of workers from all job categories are owed thousands of dollars in back pay. Typically, workers cannot collect the wages and struggle each day looking for a new employer, trying to find enough to eat, and meet the basic necessities of life. Additionally, multiple workers have complained that in addition to income tax, social security and Medicare are deducted from their paychecks. It is unlikely that more than a small amount of workers will ever collect social security or Medicare benefits. There is taxation without representation for the majority of the CNMI workers.

We saw the tragic consequence of what can happen when a guest worker learns that there will be no back wages paid and deportation has been ordered. In April this year, Buddhi Lal Dhimal was told he must leave the CNMI even though he was owed around three thousand dollars from his former employer. The desperate Nepalese set himself on fire outside the CNMI Department of Labor Offices. He died weeks later at a hospital in Manila. I met with his daughter, Pabrita, two times this week.[7] She states that their family in Nepal is in deep grief and they are in dire straits without his income. She would like the employer to pay the money owed to her father so she can send it to her family in Nepal. Certainly this horrific case illustrates the urgent need for reform.

The workers said that all of them know that once they leave the CNMI, there is little or no chance of recovering the money owed to them. The CNMI government does not prosecute employers who owe money to workers, and there are few consequences for abusing an employee or violating CNMI labor law. In fact, although violating businesses are barred on paper from hiring new workers, the employers manage to find loopholes to get new recruits. A mere change in the business name or a transfer of the business to another family member will allow the business to continue. New recruits will be hired and the cycle will repeat.

In general, the guest workers are treated like commodities, like coconuts. They can be consumed, tossed aside, and replaced with a new one. the guest workers cited example after example of non-enforcement of local and federal labor laws. Implementation of U.S. immigration laws will prevent abuses.

IMMIGRATION PROBLEMS

Entry permits and paperwork for workers are delayed. For example, three Bangladeshi workers from a security company have been asking for their entry permits for months. Their employer submitted the paperwork and fees in February this year. When the workers inquire at the CNMI Immigration Division they are told to return next week. The following week they return to be told the same thing. Others are informed that their papers are not complete even though they are. Hundreds of workers on island now have not received their entry permits. Without the entry permit the guest workers are not allowed to leave or return to the CNMI. The guest workers use the entry permits as their form of identification for banking and other purposes.

Last month the CNMI Attorney General submitted a proposal to amend regulations regarding entry permits for immediate relatives of non-aliens and immediate relatives of aliens.[8] The CNMI government is proposing a change in status for Freely Associated States (FAS) citizens' relatives. The amendments to current CNMI immigration policy will treat alien relatives of FAS citizens as guest workers. The proposal also establishes requirements for immediate relatives of United States Citizens including: a time frame for applying for status as an immediate relative and income requirements for the U.S. citizen to be able to sponsor an immediate relative. Under the proposed legislation, widows or widowers of U.S. citizens may keep their immediate relative status only if they were widowed two or more years after the marriage.

I interviewed Khondaker Rahman who has been married to a Chuukese woman for years and is raising five stepchildren in addition to one of his own. He stated that the proposed legislation will force him to lose his job and he will no longer be able to provide for his family. I also interviewed five other FAS immediate relatives. One Filipino man has been married to a Chuukese woman for over 12 years. He

[7] Pabrita Lal Dhimal's statement and newspaper clippings are attached.
[8] Commonwealth Register, Volume 29, Number 06, June 18, 2007.

owns an automotive repair shop and said the regulations will prohibit him from owning his business if their status is changed to that of a guest worker. Three taxi cab drivers also feared that the change in status would result in the end of their only means of income. One Bangladeshi who has been married for five years to a FAS citizen and has two children said, "I just want to be able to provide for my family. I love my family."

The current CNMI immigration policies do not reflect the democratic principles of the United States, and do not support the values on which this country was founded.

NON-PROSECUTED CRIMINAL ACTS

In 1994 my family was the target of criminal acts and hate crimes including assaults, having our tires slashed, and threats of rape and death against my oldest daughter and myself. A total of nine criminal complaints were filed, including two for assault by the Rota Liaison of then Governor Froilan C. Tenorio. Not one arrest was made even after months of requesting prosecution. I have over a dozen files of police complaints from foreign nationals. Only two were prosecuted.

Four of the workers I met with this week had been assaulted, and they filed police complaints. Not one of the assailants were arrested. A Bangladeshi man said an off-duty policeman assaulted him, yet was never charged for the crime. Four men bearing 2x4 boards beat two Filipino guest workers at their house. The victims recognized the assailant in a store, and alerted the police. The man was released and still no action was taken. The victims stated that they went to the police station repeatedly and were told that the detective was not there and no one could help them. One of the men who was beaten has a fractured hand. As a carpenter, he is unable to work because he can no longer lift a hammer.

The U.S. Department of Justice should investigate the non-prosecution of hundreds of filed criminal complaints made by U.S. citizens and guest workers. The need for increased funding for the U.S. Departments of Justice and Labor in the CNMI is apparent and crucial if justice is to be served in the islands. Too often citizens and guest workers are denied justice and due process in the CNMI.

Workers reported that there are moneymaking scams everywhere. Workers are paying $1,500 or more to agencies who have vacant job slots. Then papers are processed in the CNMI Department of Labor without contracts and complete applications, according to the workers. Other workers are paying local residents to sponsor them on paper even though no job exists. They want the opportunity to remain in the CNMI with the hopes of collecting money owed from former employers. Locals and other scam artists are profiting at the expense of desperate workers.

RETALIATION AND DISCRIMINATION

While criminal cases of nonresident workers go unresolved, CNMI Crime Stoppers advertisements in the newspaper and on television urge the public to turn in an illegal alien to collect up to $1,000. Workers said the advertisements are another way that the CNMI government tries to shape up before a Congressional hearing to convince Congress they can control their own immigration. The bankrupt CNMI government may have a difficult time coming up with money for those who turn in "illegals" to Crime Stoppers.

Workers spoke of job retaliation for speaking out and for belonging to Dekada, or to The Human Dignity Act Movement. One leader was told he would not have his contract renewed because he was active in The Human Dignity Act Movement. The president of a Filipino organization did not have his contract renewed. His employer chastised him for helping workers and speaking out. He believes that was the cause of his nonrenewal. Another Filipino guest worker said that the workers live in a climate of fear. They know that they risk not being renewed if they complain or stand up for their rights.

The indigenous Taotao Tano group has vocally opposed federalization, attacking the guest workers and the Dekada Movement though letters to the editor and public protests. They lined the streets this month holding signs that read, "Go home, this is our land." Bishop Thomas Camacho denounced the actions in a pastoral letter. That was read in Catholic churches in the CNMI on Sunday, July 8, 2007.

Nonresident-worker parents of U.S. citizen children complained of discrimination at federally funded programs such as Head Start and public assistance such as food stamps and Medicaid. They reported being sent to the back of the line or having applications put on the bottom of the pile.

The CNMI House of Representatives on June 25, 2007 unanimously passed H.B. 15-38, The Commonwealth Employment Act of 2007, which is now pending in the CNMI. The bill calls for guest workers to leave the CNMI for six months after they

have worked in the CNMI for three consecutive years. This type of legislation, like similar bills introduced previously, has the intention of limiting the possibility of long-term residency that could qualify guest workers for a pathway to citizenship. The Saipan Chamber of Commerce, business owners, and nonresident workers oppose the legislation, for different reasons. Most people believe the bill was introduced to give the U.S. Congress the impression that the CNMI was instituting reform on its own, to win votes in the CNMI mid-term election on November 3, 2007.

Scores of Filipino workers showed me letters from the Equal Employment Opportunity Commission (EEOC) stating that they had been victims of discrimination at the L&T garment factory owned by Willie Tan. The workers has their contract renewed, but later were given letters of termination because of a reduction of workforce. They stated they were discriminated against because they were "old, pregnant, or Filipinos." The terminated Filipino workers were replaced by Chinese workers who would not complain if they were not paid for the overtime hours they worked.

LACK OF LEGAL REPRESENTATION FOR GUEST WORKERS

Many guest workers and several attorneys that I interviewed said that there was a lack of attorneys willing to accept labor, immigration, and criminal cases. Generally, guest workers cannot afford to hire attorneys to represent them and their cases remain unresolved. Although some attorneys take cases pro bono or are willing to lose money to represent guest workers, there are far too many guest workers in need of legal representation, and far too few attorneys to take their cases. For many, justice is not within their grasp. I recommend that the federal government provide funds to Micronesian Legal Services specifically to be used by destitute guest workers.

NATIONAL SECURITY

With the present threat of terrorism, the need for one consistent immigration policy to secure our borders is critical. We need to close the open Pacific door where illegal aliens enter from China and other Asian countries. This was outlined in the 1998 Commonwealth of the Northern Mariana Islands (CNMI) Labor and Human Rights Abuse Status Report that was prepared by myself and a team of investigators on behalf of the Clinton Administration and submitted to this committee, and in the 2002 Security Report from the United States Attorney for the Districts of Guam and the Northern Marianas. A recent publication detailed the multi-million dollar human smuggling business and the fact that the CNMI's visa waiver program, which includes Chinese citizens, serves as a backdoor to the United States.[9] Since the late 1990's hundreds of Chinese have been smuggled by boat from the CNMI into Guam. A July 2007 article in the Marianas Variety details the capture of the latest boatload of Chinese who were rescued from their disabled vessel off the coast of Guam.[10]

Furthermore, the 2002 U.S. Department of Justice security report highlighted problems associated with the presence of the Chinese Triad, Japanese Yakuza, Korean mafia and Russian mafia in the CNMI. The report states, "Gambling, prostitution, drugs, money laundering and the exploitation of the large segments of the alien population are fully orchestrated by these organizations."

In testimony at the February 8, 2007 hearing before this committee, Ambassador F. Haydn Williams stated, "The CNMI does not have the institutional capacity to adequately pre-screen or screen persons entering the Commonwealth. Border control is an inherently sovereign function and in the present threatening world security environment and the reach of global crime syndicates, the responsibility for protecting the nation's borders in the CNMI should be in the hands of the Federal government."

FEDERALIZATION OF IMMIGRATION IS VITAL

At the House Resources Committee Hearings in 1999, Nicolas M. Gess, Associate Deputy Attorney General of the U.S. Department of Justice, and Bo Cooper, General Counsel of the Immigration and Naturalization Service of the Department of Justice, testified to the necessity for the immediate implementation in the CNMI of the Immigration and Nationality Act. In 1999 a bipartisan bill, S. 1052, calling for the implementation of the Immigration and Nationality Act with some exceptions and

[9] Asia Times, "China's Third Wave, Part 3: A How-to Guide for Fleeing China", by Bertil Lintner, April 19, 2007.

[10] Marianas Variety, "Coast Guard Brings 12 Passengers Back to CNMI", by Trina San Augustin, July 2, 2007.

a transitional period was introduced in the Senate and passed unanimously on February 7, 2000. However, it was blocked from consideration in the House due to documented efforts of lobbyists and House members. At the February 8, 2007 hearing before this committee, Ambassador F. Haydn Williams, one of the negotiators of the CNMI Covenant, stated, "I believe the CNMI will be greatly aided by the discipline, the orderliness, and the long-term benefits that will flow from the extension of U.S. immigration laws to the Commonwealth of the Northern Mariana Islands." I concur with his position.

There are some major elements that effective federal immigration and labor legislation should include. They are:

- Granting an unobstructed pathway to U.S. citizenship to guest workers who had been working lawfully in the CNMI for at least five years as of January 1, 2007 and/or have been working lawfully in the CNMI for at least five years as of the date the legislation becomes law;
- Granting a pathway to citizenship for the immediate relatives of the guest workers who acquire U.S. citizenship under this legislation;
- Granting immediate U.S. citizenship to parents of the U.S. citizen children in the CNMI on the date the legislation becomes law;
- Federalizing all CNMI immigration and visa programs, whether they are work or tourist.
- Requiring future foreign guest workers to complete exit interviews to ensure they have no unsettled labor and/or criminal cases; and
- Properly funding and staffing the U.S. Departments of Justice and Labor in the CNMI to ensure the safety and human rights of guest workers and the community.

The present system of labor and immigration under CNMI rule truly does not support the values on which this country was founded. There should be no place on U.S. soil where a majority of the people who pay taxes, work, and contribute to the good of their society and community have no voice in affairs that directly affect them. The majority of the adult population cannot serve on juries, but are routinely victims of criminal acts or may be prosecuted for crimes. They have no vote and no voice in the affairs of the government and the community in which they live. Where in a democratic society would the government endorse and perpetuate a disenfranchised underclass that makes up the majority of the population?

The current CNMI labor and immigration system violates provisions of the United Nations Declaration of Human Rights. The time to implement and enforce federal minimum wage, immigration, labor and customs law in the CNMI is clearly overdue. I believe that legislation is crucial and should be embraced by a united Congress in support of democracy, human rights and justice. I urge you to act now.

> Never under any condition should this nation look at an immigrant as primarily a labor unit. He should always be looked at primarily as a future citizen.—Theodore Roosevelt.

ATTACHMENT 1

DEKADA SURVEYED STATISTICS—GUESTWORKERS W/ U.S. BORN CHILDREN IN CNMI

[SURVEYED MARCH 11–16, 2007]

Nationality	Total	Years Worked in CNMI					Ages of Children				Total Children
		Less 5 Yrs.	6–10 Yrs.	11–15 Yrs.	16–20 Yrs.	21–30 Yrs.	5 Yr. Below	6–10 Yrs.	11–15 Yrs.	16–21 Yrs.	
Filipino	1,647	131	317	523	426	250	422	462	371	131	1,386
Chinese	392	93	169	113	17	.....	226	73	16	.....	315
Korean	125	15	28	50	18	8	40	30	6	2	78
Bangladesh	5	.....	8	6	2	.....	2	4	.....	.....	6
Nepalese	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Japanese	4	.....	.....	2	1	1	.....	3	.....	.....	3
Thailand	.....	5	20	10	5	.....	20	5	.....	.....	25
Total	2,173	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,813

ATTACHMENT 2.—PREPARED STATEMENT OF CARMELITA G. RANAS

My name is Carmelita G. Ranas

I been in Saipan in 26 years I been Paying my US tax. I have 2 Son US Marine in US Navy. 1 Son Serving in iraq for 7 month I want visit. my Son in america. but I cannot because im not a US. citizens. I hope Please Federal. the Saipan because. many People abuse. here my Self I have my good Job an my tree children all US Citizens I hope Saipan. Federal

Thang you very much,

CARLEMITA. G RANAS.

ATTACHMENT 3.—PREPARED STATEMENT OF RITO DOCA

I am Rito Doca popularly known by my group and my friends as (Ronnie), a Filipino citizen. At present I am the President of one of the biggest Filipino association here in Saipan, Commonwealth of the Northern Mariana Islands. The Pilipino Contract Workers Association, Inc. (PILCOWA) I am here in Saipan since 1989, it means to me of 18 years of working contineously. I have my family of six (6) childrens all born here and are U.S. passport holders. My eldest daughter was suffering from disability after she undergone a special procedure in her throat and other parts of her body at an early age because she was born six (6) months premature and is in constant need of medical health care services.

Shaping the behavior and character traits of our kids. Without our close supervision as the parents, there will be rampant juvenile delinquency. And if the parents of these U.S. citizen kids will be sent home because we are not able to find employment, our kids will be greatly influenced by the negative factors such as alcoholism, drug addiction and others. With the move to federalize the immigration system or to just change the immigration status of longterm guest workers, we can stay in the island with our kids.

ATTACHMENT 4.—PREPARED STATEMENT OF PABITRA DHIMAL

July 18, 2007.

I am Pabitra Dhimal daughter of Mr. Buddhi Lal Dhimal. Today I am going to write about my dad problem & difficulties in the Saipan.

My dad came Saipan at 1997 and stay Saipan 10 years. I told my dad to make me come at Saipan so he make someone to sponsor me and finally I come to Saipan. It is almost 2 years that I am in Saipan but when I came first time to Saipan I found him very suffering and having hard time. My dad when he came first time he started to work as a mason for one year. But where my dad working the company didn't pay his back wages. So now he has labour case pending. Than after one year he got chance to transfer in another employer. So again he started to work but still than also he waiting for the money so that when he get it he can go back to his country. His back wages was $5,000 and $2,000 from the two employers but the labour don't wants to give the money. They give him hard time so now its already 10 years he wants to go back to country and to have the money but still they not yet collect the the money. This time my dad permit is almost finish so he planned to go have the money and go back but the labour still don't want to give back his money. These time he cannot get chance to work because of his permit so he is jobless even I was also jobless too. So that time me and my dad suffering a lot. We follow plenty times in the labour but we only get hard time. Me and my dad use to stay in a small room—my dad he used to sleep in the floor and me at the bed—we both of us don't have job and my dad he cannot work because of his permit neither the labour give the money nor they give authority to work so its really very very hard time for us. In order to look for the job my dad used to drop me at several places to apply for the job by the bicycle even though the day time sun is very hot.

Due to the abuse, neglegiancy and misbehave of the labour and hard time given by them makes too much suffer and it makes him to burn himself in the department of labour. Now my dad is no more, he pass away but I am still at Saipan I married over here but than also its very hard for me to remember those days and to lose my dad. But still now the labour not yet pay my dad wages. I hope that if the labour can pay back the wages it gona be a big support for his family. Who used to depend on my dad.

At last I want to give some of his document paper of his pending and not yet pay back his money. So I would like to request you that please if you can help me to get my dad back wages.

PABITRA DHIMAL.

ATTACHMENT 5.—ARTICLE FROM SAIPAN TRIBUNE, WEDNESDAY, APRIL 25, 2007*

MAN SETS HIMSELF ON FIRE

By Ferdie de la Torre, Reporter

Learning that he is to be deported back to his country, a jobless Nepalese man set himself on fire along the hallway of the Department of Labor in San Antonio yesterday morning.

Police said Buddhi Lal Dhimal, 49, poured flammable liquid on his body and set himself on fire before a Labor enforcement officer outside the Labor Enforcement Office.

Dhimal was taken to the Commonwealth Health Center. He sustained second and third degree burns on his body. He will be taken to an off-island hospital for further treatment.

Witnesses said no other person was injured and the fire did not spread after Labor officers pushed Dhimal to the floor and sprayed him with a fire extinguisher.

The incident, which happened at 8:45 am, prompted Labor and Immigration officials, employees and some customers to evacuate the building.

Department of Public Safety spokesperson Lei Ogumoro said the man became agitated after he was informed he was to be deported.

Ogumoro said the person had a bottle of flammable liquid and a cigarette lighter. Witnesses said Dhimal started shouting and poured the liquid on his body and ignited his lighter.

Labor Secretary Gil M. San Nicolas said that, according to Labor investigator Jeffrey Camacho, Dhimal was calling him to step out of the office.

"But Jeff was kind of. did not feel comfortable so. he [Dhimal] poured something on himself. It's not like gasoline; it was in a container," San Nicolas said.

The official said that Labor investigators Frank Aguon and Jeffrey Camacho held Dhimal down to stop the fire.

"Jeff was shouting to get the fire extinguisher," San Nicolas said.

"Lucky he did not have a gun and starting shooting. [With] people nowadays, we don't know how they think and what they are thinking," San Nicolas said.

San Nicolas said Jeffrey Camacho was the investigator for Dhimal's case. Dhimal had gone to see him regarding his repatriation ticket.

"[Dhimal] was calling Jeff out but. as Jeff was walking out toward the hallway, that's when Mr. Dhimal poured what appears to be gasoline on himself and lit himself," San Nicolas said.

He said he was on his way to the office when a staff called him and informed him of the incident.

Occupational Safety and Health Administration consultant Rey Deleon Guerrero said he was in the restroom when he heard the voice of a man "in a hostile stage."

Deleon Guerrero said there were eight to nine other customers at the Enforcement Section at that time.

"He [Dhimal] was shouting on his way out. I was right in the middle when he was pushed to the floor as he was engulfed in flames.. We have to pin him down because he was engulfed in flames. We tried to cover him but at the same time we requested for the fire extinguisher to be operated. It was just a matter of seconds," Deleon Guerrero said.

Police and medics were then called.

Deleon Guerrero said the evacuation procedure was orderly as no panic occurred.

"I was there to calm everybody down," he said.

San Nicolas said he will call the DPS commissioner and ask if it is possible to have a temporary officer assigned at Labor and Immigration.

"We just want to make sure that anyone entering the building does not have any weapons or lighters with them," San Nicolas said.

He said it was the first such incident that happened in the CNMI. He said he is going to issue a written policy similar to what airports require—that visitors or customers should have no lighters and other dangerous items with them.

ATTACHMENT 6.—ARTICLE FROM SAIPAN TRIBUNE, WEDNESDAY, APRIL 25, 2007

WHAT HAD HAPPENED TO DHIMAL?

By Ferdie de la Torre, Reporter

Buddhi Lal Dhimal, a Nepalese security guard, has been on Saipan since 1997 and was once arrested in 2006 for allegedly overstaying in the CNMI.

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* Photos and captions have been retained in committee files.

Court and Labor records show that the Division on Immigration filed two deportation cases against the 49-year-old Dhimal, but those were subsequently dismissed in March 2006 at the government's recommendation.

Records indicate that Dhimal first worked on Saipan as a mason at Asia Pacific Investment Corp. in 1997. He then became a kitchen helper for Marianas Hotel Services Co. from 1999 to April 2003.

In July 2003, he started work as a security guard for Seasonal Inc. The following year he transferred to L&T International Corp. as a security guard. His work permit expired on Aug. 19, 2005.

After the deadline passed in October 2005, Dhimal approached the Labor director and asked for an extension for him to seek a new employer. He was informed that no extension would be given.

On Oct. 24, 2005, Immigration investigator Richard T. Lizama filed a deportation case against Dhimal.

In early November 2005, the Nepalese guard asked Osmani Gani, owner of Lucky Security Service, to provide him work. Gani agreed and employed him as a security guard at the Cha Cha Junior High School in Kagman.

Dhimal started work on Nov. 5, 2005, as a Cha Cha security guard. On Jan. 17, 2006, though, Immigration agents arrested him at the school, for reportedly working without a permit and remaining in the CNMI without lawful status.

The following day, Immigration investigator John Peter filed another deportation case against the respondent. Peter stated in court papers that Dhimal admitted he was working illegally for Gani. Dhimal had explained that Gani had promised him that he would process the labor papers.

On March 1, 2006, Superior Court associate judge David A. Wiseman dismissed Dhimal's two deportation cases upon the government's recommendation.

Then assistant attorney general Ian Catlett stated that the respondent has been cooperating with Immigration authorities and will be permitted to normalize his immigration status within 45 days.

In July 2006, Dhimal filed a labor complaint against Gani, alleging that the employer failed to pay his wages and committed other violations.

Dhimal was not able to find a new job within the 45-day deadline.

Labor conducted an investigation and issued its determination, notice of violation, and notice of hearing.

The Labor director found that Dhimal should be reimbursed for his unpaid wages. The director also determined that both parties should be sanctioned for violating the Nonresident Workers Act by engaging in unauthorized employment.

The Labor director recommended that Dhimal be denied transfer relief.

On Dec. 18, 2006, Labor administrative hearing officer Jerry Cody ordered Gani to pay Dhimal $1,012.04 in unpaid wages, plus liquidated damages for a total award of $2,024.08. But Cody denied Dhimal's request for transfer and ordered him to depart the CNMI.

Cody determined that both Dhimal and Gani violated the Nonresident Workers Act by conducting employment without authorization or permit from the Labor director.

Gani, who was barred earlier in 2006 from hiring nonresident workers in the CNMI for filing false information, was sanctioned again, this time for engaging in unlawful employment.

Labor found that in early November 2005, Dhimal asked Gani to provide him work so that he could support himself. During the two-month employment, Gani paid him $690 in wages. However, he worked many regular and overtime hours for which he was never compensated.

Cody rejected Dhimal's argument that he was misled by Gani into working illegally.

In denying him transfer, Cody cited that complainant was already granted transfer relief before but failed to file in a timely transfer application.

Cody noted that the AGO already granted Dhimal six additional months in 2006 to find a new employer. Despite being granted such opportunities, Cody said, the guard did not file a transfer application.

Dhimal did not appeal Cody's order.

ATTACHMENT 7.—ARTICLE FROM MARIANAS VARIETY, WEDNESDAY, APRIL 25, 2007

EX-L&T WORKER SETS HIMSELF ON FIRE

By Haidee V. Eugenio, Variety Assistant Editor.

A FORMER security guard who was ordered to leave the CNMI and was trying to get a repatriation ticket set himself on fire in the hallway of the Department of

Labor yesterday morning, setting off a fire alarm that led to the evacuation of personnel and their clients.

It was the first time that an incident like this has happened at the Labor office. Buddhie Lal Dhimal, 49, was a security guard at L&T International Corp. up to Aug. 19, 2005 before he was illegally employed by Lucky Security Service from Nov. 2005 to Jan. 2006.

Yesterday, he poured a flammable liquid on himself and used a lighter to set it on fire after getting the attention of the labor investigator handling his labor case at around 8:45 a.m.

"He was heard saying he didn't have anything to eat anymore, moments before setting himself on fire. It was scary for a lot of people in the building," said one of the tenants in the Afetnas Building which houses the Labor and Division of Immigration offices. Dhimal sustained second and third-degree burns on his body and was rushed to the Commonwealth Health Center, according to Department of Public Safety spokeswoman Lei Ogumoro.

No other person was seriously hurt in the incident apart from the minor bruises sustained by one of the labor investigators who helped put out the fire before emergency medical service and fire personnel arrived at the scene.

Labor Secretary Gil M. San Nicolas said he would ask the Department of Public Safety if police officers could be detailed temporarily at Labor to make sure that people coming to the office do not have any contraband like flammable liquids, lighters, guns or other weapons that may harm personnel and clients.

He recognized, however, that Labor—just like any other government agency—is in financial crisis and can't afford to hire a private security firm to guard the premises.

"But I cannot compromise safety . . . In my 19 years here at Labor, this is the first time that something like this has happened. I am not going to take this lightly and wait until something happens again," San Nicolas said.

Labor and Immigration services were disrupted yesterday due to the fire and the evacuation of the building.

San Nicolas ordered a temporary closure of the Labor office until 12 noon. Labor reopenned at 1 p.m. yesterday.

DPS's Ogumoro, in a report yesterday afternoon, said the man, "after learning that he was to be deported to his place of origin . . . became disgruntled and set himself on fire."

"An investigation showed that the person had a bottle of flammable liquid and a cigarette lighter which he used to set himself on fire," said Ogumoro.

The police are investigating the incident.

'We saved his life'

The incident happened in a hallway outside the Labor Enforcement Section office on the second floor of the Afetnas Building, next to the Immigration office.

San Nicolas said Dhimal went to see labor investigator Jeffrey Camacho regarding a repatriation ticket around 8:45 a.m.

"When he entered the door, he called Jeff but Jeff felt uncomfortable. When Jeff went out into the hallway, Mr. Dhimal poured what appeared to be gasoline on himself and then lit it on fire," said San Nicolas.

The police have yet to determine whether the fluid was lighter fluid, charcoal lighter or gasoline.

He said Labor personnel were concerned that Dhimal might also splash them with a flammable liquid and then set them on fire too.

"That didn't happen but the point here is that they were uncomfortable because his behavior was hostile, kind of angry at something," said San Nicolas.

Despite their concerns, Camacho and a fellow labor investigator, Frank Aguon, and other labor personnel immediately came to Dhimal's rescue when he was engulfed in the flames.

San Nicolas said Aguon tried to bring Dhimal down and cover him in order to put out the fire. Ray Quichocho, another Labor employee, used a bag while Aguon went to get the fire extinguisher.

"Labor personnel basically saved his life," said San Nicolas.

Ray Guerrero, from the CNMI OSHA Consultation Program Office, said the fire activated the fire alarm system in the building.

"Standard procedure requires that, once the alarm is activated, people evacuate the building and they did," Guerrero said.

He said Dhimal "was in much pain."

"I saw him . . . he was rolling on the floor while we were getting the fire extinguisher . . . He was shouting. The guy was in so much pain," said Guerrero.

Manny Domingo, a Labor employee, said he and his colleagues could see the blaze from across the hall and thought it was "an electrical fire."

Domingo, Israel Deleon Guerrero and other Labor personnel were wearing gas masks to protect themselves from the fumes which were still lingering on the second floor of the building by 11 a.m. Personnel were seen cleaning the hallway after the incident.

"It was scary, with recent shooting incidents in the news. I though the man had a gun," another Labor employee said.

Arrested, order to depart CNMI

Labor Hearing Officer Jerry Cody ordered Dhimal to depart the CNMI no later than 30 days from the date of the Dec. 18, 2006 order he issued for engaging in unlawful employment with Osman Gani doing business as Lucky Security Service.

In that order, Cody ordered the former employer of record, L&T International Corp., to provide a repatriation ticket for complainant's departure to his original point of hire.

The labor hearing officer also asked the director of Labor to assist in obtaining a repatriation airline ticket from L&T International Corp.

It is not known what took so long for Dhimal to finally get a ticket.

Moreover, Cody said in his five-page order in December that as it anticipated that Lucky Security Service would not pay the award of $2,024.08 to Dhimal for back wages, unpaid overtime and liquidated damages, Dhimal could make application under Public Law 11-66 for the recovery of this award.

"In that event, the Collections Unit is requested to assist complainant in obtaining any funds available under Public Law 11-66 for satisfaction of this award," said Cody.

Dhimal previously worked as a security guard at L&T International Corp. under a nonresident worker permit that expired on Aug. 19, 2005. He failed to find a transfer employer after the 45-day deadline, by Oct. 2, 2005.

After the deadline passed, Dhimal approached the office of the director of Labor requesting an extension. No extension was granted pursuant to regulations.

In early November 2005, Dhimal approached Osman Gani doing business as Lucky Security Service and the company employed Dhimal as a security guard at the Cha Cha Junior High School in Kagman from Nov. 5, 2005 to Jan. 17, 2006.

On Jan. 17, immigration officers arrested Dhimal at the work site for working without a permit and remaining in the CNMI without lawful status.

"The parties had no permit or authorization for the above-noted employment. Therefore, the employment was in violation of the Nonresident Workers Act . . ." said Cody.

Subsequent to Dhimal's arrest, the Attorney General's Office had granted Dhimal six additional months in 2006 to find a new employer but he failed to find one.

San Nicolas yesterday said the administrative order stands, and Dhimal did not file an appeal.

"The best thing we could do is to help him with his repatriation ticket," said San Nicolas.

ATTACHMENT 8.—ARTICLE FROM MARIANAS VARIETY, FRIDAY, MAY 11, 2007

EX-L&T SECURITY GUARD WHO BURNED HIMSELF STILL AT CHC

By Emmanuel T. Erediano, Variety News Staff.

THE former L&T security guard who set himself on fire at the Department of Labor a few weeks ago is still under observation at the Commonwealth Health Center's intensive care unit on a "day-to-day" basis, according to his daughter.

Pabitra Dhimal, 21, said her 49-year-old father, Buddhi, is recuperating from second and third degree burns and has developed lung problems since being admitted to CHC following the incident that took place in the labor department's hallway on April 24.

Pabitra Dhimal, who works at 99 Cents Supermart, said that attending physicians cannot tell her exactly how long it will take her father to recover.

She said her father, who was still on a respirator Wednesday night, could not open his eyes and was being fed through a tube directly into his stomach.

Pabitra Dhimal said she heard from hospital staffers that once her father's condition gets a little bit better he may be flown to the Philippines for further treatment.

She was told that CHC is waiting for the patient's lung conditions to improve.

Buddhi Dhimal suffered second degree burns to the neck, face and arms as well as third degree burns to the chest.

Pabitra Dhimal said she never had any idea that her father could do such a thing.

She said she was asleep when her father left home on that fateful day.

The day before the incident, she heard him saying that he had again failed to see the people he had to meet at the labor department.

She said her father kept going back to Labor to inquire about a temporary work authorization and money awarded to him since he lost his job a year ago.

Pabitra Dhimal, a management student in Nepal, said she is now beginning to find out why her father had discouraged her several times from following him to Saipan.

The eldest of four children, Pabitra Dhimal said she insisted that she wanted to work on Saipan so that she could stand on her own feet and help her father send money to her mother and three siblings.

She said she kept insisting until her father finally agreed to bring her to Saipan in Oct. 2005.

But months after she landed a job here, her father lost his, leaving her no choice but to stay with him.

She said her father never stopped looking for a new job..

A firm had promised her father a job and when this did not materialize, her father decided to return to Nepal.

This was why he kept returning to Labor to inquire about the $5,000 owed him by his former employer, Asia Pacific Investment Corp., pursuant to a Labor order.

Pabitra Dhimal said she has to comfort her mother who cries over the telephone every time she calls home.

ATTACHMENT 9.—ARTICLE FROM MARIANAS VARIETY, FRIDAY, MAY 11, 2007

DISTURBING

By Bruce Jorgensen, Kabul, Afghanistan.

THE sad experience of Ms. Babitra Dhimal's father typifies what transpires when governments and government officials fail to disclose to CNMI nonresident workers particularly, and the CNMI public generally, their basic human rights—in this case, their rights to seek/obtain asylum, refugee, and torture protection from both the CNMI and federal governments via either the commonwealth's current albeit legally defective refugee procedures, or the more protective procedures enacted by the federal government throughout the rest of the country.

Had Mr. Dhimal known or been apprised of these rights during the past 10 years—as these rights have been fully known to current/former CNMI and federal officials—he could have sought asylum/refugee/torture protection, rather than being subject to the CNMI's always malfeasant bureaucracy at the Department of Labor.

Do some checking. There's a reason that the feds several years ago precluded folks who are Nepalese citizens from entering Guam—that reason, I'm told, being that folks from Nepal were entitled to and did in fact seek political asylum./refugee/torture protection upon entry to Guam thereby precluding their return to Nepal.

This in turn derived from the recognition of Nepal's raging civil war throughout the past decade.

Ditto this outcome as to Mr. Dhimal, should he/his daughter opt to seek asylum/refugee/torture protection in the CNMI via either the CNMI's defective procedures or via the federal procedures which, in turn, would likely require suit being filed in the U.S. court on Saipan.

Equally disturbing—what some perceive to be not only a wholesale lack of sympathy toward a man driven to alight himself afire in order to draw attention to his government malfeasant-plight, but the hardhearted, abjectly mean-spirited derision of folks like Saipan Tribune columnist Bruce Bateman.

No sympathy or public remorse for Mr. Dhimal, yet a legion of letters debating things like animal welfare and rights as to veterinary medicine . . . a pretty sad commentary on the CNMI, some might contend.

Absolutely shameful that apparently nobody in the BenTan administration, nobody in the MattTan AG's office, nobody in the CNMI Guma In Hustisia, and nobody in the so-called CNMI Bar Association, has stepped forward to offer this fellow and his family some fundamental legal advice. If they won't help them, then I will . . . from thousands of miles away.

The word is "refoulement"—it kicks in the instance Mr. Dhimal and/or his daughter request asylum/refugee/torture protection, and it means that they cannot be repatriated by the CNMI or U.S. governments to their country of origin once they've requested asylum/refugee/torture protection, which, in turn, perhaps is why the CNMI wants to ship this poor fellow off to the P.I. ASAP.

ATTACHMENT 10.—ARTICLE FROM SAIPAN TRIBUNE, TUESDAY, MAY 29, 2007

'DHIMAL WAS AWARDED $9K BUT GOT ONLY $1.2K'

By Ferdie de la Torre, Reporter.

Two Labor administrative orders had awarded Nepalese security guard Buddhi Dhimal a total of $9,984.08 but he received only $1,256.65, according to Department of Labor counsel Dorothy Hill.

Hill, an assistant attorney general, told Saipan Tribune that the $1,256.65 Dhimal got was only for the 1998 case and that Labor is intending to take appropriate action to collect the $2,024.08 awarded him in the 2006 case.

Hill explained that in the first case, the Labor director brought a compliance agency case in 1998 on behalf of Dhimal and 10 other employees against Asia Pacific Investment Inc.

Dhimal used to work as a mason for the defunct Asia Pacific.

Hill said the Labor administrative hearing office issued an order on Feb. 16, 1999, finding the Asia Pacific Investment liable to pay Dhimal $1,988 in wages for work not provided and $5,172 for improper deductions.

She said Labor failed to collect against Asia Pacific Investment apparently because the company filed for bankruptcy.

However, the lawyer said, Labor did secure payment on the labor bond for Dhimal. Hill said the bond company gave Dhimal a $1,256.65 check in May 1999.

In January 2006, Dhimal, with the assistance of the Ombudsman's Office, filed an application to receive money from the Worker's Relief Fund.

"Under the law governing this fund, Public Law 11-66, wages ordered by a final order of the department that are uncollected may be paid to a worker only upon departure from the CNMI," Hill said.

Hill said Labor began processing the request, but then Dhimal changed his mind and decided he did not want to depart the Commonwealth.

"Accordingly, he was not paid any amounts from the relief fund. Had he not changed his mind, he would have been eligible to receive $3,000 from the fund," the counsel said.

In the second case, Dhimal filed a Labor case against Osmar Gani, owner of Lucky Security Service, in July 2006. Hill said Dhimal filed the case after he was arrested for working without lawful status for Lucky Security Service.

"Prior to filing the complaint, it appears that Mr. Dhimal cooperated with Immigration investigators and as a result, they deferred action on his deportation four times, the last expiring on Aug. 25, 2006," she said.

The Labor administrative hearing office issued an order on Dec. 18, 2006, awarding Dhimal $2,024.08 in unpaid wages and liquidated damages.

Because he was working without lawful papers for Lucky Security, Dhimal was not granted transfer relief and was directed to depart the CNMI in 30 days.

The hearing officer also noted in the order Dhimal's right to file an application for unpaid wages under the Worker's Relief Fund if the employer did not timely pay his wages.

Hill said Gani has not paid Dhimal as directed under the order so the matter has been referred to Labor's Collection Unit.

"Because Mr. Dhimal was working without a labor contract, there is no bond to be tapped," Hill said.

On April 24, the 49-year-old Dhimal poured kerosene on his body and set himself on fire along the hallway of Labor. He sustained second- and third-degree burns on his body and face. He remains in serious condition at the Commonwealth Health Center's intensive care unit.

It was his 21-year-old daughter, Pabitra Dhimal, who disclosed to Saipan Tribune that aside from the $2,024.08 Gani owes her father, Asia Pacific Investment also owes him over $5,000.

ATTACHMENT 11.—ARTICLE FROM MARIANAS VARIETY, TUESDAY, MAY 29, 2007

DHIMAL DIES AT RP HOSPITAL

By Emmanuel T. Erediano, Variety News Staff.

The former L&T security guard who set himself on fire at the Department of Labor died after he was transferred to a Philippine hospital on medical referral, according to his daughter.

Pabitra Dhimal, 21, said the Commonwealth Health Center called her at 10 a.m. yesterday to inform her of her father's death.

Pabitra said her father, Buddhi Dhimal, 49, was transferred to St. Luke's Hospital in Quezon City, Metro Manila at 3:30 p.m. on Saturday.

Prior to his departure, Buddhi Dhimal underwent hemodialysis treatment due to kidney problem that developed while he was confined in the intensive care unit of CHC.

Pabitra Dhimal said she was having a hard time deciding whether she would call their home in Nepal to tell her mother about the sad news.

She said her mother may not be ready to hear it.

She said she has been telling her mother that her father's condition was getting better because that was what CHC told her before her father was flown to the Philippines.

"I can't call her right now—I don't know what I am going to tell her," Pabitra Dhimal said while trying to hold back her tears.

She said she will have to ask CHC and St. Luke's to furnish her with copies of the documents pertaining to her father's condition prior to his death.

She said she needs to see the post-mortem from the Philippine hospital, and the doctors' findings at the time her father was brought out of CHC.

According to Pabitra Dhimal, CHC promised to give her today all the information she needs.

Since her father only had a one-way plane ticket, his remains will either be flown to Nepal or back to Saipan.

She said she was told that if her father would be sent back to Saipan, he would have to be buried here.

She said she still could not make a decision.

"They always told me he was getting better, but now they tell me he passed away," she said.

Buddhi Dhimal never regained consciousness since he set himself on fire at the Department of Labor where, prior to the incident, he had been going back in hopes of getting his repatriation ticket and the money due to him from the company that hired him illegally after L&T did not renew his contract.

Pabitra Dhimal said her father was wrapped with gauge, from his face all the way down to his legs, when she last saw him at the Saipan airport.

"I wanted to see his face but he was covered with gauge. It was all over the body," she said.

Pabitra Dhimal, who works at the 99 Cents Supermart in Garapan, is now her family's remaining breadwinner. Her mother, Kutuli is jobless and she has three other siblings back in Nepal.

ATTACHMENT 12.—ARTICLE FROM SAIPAN TRIBUNE, THURSDAY, MAY 31, 2007

FAMILY WANTS DHIMAL'S BODY FLOWN TO NEPAL FROM MANILA

By Ferdie de la Torre, Reporter.

The family of Buddhi Lal Dhimal wants his remains to be flown straight to Nepal from Manila, instead of it being brought back to Saipan.

Dhimal's daughter, Pabitra Dhimal, told Saipan Tribune that her mother wants the body to be brought to Nepal instead of it being returned to Saipan.

Pabitra, who works as a cashier at 99 Cents in Garapan, said she called home on Tuesday to inform her family about her father's death. Home for the Dhimals is Duhabi-4 Sunsari in Nepal.

She said she first talked to her 11th grade sister and explained to her what had happened.

"She started crying and crying. The my mother talked to me and she too started crying," Pabitra said.

Pabitra said the Commonwealth Health Center had informed her that they only have a one-way ticket for her father, so his remain should either come back to Saipan or go on to Nepal.

If the body is flown first to Saipan, the CNMI government will not be able to shoulder the expenses for its repatriation to Nepal, which means that it will have to be buried here.

Pabitra said she remains confused whether she will go home to attend her father's funeral or if she will just stay here because of her work.

Pabitra is the eldest of four children. Her mother is a housewife. The youngest is only an 8th grader. Except for Pabitra, all the children and their mother are staying in Nepal.

A CHC medical staff escorted Dhimal on Saturday night to Manila where he was treated at St. Luke Hospital. On Monday at 3:20 am CNMI time, he passed away.

The 49-year-old Dhimal poured kerosene on his body and set himself on fire at Labor on April 24, 2007. He sustained second- and third-degree burns on his body and face.

Public Health Secretary Joseph Kevin Villagomez on Tuesday said they are still waiting for the medical report from St. Luke's Hospital to know exactly what caused Dhimal's death.

ATTACHMENT 13.—ARTICLE FROM MARIANAS VARIETY, TUESDAY, JULY 17, 2007

DHIMAL'S DAUGHTER, HUSBAND TO JOIN FAS RALLY

By Emmanuel T. Erediano, Variety News Staff.

PABITRA Dhimal, the daughter of the former L&T security guard who burned himself at the Department of Labor last April out of frustration and died a month later, will join the rally of the Freely Associated States citizens opposed to a proposed amendments to immigration regulations that will restrict the employment opportunities of their spouses. The amendments are expected to take effect tomorrow.

"It's unfair for us," says, Pabitra Dhimal, 21, who is married to a Palauan and works as a cashier at a store in Garapan.

She said she and her husband will join the rally because "we don't like this kind of changes in our status."

Her husband is now jobless, and since her father died, she is the only breadwinner of her family in Nepal.

The eldest among four children, she has to send money to her jobless mother while stretching the budget for her and her husband here.

Going back to Nepal cannot be her option, she said, adding that she would lose her job once the amended immigration rule takes effect.

She said it is unfair that wives and husbands will end up "broken-hearted" just because one of them can no longer stay to work here.

"Plenty people will be against it," Pabitra Dhimal's husband said, adding that "we have to fight against those amendments."

He said if the new rule makes life harder for him and his wife, "I'm going to bring her with me to the U.S. She's not going to go back to Nepal."

One of their neighbors, who identified herself only as Rashid, is also a Palauan and is married to a Bangladeshi for almost six years now.

Rashid, who said she works as a cook, said the proposed new rule "is going to affect relationships, and will create bigger problems—thank God we don't have a child."

Dhimal Pabitra said the CNMI government appears to be not interested in informing the people to be affected by its proposed new rule.

They said it is unfair that they were not given enough time to comment on the issue.

SISTERS OF THE GOOD SHEPHERD,
THE NATIONAL ADVOCACY CENTER,
Silver Spring, MD, July 18, 2007.

HON. Jeff Bingaman,
Chairman, Senate Committee on Energy and Natural Resources, 304 Dirksen Senate Building, Washington, DC.

DEAR CHAIRMAN BINGAMAN: Thank you for holding a hearing to receive testimony on S. 1634, The Commonwealth of the Northern Mariana Islands Covenant Implementation Act of 2007. The National Advocacy Center appreciates the Committee's efforts to address the situation in the CNMI and requests that the following documents (attached) be included in the written hearing record in general support of the legislation:

- Statement of the National Advocacy Center of the Sisters of the Good Shepherd on S. 1634, The Commonwealth of the Northern Mariana Islands Covenant Implementation Act of 2007 (PDF)
- Karidat—List of Trafficking Victims (Excel spreadsheet)

These documents provide information on human trafficking cases in the CNMI and offer some suggestions for strengthening the legislation.

Should you or any committee members have any questions regarding the information in the documents, please feel free to contact Sr. Carol McClenon in our office.

Thank you again for this opportunity to share our concerns.

Sincerely,

ALISON L. PREVOST,
Lobbyist.

ATTACHMENT 1.—STATEMENT OF THE NATIONAL ADVOCACY CENTER OF THE SISTERS OF THE GOOD SHEPHERD

On behalf of the Sisters of the Good Shepherd and the victims of human trafficking served by Good Shepherd programs and affiliates throughout the world and particularly in the Commonwealth of the Northern Mariana Islands, the National Advocacy Center of the Sisters of the Good Shepherd appreciates this opportunity to share our thoughts and concerns about S. 1634, The Commonwealth of the Northern Mariana Islands Covenant Implementation Act of 2007. The National Advocacy Center of the Sisters of the Good Shepherd represents sisters and programs in 22 states, the District of Columbia, Saipan, and the Virgin Islands. We also collaborate with the Sisters of the Good Shepherd's NGO office in consultative status with the Economic and Social Council and with the Good Shepherd International Office for Justice, Peace and Solidarity in Mission in Rome.

Following the Good Shepherd mission of reconciliation and reaching out to people, especially women and girls who are marginalized by society, Good Shepherd Sisters, Associates, Lay Collaborators, and Volunteers throughout the world have been engaged in efforts to combat human trafficking and assist trafficking victims for many years. The Good Shepherd connection to the Commonwealth of the Northern Mariana Islands began in 1999, when Sr. Mary Stella Mangona was sent by her Provincial Superior to investigate reports of human trafficking and determine if the Sisters could provide assistance or intervention. Sr. Stella continues to work in the CNMI with the Community Guidance Center providing counseling services to both the local and immigrant populations and conducting outreach and educational services related to domestic violence, human rights advocacy for non-resident workers, and trauma recovery and empowerment for victims of human trafficking and sexual assault. She submitted testimony related to her experience and concerns about labor abuses and trafficking for the committee's oversight hearing on February 8, 2007.

Sr. Carol McClenon joined Sr. Stella in Saipan in 2003 to work at Karidat, a nonprofit social services agency affiliated with the Catholic Church—the local equivalent of Catholic Charities. Sr. Carol worked at Guma' Esperansa—House of Hope—with Lauri Ogumoro, who also testified before this committee in February. Sr. Carol's work was initially with women and children who had been affected by domestic violence and sexual assault, but beginning in 2005 also came to include work with victims of human trafficking into the CNMI. Since September 2005 until recently, Sr. Carol, at the request of Bishop Tomas A. Camacho of the Diocese of Chalan Kanoa, who had become aware of the growing number of incidents of trafficking coming to the attention of law enforcement and victim service providers, also served as a special liaison to the diocesan office on the topic of human rights in the Diocese, which encompasses all the islands in the CNMI. She worked closely with Sr. Stella Mangona, Lauri Ogumoro, and K.E. (a trafficking survivor), the delegation sent by Bishop Camacho, in their preparation for the committee hearing February on labor and immigration issues in the CNMI. Sr. Carol joined the National Advocacy Center staff in June 2007, but remains in close contact with the CNMI. The Sisters of the Good Shepherd remain committed to anti-trafficking work in the CNMI and have recently missioned Sr. Miriam Phan to Saipan to assist with victim services and translation.

Drawing from these connections, the National Advocacy Center offers this statement in general support of the proposed legislation, S. 1634, but with some reservation and suggestions for improvement. Knowing that the government of the CNMI opposes this legislation creates some difficulty for us as those we work with rely on some measure of government cooperation to assist the victims they serve. However, the continuing prevalence of human trafficking on the CNMI necessitates a stronger response than has yet been provided.

During the February 2007 testimony, the members of Bishop Camacho's delegation (and Sr. Carol, as one of his consultants) did not take a position on the hotly-debated topic commonly known on the Islands as "Federalization." They merely supplied information which had been requested about clients with whom we worked and for whom we advocated. At that time, delegation members still cherished some hope that the local government was truly interested in human rights and would make reforms for the purpose of creating a more just society and greatly reducing the incidents of human trafficking and labor law violations. This hope was based on experiences of collaboration with individuals in various government agencies who

worked valiantly as investigators, prosecutors, and hearing officers trying to implement laws and reduce an old backlog of labor cases. Here we would particularly like to mention the assistance provided by Assistant Attorney Generals Kevin Lynch and Dorothy Hill, although there were also many others.

The National Advocacy Center and our contacts on the CNMI had hoped that following the hearing, higher-ranking members of the CNMI administration would use the occasion to explore the concerns about human trafficking being brought to their attention and to add credibility to their commitment to ongoing reform. Unfortunately, such has not been the case. The current CNMI administration continues to employ the term "alleged abuses" to imply that reports made by victim services providers and human rights advocates about the problem of trafficking in the CNMI are exaggerated, fabricated, or based on speculation. This is troubling, because such reports stem from documented cases which were mostly referred by local government agencies themselves, or by Federal agencies such as the F.B.I. and the Office of the Federal Ombudsman.

Over the past two years, 43 victims of human trafficking into the CNMI have been referred to Karidat, including 9 victims in the 5 months since the hearing in February. Attached to this statement is a spreadsheet providing more detailed information on these cases. The most recent case referred to Karidat in June may involve an additional 16 victims, possibly including one minor. To understand the extent and continuing prevalence of the problems, one need only compare Karidat's current caseload with its own projections of the number of victims it would serve under the Department of Justice grant (to provide services to pre-certified victims of human trafficking) it applied for and received in December of 2006. In the grant application, Karidat projected it would serve 50 victims during the three-year grant period. However, since the grant began in December, Karidat has already served to 39 human trafficking victims—in just the first six months of the grant.

Unfortunately, in many of these cases investigations languish and victims are held in limbo. Rather than wait for government action, some victims have chosen to return to their home countries without restitution. Moreover, despite evidence of abuse, rumors abound that the victims are only making allegations in order to receive "T" visas (though many were not even aware of such visas when they sought assistance) and in some cases have delayed the certification of trafficking victims, which would provide them access to needed social services as they attempt to rebuild their lives.

Representative of these problems and the government's unwillingness to investigate and take action against labor abuses is the story of three female immigrant workers previously employed by the now defunct Benny's Place in Garapan. Promised jobs as waitresses in the CNMI, upon arrival the women were forced to wear skimpy clothes, were subjected to touching by patrons and forced to perform lewd acts with customers. In addition, the women were often forced to clean the homes of their employers, were illegally confined to their barracks, and were not paid promised wages. The three women filed a labor complaint in May 2005, but it wasn't until March of this year that their case was granted a hearing and they were identified as victims of human trafficking and referred to Karidat for assistance. While the employers were ordered by the Labor administrative hearing officer to pay back wages and damages to the victims, the criminal investigation also requested by the hearing office has yet to be acted upon by the Attorney General's Office, despite evidence of additional labor violations by the same employers from a labor hearing earlier in March of this year.

More detailed information about this particular case can be found in two attached news articles from the Saipan Tribune and the Marianas Variety. Of additional concern to the National Advocacy Center in this case and others is the lack of a victim-centered approach as required by federal anti-trafficking legislation. In addition to having to wait two years before receiving a hearing and needed assistance, the Saipan Tribune article reports that the women themselves were fined for Labor violations that were the direct result of their having been trafficked.

Understandably, the government of the CNMI wishes to rehabilitate its tarnished international reputation, but as Sr. Stella Mangona noted in her testimony, this desire has led to a defensive posture by the government, which downplays and refuses to address continuing problems. Quoting Sr. Stella, "[This] climate is not conducive for productive dialogue and search for systemic solutions to serious and ongoing problems." The insistence of the government that it has identified and fixed all of its immigration problems in the face of continuing abuses unfortunately demonstrates the unwillingness of the current administration for true self-reform and perpetuates a corrupt system that prevents people of good will who are working to end abuses from realizing justice.

For these reasons and in solidarity with the victims of human trafficking and labor abuses, the National Advocacy Center of the Sisters of the Good Shepherd believes that federal involvement has become necessary and supports the framework for reform outlined in S. 1634. However, we hope that amendments will provide greater clarity to the legislation in the following areas:

- In all areas regarding immigrant workers, workers' rights and specific references to applicable U.S. labor protections should be included and an appeals process for workers should be outlined, lines of accountability for addressing abuses and for worker redress should be made explicit, and penalties for employers found in violation of fair labor and immigration regulations should be spelled out;
- It should be made explicit that all U.S. anti-trafficking laws and penalties apply to the CNMI and sufficient funding for enforcement, investigation/prosecution of trafficking and labor abuse cases and victim services should be provided. Technical assistance and training should also be provided to all employees within the new federally administered immigration system on how to recognize, screen and serve victims of human trafficking. Given the prevalence of human trafficking within the region, a funding set aside for regional training/technical assistance for all federal immigration and customs officials should be included.
- The legislation should include clarifications to Violence Against Women Act and provide directions for the yet to be released regulations for the "U" visa to ensure that immigrants to the CNMI have the right to self-petition for relief if they are victims of domestic violence, sexual assault, or other forms of violence.
- Negotiations and cooperative agreements with sending countries should be considered to prevent continued recruitment fraud and falsification of documents;
- In both the GAO and local government reports mandated by the Act, information on efforts to combat human trafficking and the prevalence of trafficking should be required.

The above provides a basic outline for the improvements to the legislation that the National Advocacy Center believes are necessary, but we stand ready to work with the committee in its efforts to craft a bill that ensures that all workers on the CNMI are treated with justice, dignity, and respect and that abusive employers and government systems themselves are held accountable.

Understanding the economic difficulties facing the CNMI, the National Advocacy Center is yet grounded in Catholic Social Teaching which states that the beginning, the subject and the goal of all social institutions is and must be the human person and that the economy should be at the service of the people and not the other way around. In the United States Conference of Catholic Bishops' pastoral letter, Economic Justice for All, this fundamental principle is summarized eloquently:

> The basis for all that the Church believes about the moral dimensions of economic life is its vision of the transcendent worth—the sacredness—of human beings. The dignity of the human person, realized in community with others, is the criterion against which all aspects of economic life must be measured.
>
> All human beings, therefore, are ends to be served by the institutions that make up the economy, not means to be exploited for more narrowly defined goals. Human personhood must be respected with a reverence that is religious. When we deal with each other, we should do so with the sense of awe that arises in the presence of something holy and sacred. For that is what human beings are: we are created in the image of God (Gn 1:27). #28

Given the documented and continuing problems within the CNMI, the National Advocacy Center strongly believes that a new approach to immigration and labor regulation, grounded in the fundamental dignity of every person and respect for human rights, is necessary. We commend the Committee on Energy and Natural Resources and its staff for their work to bring justice to the CNMI and Senators Akaka, Murkowski, Cantwell, and Inouye for the introduction of S. 1634. We hope that its passage will provide desperately needed change to the CNMI and create a responsive government system that will be proactive in addressing and preventing abuses. Thank you again for this opportunity to share our concerns.

ADDENDA

De la Torre, F. (2007, March 30). Two owners of defunct club told to pay $120K. *Saipan Tribune.* Retrieved July 17, 2007 from http://www.saipantribune.com/newsstory.aspx?newsID=67034&cat=1.

> Three alien workers who were hired as waitresses under false pretenses were coerced into performing acts of a sexual nature and were restricted to their bar-

racks. One of the employers was also found to have submitted false documents to the CNMI Department of Labor and even to the Philippine government.

As a result, Labor yesterday held the owners of the defunct Benny's Place in Garapan liable to pay a total of $110,000 in wages and damages to the three waitresses and sanctioned one owner to pay $10,000 for numerous violations of law.

Labor administrative hearing officer Barry Hirshbein ordered Bienvenida C. Camacho and her former husband, Felipe SN Camacho, to pay $49,496 to Marites A. Aurelio, $30,607.40 to Ronna D. Santo Domingo, and $30,357.40 to Rosalina C. Oliva.

The awards were for unpaid wages, restriction/overtime payments, contract damages, liquidated damages, health examination payments, health certificate reimbursement, processing fee reimbursement, airfare reimbursement, and housing reimbursement.

Hirshbein said Mrs. Camacho is solely sanctioned in the sum of $10,000. Her alter ego, Michelle Corp., was also ordered to pay $1,000 in sanction.

Hirshbein permanently barred Mrs. Camacho and Michelle Corp. from employing nonresident workers in the CNMI.

He noted that while the business operation was conducted in Mr. and Mrs. Camacho's name, it was Mrs. Camacho who made all the business decisions.

The three workers were given 45 days to seek new employers. But they were each ordered to pay a $250 sanction for violating Labor laws such as failing to report unapproved changes to their contracts and accepting commissions not provided for in the contract.

'The evidence in this case is overwhelming. Mrs. Camacho flagrantly violated numerous provisions of the Nonresident Worker Act and Alien Labor Rules & Regulations,' Hirshbein said.

He pointed out that Mrs. Camacho's testimony lacked any credibility whatsoever.

'Fraud and deceit permeate every aspect of her business activities,' the hearing officer said.

Hirshbein noted that by her own admission, Mrs. Camacho submitted false documents to the Philippine government and that evidence supports a finding that she also filed false documents to CNMI Labor.

He also noted that there is strong evidence of tax fraud by reporting wages that were not paid; by not reporting commissions as salaries; and by failing to report the employer's share of ladies' drinks as income.

At the hearing, Aurelio, Santo Domingo and Oliva were represented by attorney Mark Hanson. Mrs. Camacho came with counsel Reynaldo Yana, and Mr. Camacho was represented by Stephen Nutting.

On May 23, 2005, the three filed a labor complaint against the Camachos and Michelle Corp.

The workers alleged that respondents failed to pay hourly wages; altered the terms of their employment contract; failed to pay overtime; improperly restricted them to their barracks; and made unlawful deductions from their wages.

The three stated that they were recruited in the Philippines as waitresses but when they arrived on Saipan they learned that their duties would be different.

Aurelio and Oliva testified that Mrs. Camacho instructed them to engage in intimate contact with patrons.

Hirshbein determined that 'the weight of the evidence is overwhelmingly in favor of complainants.'

Early this month, Labor administrative hearing officer Herbert D. Soll also found Mrs. Camacho and Michelle Corp. liable to three employees of their defunct Tagpuan Nightclub in Garapan for unpaid wages, 'training wages' and wages for reduced hours.

Soll also ordered the respondents Michelle Corp. and Mrs. Camacho to reimburse the workers for house rental, utility payments, processing fees, and medical fees.

The total award was over $6,000 in that case.

Eugenio, H. (2007, March 30). Alien workers say they were forced to perform sexual acts. *Marianas Variety*, Vol. 35 No. 11. Retrieved July 17, 2007 from http://www.mvariety.com/calendar/march/30/frontpage/front01.htm.

LABOR Hearing Officer Barry Hirshbein has asked the Attorney General's Office to investigate a possible case of human trafficking involving at least six alien workers who were brought here as waitresses but were allegedly coerced

by their former employers into performing sexual acts with bar customers, in addition to other possible criminal violations.

The workers were also not paid their hourly wages or overtime, were illegally confined in their barracks, and had illegal deductions made from their wages, among other labor violations.

On Wednesday, Hirshbein issued a 27-page administrative order awarding $110,000 in wages, damages and liquidated damages to nonresident workers Marites A. Aurelio, Ronna D. Santo Domingo and Rosalina C. Oliva.

Three of their former co-workers, who testified in the labor case, also suffered the same abuses from the employers.

Hirshbein imposed a $10,000 sanction against the employers: Bienvenida C. Camacho, Felipe SN. Camacho and Michelle Corp. who owned Benny's Place.

Mrs. Camacho managed the bar and was named as the primary responsible party in these abuses.

The workers testified that their employers would not pay their wages and overtime if they didn't perform 'acts of a sexual nature.'

'The evidence in this case is overwhelming. Respondent Bienvenida C. Camacho flagrantly violated numerous provisions of the Nonresident Worker Act and the Alien Labor Rules and Regulations,' Hirshbein said.

In some instances, Mrs. Camacho instructed the workers to fly from the Philippines to Hong Kong and then depart Hong Kong for Saipan as 'tourists' to avoid the Philippine Overseas Labor Office's requirements of authenticated contracts.

The workers were hired by the employers as waitresses for Benny's Place, but once they reached Saipan, their duties 'were very different.'

The workers testified that Mrs. Camacho instructed them to 'engage in intimate contact with patrons including hugging, kissing, touching the customers' genitals and allowing customers to fondle them.'

'Mrs. Camacho brought these workers into the CNMI under false pretenses,' said Hirshbein. 'In addition to the other possible criminal violations suggested by this case, the hearing officer recommends that the Office of the Attorney General determine whether there was a violation of the Anti-Trafficking Act of 2005.'

Hirshbein said Mrs. Camacho's 'testimony lacked any credibility,' and that 'fraud and deceit permeate every aspect of her business activities.'

By Mrs. Camacho's own admission, she submitted false documents to the Philippine government to hire the workers.

Mrs. Camacho also submitted false documents to the CNMI Department of Labor based on the evidence, said Hirshbein.

'There is strong evidence of tax fraud by reporting wages that were not paid; by not reporting commissions as salaries; and by failing to report the employer's share of ladies drinks as income,' said Hirshbein.

The workers were restricted to their barracks during non-working hours, and were required to sign payroll records under threat that they would not receive the commission payments but these payroll records did not reflect the actual amount they receive as wages. The wages were much lower than what was in the contract, and were subject to illegal deductions.

In the order, Hirshbein said nonresident worker Marites A. Aurelio is entitled to receive $49,496 for unpaid wages and overtime, liquidated damages, contract damages for unexpired term, health examination payments, and processing fee reimbursement.

Ronna D. Santo Domingo is entitled to a total of $30,607.40, while Rosalima C. Oliva, $30,357.40.

Hirshbein also permanently barred the respondent employers from employing alien workers in the CNMI.

VICTIMS OF HUMAN TRAFFICKING

Identified in the Commonwealth of the Northern Mariana Islands Served by Guma' Esperansa/Karidat

GE Case #	Intake Date	Initials	DOB	Country	Type	Referral Source	Criminal Case #	Civil Case #	LE	Certification	T-Visa	Comments
S05-019	5/7/2005	LRJ	11/28/2006	China	Labor	DPS	05-004787	USDC-05-00048	AGO	Certified	granted	T-3 Visa granted for son (derivative applicant)
S05-048	9/27/2005	LT	12/15/1981	P.I.	Sex	AGIU	05-0311B	na	AGO	Certified	granted	Moved to the United States 2/1/2007
S05-049	9/27/2005	KE	9/3/1983	P.I.	Sex	AGIU	05-0311B	na	AGO	Certified	granted	Moved to the United States 2/11/2007
S06-004	3/9/2006	AA	1/7/1989	P.I.	Sex	AGO	06-098	CAC-06-002-01	AGO	Precertified	filed	
S06-005	3/9/2006	EH	11/16/1986	P.I.	Sex	AGO	06-098	CAC-06-002-01	AGO	Precertified	na	returned to P.I. 05/25/06
S06-006	3/9/2006	SR	11/21/1987	P.I.	Sex	AGO	06-098	CAC-06-002-01	AGO	Precertified	filed	
S06-007	3/9/2006	AS	10/1/1987	P.I.	Sex	AGO	06-098	CAC-06-002-01	AGO	Precertified	filed	
S06-008	3/9/2006	JB	10/31/1982	P.I.	Sex	AGO	06-098	CAC-06-002-01	AGO	Precertified	filed	
S06-009	3/9/2006	CM	6/2/1985	P.I.	Sex	AGO	06-098	CAC-06-002-01	AGO	Precertified	filed	
CM06-001	3/28/2006	KA	4/25/1988	P.I.	Sex	AGO	06-098	CAC-06-002-01	AGO	Precertified	filed	
S06-013	4/9/2006	RD	3/14/1986	P.I.	Sex	AGO/DPS/AGIU	06-098	CAC-06-002-01	AGO	Precertified	filed	
S06-014	4/9/2006	MV	8/4/1980	P.I.	Sex	AGO/DPS/AGIU	06-098	CAC-06-002-01	AGO	Precertified	filed	
S06-015	4/9/2006	JM	10/31/1986	P.I.	Sex	AGO/DPS/AGIU	06-098	CAC-06-002-01	AGO	Precertified	pending	left program 4/19/06, returned to GE 1/12/07
S06-016	4/9/2006	RP	1/31/1986	P.I.	Sex	AGO/DPS/AGIU	06-098	CAC-06-002-01	AGO	Precertified	na	returned to P.I. 12/23/06
S06-017	4/9/2006	RC	10/17/1984	P.I.	Sex	AGO/DPS/AGIU	06-098	CAC-06-002-01	AGO	Precertified	pending	left program 4/19/06, returned to GE 1/12/07
S06-018	4/9/2006	MDLC	6/24/1984	P.I.	Sex	AGO/DPS/AGIU	06-098	CAC-06-002-01	AGO	Precertified	filed	
S06-019	4/9/2006	SA	1/12/1987	P.I.	Sex	AGO/DPS/AGIU	06-098	CAC-06-002-01	AGO	Precertified	na	left program 4/19/06, returned to P.I date unknown
S06-020	4/9/2006	AG	5/30/1982	P.I.	Sex	AGO/DPS/AGIU	06-098	CAC-06-002-01	AGO	Precertified	filed	
S06-021	4/9/2006	BC	6/29/1982	P.I.	Sex	AGO/DPS/AGIU	06-098	CAC-06-002-01	AGO	Precertified	na	left program 4/19/06, returned to P.I. date unknown
S06-022	4/10/2006	CG	7/27/1985	P.I.	Sex	AGO/DPS/AGIU	06-098	CAC-06-002-01	AGO	Precertified	filed	

S06-023	4/10/2006	JM	12/3/1983	P.I.	Sex	AGO/DPS/ AGIU	06-098	CAC-06-002-01	AGO	Precertified	filed	
CM006-002 ..	5/26/2006	JDC	9/16/1984	P.I.	Sex	AGO	06-098	CAC-06-002-01	AGO	Precertified	filed	
S06-051	12/4/2006	LG	12/7/1976	China	Sex	Ombudsman	charges pending	CAC-06-162-12	Ombud	Precertified	na	returned to China 3/10/2007
S06-052	12/4/2006	CS	11/26/1973	China	Sex	Ombudsman	charges pending	CAC-06-162-12	na	Precertified	na	returned to China 3/10/2007
S06-053	12/4/2006	XC	7/3/1974	China	Sex	Ombudsman	charges pending	CAC-06-162-12	na	Precertified	na	returned to China 2/7/2007
S06-054	12/4/2006	XZ	5/18/1975	China	Sex	Ombudsman	charges pending	CAC-06-162-12	na	Precertified	na	returned to China 3/10/2007
S06-055	12/4/2006	SY	1/24/1987	China	Sex	Ombudsman	charges pending	CAC-06-162-12	na	Precertified	na	returned to China 2/7/2007
S06-056	12/4/2006	XZ	10/20/1987	China	Sex	Ombudsman	charges pending	CAC-06-162-12	na	Precertified	na	returned to China 1/23/2007
CM07-003	1/12/2007	SC	7/30/1984	P.I.	Sex	Labor	06-098	CAC-06-002-01	pending	Precertified	pending	
CM07-004	1/12/2007	EM	6/22/1984	P.I.	Sex	Labor	06-098	CAC-06-002-01	pending	Precertified	pending	
CM07-005	1/12/2007	MS	1/3/1982	P.I.	Sex	Labor	06-098	CAC-06-002-01	pending	Precertified	pending	
CM07-006	1/12/2007	EM	12/20/1983	P.I.	Sex	Labor	06-098	CAC-06-002-01	pending	Precertified	pending	
S07-005	2/6/2007	PZ	1/2/1974	China	Sex	AGIU	charges pending	CAC-06-162-12	na	Precertified	na	returned to China 3/10/2007
S07-012	3/27/2007	XLL	8/19/1972	China	Sex	FBI	50HN19664		pending	Precertified	pending	Trafficker arrested by FBI in federal custody
CM07-07	4/10/2007	MA	1/28/1968	P.I.	Sex	Private Attorney	charges pending	L.C.No.05-168	pending	Precertified	pending	
CM07-08	4/10/2007	RO	8/13/1982	P.I.	Sex	Private Attorney	charges pending	L.C.No.05-168	pending	Precertified	pending	
CM07-09	4/10/2007	RSD	10/14/1982	P.I.	Sex	Private Attorney	charges pending	L.C.No.05-168	pending	Precertified	pending	
CM07-10	4/11/2007	CM	5/24/1984	P.I.	Sex	co-victim	charges pending	L.C.No.06-081	pending	Precertified	pending	
S07-014	4/20/2007	LFA	10/15/1972	China	Sex	Labor	ongoing investigation	L.C.No.07-022	pending	Precertified		Trafficker arrested in Guam on smuggling charges
S07-015	4/20/2007	FXQ	7/30/1965	China	Sex	Labor	ongoing investigation	L.C.No. 07-21	pending	Precertified		Trafficker arrested in Guam on smuggling charges
CM07-010	5/29/2007	ATB	1/7/1986	PI	Sex	co-victim	ongoing investigation		pending	Precertified	pending	
S07-027	6/7/2007	RLD	12/30/1985	PI	Sex	friend	referred to DPS, AGIU					Victim reports 16 women locked in, some minors

GE=Guma' Esperansa, Type=Type of Human Trafficking, DPS=Department of Public Safety, AGIU=Attorney General's Investigative Unit, AGO= Attorney General's Office, Ombudsman=Federal Ombudsman's Office, Labor=CNMI Department of Labor, LE=Law Enforcement Endorsement, USDC=United States District of the NMI.

INTERVIEW OF ATTORNEY BRUCE LEE JORGENSEN

FOR DISTRIBUTION—THOUGH UNEDITED

U.S. V. CNMI (SAIPAN) ASYLUM CRISIS

March/April 2005—PART 1 OF A 4-PART INTERVIEW SERIES

U.S. vs. CNMI Asylum: U.S. More Advantageous Lawyer Explains

Explaining that CNMI-situated persons remain entitled to seek asylum/refugee/torture protection from the U.S. Government, as well as the CNMI Government, lawyer Bruce Lee Jorgensen—who filed the first CNMI asylum lawsuits successfully, on behalf of 50 or so persons between 1999 and 2002, in the U.S. District Court on Saipan—emphasized that protections available under the U.S. system are far more beneficial to CNMI-situated persons than under the CNMI's new system which Jorgensen characterized as "rather flawed" and "perhaps well-intentioned, but nevertheless legally defective, and constitutionally violative, in multiple respects". "The upshot", Jorgensen said, "is that any and every CNMI-situated person who considers seeking asylum/refugee/torture protection—Falun Gong adherists, Catholic practitioners, women facing persecution for 'one-child-policy' violations, Tiannamon Square activists, Timil separtists, and others, who originate from the Peoples' Republic of China, Myanmar, Nepal, Sri Lanka, Iran, or other regimes characterized as 'totalitarian' and/or stricken by civil war, for example—should apply for protection from the U.S. Government by obtaining, completing, and submitting an application for asylum/refugee/torture protection to the U.S. Government, even before, and whether or not, they have applied, or intend to apply for, or have been denied, similar protection from the CNMI Government." And for queries from prospective applicants regarding asylum/refugee/torture protection from the U.S., Jorgensen suggests that persons contact an interested and knowledgeable group of advisers at an e-mail address created—usasylum@yahoo.com—for guidance and suggestions.

Jorgensen's remarks were elicited during a series of extraordinarily candid interviews recently, via satellite communication, in which Jorgensen agreed to familiarize this reporter, with: (1) some of the reasons that U.S. asylum/refugee/torture protection is far more beneficial and preferable to CNMI-situated persons than the CNMI's new system; (2) the perceived deficiencies plaguing the CNMI's new asylum mechanism; (3) the legal/practical obstacles involved when seeking asylum/refugee/torture protection; (4) the historical background from which asylum/refugee/torture emerged, during 1999-2003 in the CNMI, as an issue finally confronting the Federal and CNMI Governments in the courts here, to the vivid consternation of prior administrations and their leaders—including the means and opportunities by which prior CNMI administrations had over a 15-year-period failed to recognize, minimize, and/or timely resolve asylum/refugee/torture protection issues now so visible and problematic in 2005; (5) the lengths to which suppression/distortion of information, coupled with intimidation and swift retribution, were brazenly concocted, invoked, orchestrated, and meted out by Government officials—in tacit efforts to dissuade CNMI situated persons from learning the existence of, and timely seeking, these asylum/refugee/torture protections while in the CNMI; and, in ensuring that adverse, retaliatory, and/or punitive consequences would swiftly be directed at the few CNMI lawyers possessing the temerity, scruples, compassion, or conscience to meaningfully assist prospective CNMI-situated persons entitled to seek asylum/refugee/torture protection from the Federal and CNMI Governments; (6) underlying political considerations which gave rise to and have perpetuated this dilemma; and, (7) helpful hints, information, encouragement, and resources, for use by CNMI-situated persons interested in seeking asylum/refugee/torture protection, including prospective lawyers for representation, anticipated costs, and potential tactics.

"If you want a portrayal as 'The Answer Man'", Jorgensen offered, "then here are some relatively simple details, facts, and suggested answers, pertaining to relatively simple issues, which issues have been made to appear complex for whatever reasons, by the conduct of prior CNMI administrations. This conduct, in turn, giving rise to the irrefutable disgrace of the so-called 'leadership' in these prior administrations, to the unfortunate but irrefutable detriment of the current Babauta administration, and to the unbridled dismay of world leaders and international human rights observers who, unfortunately but quite reasonably, have come to view the CNMI's human rights record, in the context of asylum/refugee/torture protection, as dismally substandard, under any conceivable pretext of mandatory U.S. treaty compliance, past or present."

(1) U.S. vs. CNMI—Why U.S. Asylum/Torture Protection Is Better

"The fundamental basics which come into play, immediately upon the filing a request for asylum/refugee/torture protection" Jorgensen remarked "can be summarized by considering the primary two consequences: first, the applicant may ordinarily not be returned to his or her country of origin until the application is processed and/or adjudicated if necessary; and, second, the applicant may remain in the host country or a country other than the applicant's country of origin."

"By submitting an application for U.S. asylum/refugee/torture protection, to U.S. Government authorities, the applicant not only obtains protection from 'refoulement'—the fancy term for being sent back to a country of origin—but opens the door to the possibility that the applicant might be able to remain indefinitely not only within the CNMI, but also to remain indefinitely within the United States itself, that is Guam or the Mainland U.S. After all, we know from pleadings filed in the U.S. court a few years back, that some of the so-called Tinian Boat People were interviewed on Tinian for U.S. asylum/refugee/torture protection, by U.S. officials sent to Tinian for that purpose, and were later transported from Tinian to Carbondale, Illinois. This, of course, the governments have kept relatively hush-hush over the years, citing irrationalities like 'confidentiality', 'security', 'privilege', and 'national' concerns."

"And of course, while this will almost certainly require applicants to band together and file a lawsuit, or for one applicant to file what is termed a 'class-action' lawsuit, this route provides exponentially more protection for an applicant. Here are just a few reasons why that is so:

- the applicant seeking U.S. asylum/refugee/torture protection may ordinarily not be forced to the country of origin after filing until the application procedure/adjudication are completed;
- the applicant seeking U.S. protection may stay in the CNMI or—if past asylum proceedings on Tinian and Guam are used as precedent—might in all likelihood be permitted to enter Guam or the Mainland U.S. pending application/adjudication completion;
- the U.S. application procedure is quite time-consuming, often lasting years, meaning that 'refoulement' to a country of origin must be delayed during this time;
- the persons tasked with processing, determining, and adjudicating U.S. applications are U.S. Government officials—meaning, in turn, that they are not subject to CNMI political whim, CNMI political allegiance, or the CNMI legislative-merry-go-round-laws which typify the current CNMI House (consider, for example, the seemingly-weekly modifications to laws involving the CNMI's Garment Industry);
- the U.S. officials are hired and trained in accordance with U.S. law, are accountable under U.S. laws prohibiting misconduct like corruption, have undergone U.S. background investigations, and are U.S. monitored administrators and judicial officials tasked with processing/adjudicating U.S. applications;
- the U.S. courts—particularly the U.S. District Court on Saipan—are intimately familiar with the legal, equitable, and practical issues raised by effect of submitting to the U.S. Government an application for asylum/refugee/torture protection, have provided relief to past applicants, and have been generally sympathetic to applicants' plights;
- the CNMI courts have been not only unsympathetic in the past, but have exhibited outright hostility towards the notion of asylum itself, and towards lawyers who have assisted in the attempted processing of asylum/refugee/torture protection claims on behalf of persons indefinitely incarcerated by DOLI under the auspices of the CNMI Judiciary;
- the U.S. applicant has redress not only in the U.S. District Court on Saipan, but in the U.S. Appellate Courts, while the CNMI applicant is limited to review by the CNMI's courts whose judges are politically appointed;
- the U.S. application procedure requires no fee or payment to accompany the Application;
- the CNMI's system reportedly prohibits all persons from seeking CNMI asylum/refugee/torture protection unless and until there first exists a CNMI order by which an applicant is to be subjected to deportation by the CNMI (meaning nobody can apply until the CNMI says they are to be deported by the CNMI)—while, under the U.S. system, no deportation order is required, and anyone can submit, at any time; an application for U.S. asylum/refugee/torture protection;
- the CNMI's system reportedly punishes applicants whose CNMI applications are denied, by requiring those persons to be deported from the CNMI—while, under the U.S. system, such a deportation is not automatic, so a person might

continue working in the CNMI even if a U.S asylum/refugee/torture protection request is either pending or has been denied;

- the U.S. system ordinarily frowns upon 'secret' proceedings, while the use of 'secret' or so-called 'sealed' hearings appears to be prevalent with respect to CNMI immigration matters—as seen, for example, by review of the CNMI court's calendar showing four 'sealed' hearings this week;
- the asylum/refugee/torture protections arise due to U.S. Treaty obligations—which obligations preceded and are therefore in no manner connected to the CNMI's present control over immigration—which obligations arose long before the CNMI was itself established and are derived from human rights guarantees made by the U.S. Government, not the CNMI Government, to all other treaty signatories; and,
- the U.S. courts have ample experience dealing with class action, multiple-person, and Federal claims against the U.S. Government, respecting wholly federal treaty matters and protections assured, not by the CNMI, but by the U.S. Government itself."

U.S. vs. CNMI Asylum Part 2: Who Let Us Down? What Can Be Done?

During the Spring of 1999, former Marianas Variety reporter Ruth Tighe [1] wrote a series of articles [2] detailing the plight of at least 379 so-called "Tinian Boat People" who, attempting to enter U.S. soil via boats headed from the Peoples Republic of China to Guam, were diverted by the U.S. personnel, who then guided the boats—with their hundreds of illegal PRC citizens—to Tinian.[3] There, as later disclosed in files at the U.S. Court on Saipan and by the CNMI media, these illegals were permitted to seek asylum/refugee/torture protection, made available by effect of U.S. Treaty obligations binding upon the U.S. and, by effect of the Covenant, also binding upon the CNMI. The applications were provided by U.S. personnel flown to Tinian, where these U.S. officials interviewed the applicants, later transporting some of the applicants, by chartered jet, to Honolulu, Seattle, and Illinois, with some of them ending up in New York.[4]

The initial reaction from the CNMI Government, via then-Governor Pedro P. Tenorio's appointee DOLI Secretary Mark Zachares (an attorney), was kneejerk: outraged indignation, finger-pointing blame at the Feds, and shortsighted blunder. "This is the same [U.S.] administration that called our [CNMI] immigration . . . to be against American values" was a quoted remark. The CNMI also "criticized the inability of federal authorities to make swift decisions on what to do with" the persons seeking asylum/refugee/torture protection, before lecturing the Feds that "This is the same [U.S.] administration that talks about human rights and taking care of people."[5]

This shortsightedness by the Teno Administration had been pointed out nearly a year earlier, to these same CNMI officials, by the CNMI media. As one reporter wrote during June 1998: "Is anyone in the CNMI paying attention to where this path may lead? Is anyone in the U.S.? . . ." [t]here are the thousands of foreign workers already in the CNMI, many of whom are doubtlessly also desirous not only of escape from their own country but also of the [asylum/refugee/torture] freedoms offered in the United States. With a mechanism established for providing 'asylum,' the CNMI faces considerable risk . . . of being swamped with [persons] eager to take advantage of those freedoms."[6] And, even before then, CNMI officials knew full well of the ticking-asylum-time-bomb and its negative implications for the CNMI: for example, they had forewarning by effect of a footnote included in a U.S. District Court opinion written around 992—the name of which escapes me at the moment [7]—as well as the successful efforts by at least two CNMI-situated persons dur-

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[1] Tighe later wrote for the Saipan Tribune newspaper, controlled by CNMI Garment Factory mogul Willie Tan, including columns by Tighe under the "On My Mind" moniker.

[2] Tighe's articles included those published April 23, 1999, June 19, 1998, May 28, 1999.

[3] That hundreds entered was documented in a June 3, 1999 Saipan Tribune article titled "DOLI slams INS . . .". Stating, in parial excerptst: "This brings to 379 the number of undocumented Chinese nationals who are still staying in a tent city in the Northfield area of Tinian island"; "After the hearings were conducted in the United States, the Chinese were released with some of them transferring to as far as Honolulu while the others ended up in underground garment factories in New York"; and, "INS [from the U.S.] made a decision to divert the illegal Chinese . . . to Tinian . . . after it brought an entire boatload of undocumented Chinese to Seattle . . . on a chartered jet."

[4] Id.

[5] Id.

[6] June 19, 1998 On My Mind by Ruth L. Tighe.

[7] The opinion, issued by U.S. District Court Judge Alex R. Munson, was reportedly researched and written by Judge Munson's then-law clerk, Gregory Baka who later, after being hired as one of several Assistant U.S. Attorneys employed on Saipan, astonished many by taking the po-

ing the early/mid 1990s—Bruce Sui from China and Mohammed Kamal Hossain from Bangladesh—to seek asylum/related protections from the U.S. Government.[8]

Some of those person who were, in fact, paying close attention, included prospective asylum/refugee/torture protection applicants on Saipan—many employed in CNMI garment factories—along with attorney Bruce Jorgensen, some colleagues, and then-CNMI-Washington Representative Juan N. Babauta. In a July 27, 1999 interview, later published by the Variety, Jorgensen explained that all CNMI-situated persons from totalitarian countries, including the thousands of Peoples Republic of China ("PRC") nationals employed in Saipan's garment industry, could apply for asylum/torture/refugee protection from the U.S., thereby urging the Teno administration to refrain from permitting additional PRC nationals from entering the CNMI for garment employ. The next day, the CNMI leadership seemed to heed the warning, with Zachares announcing a total ban on entry permits for PRC nationals. And asserting—either mistakenly or falsely—that "[i]t is impossible to claim that you fear persecution in your native country when you're a [CNMI] contract worker."[9]

But the Teno administraton quickly reversed course, with the ban quickly lifted, and the garment industry thereby permitted to continue gaining entry to the CNMI for the 15,000 or so garment industry workers now here. All of whom, as Jorgensen had painstakingly cautioned, constituted prospective asylum/refugee/torture protection seekers who, upon application in the CNMI, could not then be deported to their countries of origin unless and until their application/adjudication process was completed—and with no such U.S. or CNMI processing mechanism in operation.

Having learned of this policy shift, Jorgensen successfully filed the first series of CNMI asylum lawsuits—civil numbers 99-0046, 00-0005, and 02-0023—in the U.S. District Court on Saipan. And while the settlement terms remain confidential, Jorgensen says there is "nothing surprising about the fact that, in the aftermath of settlement, the CNMI created its own asylum/refugee/torture mechanism seemingly designed to minimize, sidestep, hamper, discourage, scuttle, and derail efforts by CNMI-situated persons—including those foolishly brought in by garment factories after we had unequivocally established and asserted the fact of asylum protections for such workers—to seek the far more beneficial protections available under Federal Law from the U.S. by way of the Federal Courts, than the minimal protections offered by the CNMI's recently-implemented system." Characterizing the new CNMI system as "fraught with legal and practical shortcomings", Jorgensen also discussed responsibility/liability issues.

As to who should bear the responsibility arising by consequence from asylum/refugee/torture applicants, Jorgensen did not hesitate: "The full responsibility has always been, and remains, that of the United States Government whose treaties, including these human rights treaties, have placed this burden upon the CNMI general public. That is what the Covenant's relavant provisions require, no ifs, ands,

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sition that CNMI-situate persons are entitled to no right of asylum/refugee/torture protection from the U.S., despite its exclusive Treaty authority over and for the CNMI, simply because no procedural mechanism had been put into place by the Feds. Prior to Baka's tenure as Judge Munson's law clerk at the U.S. District Court on Saipan, attorney Bruce Lee Jorgensen held that position.

[8] The lurid details of Messrs. Sui's and Hossain's respective ordeals, were published in an article titled "Sweatshop 'Til You Drop" by Ben Jacklet, which can be viewed as a 2-part Feature at theStranger.com (Vol. 8 No. 25 March 11-17, 1999). The article detailed the involvement by Catholic Social Services and two Americans, Phil Kaplan and Wendy Doromal, painting an extremely unflattering portrayal of the CNMI garment industry, its connections to the Preston Gates & Ellis lobbyist/law firm and PGE's premier lobbyist Jack Abrahamson (now being grilled by U.S. officials concerning his links with Tom DeLay of Texas/Enron/Bush fame) to whom the CNMI paid millions for lobbying against a proposed U.S. takeover of CNMI immigration in the mid-1990s reportedly orchestrated at the insistence of former CNMI Governor Froilan Tenorio in tandem with CNMI Garment Industry insiders such as Beningno Fitial (now head of the CNMI House of Representatives—termed, by many in the CNMI, "the Garment House on Capitol Hill"). The response was CNMI-wide outrage, denial, and denunciation aimed at Doromal, Kapalan, the article, and its contents. And intensified lobbying to the tune of millions in payments by the CNMI (some of which later were determined to have constituted unlawful CNMI public expenditures). Of course, the facts on which the article was predicated were deemed false within the CNMI community, including the refusal to believe claims by a CNMI-situated woman named Tu Xiao Mei (who helped an ABC 20/20 News team research an investigative report, critical of the CNMI's garment industry, televised during 1998) whose CNMI boss, she explained, had ordered her to have an abortion and fired her when she refused. And given this history, it is noteworthy that both Former-Governor Froilan Tenorio, and current Speaker of the CNMI's "Garment House on Capitol Hill", are candidates seeking election during 2005 as the CNMI's next Governor.

[9] July 29, 1999 Marianas Variety and Saipan Tribune (as reported by Anence France Presse in US Immigratin News July 30, 1999.

or buts. U.S. Treaties mean U.S. responsibility. And that means a U.S. application/processing/adjudication procedure, like the one invoked seven years ago on Tinian, with U.S. funding, U.S. employees. And with transfer to U.S. soil of persons seeking asylum—to Honolulu, Seattle, Illinois, or New York—just as those from Tinian were so transferred."

Relative to the economic/social burdens inflicted upon the CNMI as a result of these U.S. human rights/treaty obligations, Jorgensen is equally emphatic: "One key here revolves around the term 'foreseeability'. Before 1998, the garment industry might have argued: 'Gee golly, nobody knew these employees we brought into the CNMI, and will keep bringing here, from totalitarian regimes like China, could seek asylum/refugee/torture protecton thereby preventing the CNMI from sending them home.' But that changed, both with the public warning we provided in July 1999, and then with the lawsuits later filed on my clients' behalf. Then-Washington D.C. Representative Juan N. Babauta was astute enough to understand this, and to see it through when he was elected Governor. You see, once the lawsuits were settled by the Babauta administration, there could be no argument—from the garment factory owners and principles, their SGMA flunkies, the Garment Speaker of the House, or his minions on Capitol Hill—that they did not forsee the consequences. And since damages which are proximately caused to a person or persons—like the CNMI general public—by the breach of a duty which is foreseeable may be recovered from the persons/entities who caused these foreseeable damages, it's easy to see who should pay, and pay alot. By way of voluntary contribution, private civil litigation, Article X Section 9 litigation by a 'private attorney general', or litigation initiated by the CNMI government itself. These damages, of course, should be paid by garment factory principals and their cronies, who remain in the CNMI. And that just might be on the horizon, via litigation initiated by the CNMI or private persons, if the Garment House on the Hill does not now seek to exempt these garment-folks from this liability in yet another weekly-round-robin-legislative session."

U.S. vs. CNMI Asylum Part 3: CNMI Law Defective/Related Obstacles

Defective CNMI Asylum Law

"Simply put, the asylum/refugee/torture protections available to persons in the U.S. and territories like Guam—being more readily available to a wider group of persons than permitted under the CNMI's new scheme, with more beneficial consequences, far less likelihood of political/legislative whim or interference, and administered by U.S. personnel trained by the U.S. and held accountable under U.S. corruption/related laws—leave no question that the CNMI's asylum system is both legally and practically defective in multiple respects", said attorney Bruce Jorgensen during a recent interview. "Please consider some of the following circumstances which suffice to explain this conclusion:

"First, the U.S. procedure for asylum/refugee/torture protection submission, processing, and adjudication, if not made readily available on a wholly equal basis—that is, to every person entitled to protections implicit in the U.S. Government's agreement to enter into and abide by these treaties—would violate equal protection and due process rights guaranteed by effect of the U.S. Constitution, as well as U.S. laws barring discrimination based on locale."

"Second, there appears scant authority which might permit a U.S. state, territory, or commonwealth, to usurp from the U.S. Government, the oversight, regulation, and compliance with the U.S. Government's international obligations, rights, or responsibilities—whether arising by treaty or otherwise. Consider it this way: if the State of Florida was concerned about losing Federal funding as a consequence of thousands of Cuban and Haitan nationals coming to and seeking asylum in Florida, would Florida be permitted to initiate and administer itself an asylum program more restrictive than the U.S. asylum system? Certainly not. This is what Federal obligations are all about. Similarly, if the CNMI is concerned about losing control over CNMI immigration as a consequence of thousands of Chinese nationals being permitted to enter the CNMI and seeking asylum, the CNMI may not be permitted to initiate/administer an asylum program more restrictive than the U.S. asylum system in violation of U.S. constitutional safeguards requiring equal protection and process. And the CNMI Government's lawyers are certainly aware of this fact and must have explained it to their bosses by now, especially having been reminded of it most recently in the CNMI v. U.S. case, involving submerged lands around the CNMI, which the CNMI being represented by DOLI lawyer James Livingstone lost on February 24, 2005.[10] The U.S. Ninth Circuit Court went to great pains to explain this scenario. Consider some of the court's language, for instance: 'Article 1 [of the

[10] CNMI v. U.S., Slip Opinion No. 03-16556 (9th Cir. Feb. 24, 2005).

Covenant] establishes that the United States has "complete responsibility" for and authority with respect to matters relating to foreign affairs';[11] 'The paramountary doctrine draws its authority from the inherent obligations placed on the sovereign governing entity to conduct international affairs and control matters of national concern . . . The Covenant unquestionably places these powers and obligations in the United States';[12] 'There is no indication . . . that the United States contemplated a permanent divestment of the paramount rights that the United States would obtain upon assuming sovereignty [under the Covenant]';[13] 'As the paramountcy cases established, that state interest is inferior to the federal rights.';[14] and, 'Laws passed by the CNMI legislature to the contrary are inconsistent with the paramountcy doctrine and are pre-empted by federal law.'[15]

"Third, under the U.S. system, all persons may apply for asylum/refugee/torture protection, whether or not a deportation order has been issued. The CNMI's law, requiring such an order, is consequently more restrictive in violation of U.S. equal protection/due process constitutional obligations."

"Fourth, the U.S. system provides U.S. employed administrators, judges, and the like, who have undergone U.S. training, U.S. security screening, and other U.S. requirements, having no political, family, economic, or similar obligations to the CNMI or persons/businesses situated within or connected to the CNMI. The CNMI's scheme does not provide these protections, so there arise, yet again, instances of equal protection/due process/discrimination by which CNMI-situated persons are subjected, while those in the U.S. are not."

"Fifth, the U.S. system inherently subjects U.S. personnel within the system to federal corruption standards, with federal criminal punishment and non-parole jail sentences for violation, while the CNMI's system does not. Again, this affords U.S. situated persons far greater protection and benefit than is available to those in the CNMI, in violation of equal protection, due process, and discrimination prohibitions."

"And Sixth—perhaps most importantly—is that persons seeking protections respecting asylum/refugee/torture under the U.S. system, have been already permitted to go from the CNMI to Honolulu, Seattle, Illinois, and elsewhere in the U.S. itself, while those seeking help from the CNMI will only be permitted to stay in the CNMI."

"It really boils down to this: the U.S. Government may not opt to provide greater treaty protection to one group of people, and lesser treaty protection to another group of people, where the obligations to protect arise from treaties with which the U.S. exercises full and exclusive treaty duties, obligations, and sovereignty. The Feds may not and must not be allowed to discriminate against and provide lesser protection for persons situated within the CNMI. This is not a CNMI immigration matter, but a U.S. treaty matter, of human rights and jus cogens (international common/customary law)—do away with the INS, do away with DOLI, do away with TSA and post-9/11 Orwellian law, and the U.S. still has these treaty obligations. And with no double-standards or preferential treatment permissible, to the detriment of CNMI-situated people."

"The U.S. may not pick and choose which protections they may or may not provide to the CNMI. Birth in the CNMI, for example, confers U.S. citizenship. The U.S. may not change that by deciding, for example, that only birth on Guam will suffice for U.S. citizenship. Nor would the U.S. heed the contention that, since the Feds give CNMI-situated persons diminished asylum/refugee/torture protection rights, then persons in the CNMI may refuse to register for prospective military service."

"Whether there might also rise a challenge, on the basis that the Garment House on Capitol Hill seem to change the CNMI's laws as often as their socks, might be interesting as well. Certainly, the unstable nature of the CNMI's laws respecting DOLI and the garment industry, would give rise to equitable considerations substantiating the flawed nature of the CNMI's asylum scheme."

Related Obstacles

Beyond the flawed nature of the CNMI's new mechanism, it was also pointed out that obstacles likely awaiting CNMI-situated persons seeking U.S. asylum/refugee/torture protection, included U.S. resistance, and CNMI political concerns.

"The U.S. Government is not likely to voluntarily provide the procedural mechanism required to fulfil these treaty obligations if the past is any indication. U.S. offi-

[11] Id. at 2189 (1st full paragraph).
[12] Id. at 2195 (2d full paragraph).
[13] Id. at 2199 (2d full paragraph).
[14] Id. at 2200 (1st full paragraph).
[15] Id. at 2203.

cials employed by the INS and stationed on Saipan, for example, refused to accept the completed I-589 and I-590 forms submitted to them on behalf of my clients, reputedly on the advice of former Assistant U.S. Attorney Gregory Baka," Jorgensen mentioned. "So a lawsuit or series of lawsuits, filed in the U.S. District Court on Saipan, will probably be necessary—either by an individual, a group of individuals, or by way of what is called a 'class action' lawsuit. But this process might be expedited, for example, by seeking only what is called 'declaratory relief' and/or a 'consent decree'. And, of course, anyone seeking protection, who participates as a party in such a suit, would seek from the U.S. Court a protective order preventing their deportation until the lawsuit is resolved, which is the type of protection made available to my clients, by the U.S. court, in earlier cases ultimately settled."

This stubbornness on the part of the U.S. is not surprising with respect to asylum in the CNMI, however. As recent experience shows "this is the same U.S. Government which, through its U.S. officials, went to extraordinary lengths in an effort to deprive the privileges of U.S. citizenship and U.S. passport possession to the small group of so-called 'Stateless People' recently on Saipan. And there, as in this instance, the Feds adopted as part of their defense the tactics of delay, legal wrangling in court, and the like, aimed at frustrating and discouraging the persons entitled to the rights they finally attained only by suing the U.S. and prevailing in the Federal Court system. This as, all the while, U.S. officials on Saipan and elsewhere routinely, but mistakenly, opined that these folks had no substantial likelihood of success, and that the U.S. would prevail. And like they are now doing with the Dekada folks."

Then there are the CNMI's politics. "Many in the CNMI fear that, if U.S. treaty/refugee/asylum protections are provided to CNMI-situated persons, then the Feds will take over the CNMI's immigration control. First off, this does not appear likely, as it takes a Congressional law to accomplish a takeover. But more importantly, many people including myself believe that a U.S. takeover would be in the CNMI's best interests for a wide range of reasons: the U.S. would have to hire hundreds of U.S. immigration employees, almost certainly from the CNMI, who then would be paid by the U.S., and would receive U.S. funded benefits/COLAs/per diems/retirement/fixed expenses/equipment/vehicles/airplanes/patrol vessels/resources/training/travel, all courtesy of the U.S. Government's pocketbook—translating into substantial cost savings to the CNMI Government's payroll, expense, and retirement systems. And then the CNMI-situated persons seeking asylum/refugee/torture protection would be able, during the application process, to depart the CNMI for Guam or—as have many Guam-situated seekers—for the the U.S. Mainland. But perhaps most importantly, in the culture of 'finger-pointing' and 'blame-avoidance' which typifies U.S./CNMI relations, the tables would finally be turned against routine U.S. criticism of the CNMI's untenable immigration situation, as the CNMI's immigration woes are almost certain to persist—by virtue of foreign laborers having come to be expected as an institutional necessity to CNMI development—with the result of U.S. control being the CNMI's ability to finally point the accusatory finger-of-blame at the U.S., while avoiding U.S. repercussions, as immigration problems most certainly arise to plague the CNMI in the future."

U.S. v. CNMI Asylum Part 4: CNMI Court Hostility; Help For Asylees

"The U.S. Constitution controls, as the Supreme Law, over any and all treaties binding by effect of a two-thirds U.S. Senate vote, over laws enacted by the U.S. Congress, over laws enacted by the CNMI Legislature, and over all administrative 'agreements' or 'understandings' by and between U.S. and CNMI officials. The U.S. Supreme Court controls all interpretation of the U.S. Constitution by effect of the Court's rulings. And the Court made crystal clear with the 1950's case Brown vs. Board of Education of Topeka Kansas, and has emphatically reiterated since then, that the disparate notion of 'Separate But Equal' treatment of persons entitled to the full protections of the U.S. Constitution is wholly unlawful." This, explained lawyer Bruce Lee Jorgensen, is the unavoidable obstacle precluding U.S. and CNMI officials from preventing CNMI-situated persons from seeking and obtaining U.S. asylum/torture/refugee protections far more beneficial, to these seekers, than those similar but less beneficial protections ostensibly available under the CNMI's recently enacted legislative scheme. "And while these Government officials have attempted, and continue, to devise systems by which this fact of U.S. Constitutional Supremacy is circumvented, the U.S. Judiciary, if called into play by the filing of federal lawsuits on these seekers' behalf, will not let this happen," Jorgensen reassures.

"Fixation on the Covenant—the agreement by which the CNMI was established as a U.S. Commonwealth—as the focal point of asylum/refugee/torture protections, tends to obfuscate this fact of the U.S. Constitution reigning supreme. Because the

Covenant is, in the end, not a U.S. Treaty presented to and ratified by two-third of the U.S. Senate, but merely a run-of-the-mill law, enacted by the U.S. Congress. There it is: a mere federal law codified in the U.S. Code. And a law, consequently, whose terms and application—like any other U.S. law, regulation, administrative ruling, or official 'agreement' or 'understanding'—must wholly comport with the U.S. Supreme Court's denunciation of, and prohibition against, 'Separate-But-Equal' treatment of persons entitled to the full protections of the U.S. Constitution, as are persons physically situated in the CNMI who have arrived within the CNMI by any means, lawful or otherwise. So any fixation should be redirected at the outset, away from the Covenant, and pointed instead directly at the U.S. Constitution as the Supreme Law."

"Neither the U.S. Constitution, nor the Covenant, permit U.S. and CNMI officials from ignoring this Supremacy Doctrine. One result is that neither U.S. nor Federal officials may enact laws, or implement formal/informal 'agreements' or 'understandings', which effectively impose, upon CNMI-situated persons, standards/procedures which are more stringent or less beneficial, than those standards/procedures/benefits made available to U.S. Mainland-situated person, or to persons situated 35 miles away from the CNMI's southernmost island (Rota) on the U.S. Territory of Guam. Beyond the Constitutionally violative nature of such a scheme, consider just one of the practical inequities which might otherwise result: persons from totalitarian regimes like the Peoples' Republic of China ('PRC') who unlawfully enter Guam and seek asylum/refugee/torture protection are granted full U.S. protection, permitted to remain indefinitely, and freed pending disposition to travel anywhere in the U.S. or its territories; while persons from this same PRC totalitarian regimes who have lawfully been permitted to enter the CNMI and seek asylum/refugee/torture protection are denied U.S. protection and deported, despite the fact of application not of a 'similar' U.S. treaty, but the exact same treaty as binding on Guam? And so illegal entrants are rewarded while legal entrants are penalized by application of standards/procedures/benefits conferred by the exact same treaties?!?"

Jorgensen later alluded to historical background by way of explaining further. "Think of an umbrella or a shield. Both used for protection. Well during the 1940s and later, long before the CNMI was created in tandem with the U.S., there was offered to the U.S. by the International Community an 'umbrella' or 'shield' in the form of various asylum/refugee/torture protections. One umbrella. One shield. And upon accepting this 'umbrella/shield', the U.S. agreed to use the 'umbrella/shield' to provide asylum/refugee torture protections to all persons falling within the ambit of U.S. Constitutional rights. Next came the 1950's and the Brown decision. 'Look' said the U.S. Supreme Court, 'you can not have use separate, different, school buildings, one to educate the White boys and girls, and one to educate the Black boys and girls. None of this "Separate-But-Equal" nonsense. You must use the same building because we have determined that equal right and due process clauses of the U.S. Constitution bar this "Separate-But-Equal" pretext.' Well this, of course, meant as well that the U.S. was and remains limited to using one, and only one 'Treaty Umbrella', one and only one 'Treaty Shield', which must be made equally available to protect all entitled to U.S. Constitutional rights—no 'Separate-But-Equal' umbrellas or shields allowed."

"Now along came the 1970s, with the U.S. approaching the folks on Saipan, Tinian, and Rota—and vice versa—and the U.S. folks saying: 'Look, the U.S. is willing to sign this Covenant, and to make this Covenant into U.S. law, if you specifically agree as part of this Covenant that you are and shall remain prohibited from owning your own 'Treaty Umbrella'/'Treaty Shield' but, instead, agree to use exclusively the 'Treaty Umbrella'/'Treaty Shield' already possessed by the U.S. No substitutions, no alternatives, no 'Separate-But-Equal' umbrellas/shields, no bigger umbrellas/shields, no smaller umbrellas/shields. The CNMI must agree to use the one and only U.S. provided 'Treaty Umbrella'/'Treaty Shield'. And, by the way, the CNMI must further expressly agree that all provisions of the U.S. Constitution relating to equal protection/due process, as well as the U.S. Supreme Court's interpretation of these U.S. Constitutional protections, shall be binding upon and within the CNMI."

The CNMI people, in essence, said "O.K. We'll agree to that in exchange for the extraordinary benefits the U.S. has agreed to give us, like: automatic U.S. citizenship; birth within the CNMI conferring U.S. citizenship; unrestricted rights to enter/reside/work/buy land anywhere in the U.S.; more per-capita federal spending, within the CNMI, of tax money paid by U.S. Mainland residents, than anywhere in the 50 U.S. states themselves; no taxation upon persons within the CNMI payable to the U.S Treasury; the exclusive right for 'persons of NMI descent' to own land in the CNMI to the exclusion of all other U.S. citizens; full control over CNMI immigration subject to U.S. takeover upon enactment of any U.S. laws permitting takeover; no

worries over military defence which the U.S. shall provide via the U.S. Coast Guard, Navy, etcetera—basically all of the benefits and few of the burdens of U.S. affiliation. And in exchange, we in the CNMI agree to restrict CNMI-situated persons to use of only the U.S. single 'Treaty Umbrella'/'Treaty Shield'. No mini-umbrellas/shields, no partial umbrellas/shields here. The 'whole nine yards'". And so this agreement, called the Covenant, was enacted—not as a U.S. Treaty by a two-third Senate vote, but as a simple U.S. law subject to all U.S. Constitutional protections respecting equal protection/due process and the U.S. Supreme Court's interpretative enforcement of these protections via the Supremacy Clause.

"And so we have this single 'Treaty Umbrella/Shield' provided by the Covenant. And the U.S. Supreme Court's prohibition against 'Separate-But-Equal' treatment to all persons granted equal rights/due process/equal protection by effect of the U.S. Constitution including all persons in the CNMI. Now may the U.S. Congress or the CNMI Legislature, by law or by 'agreement' or by 'understanding' limit, ignore, circumvent, or prohibit application or availability of any portion of these Constitutional protections to persons in the CNMI—such as persons from totalitarian regimes seeking asylum/refugee/torture protection from the U.S. while physically present in the CNMI? No—at least not lawfully. Neither the he U.S. nor the CNMI may lawfully say, in essence: 'Well, the folks on Guam and in the U.S. Mainland can use 100 percent of this one "Treaty Umbrella" we own, and may receive 100 percent protection/benefit from this one "Treaty Shield" we own; but the folks in the CNMI may only use 40 percent of the "Treaty Umbrella" and receive 40 percent protection/benefit from the shield.' Because any such policy/procedure, whether enacted by U.S. law, CNMI law, or U.S./CNMI official 'agreement'/'understanding' would itself be not worth the paper upon which it is written because it is violative of the Supreme Law guaranteed by the U.S. Constitutional protections as to equal protection/due process. Neither the U.S. nor the CNMI may let Guam/U.S. Mainland residents use the entirety of this single 'Treaty Umbrella'/'Treaty Shield', while limiting persons in the CNMI—the Westernmost of any U.S. Commonwealth—to only the Western quadrant of this 'Treaty Umbrella'/'Treaty Shield'. And think of another practicality—does application of U.S. law used by the U.S., in effect as a 'Sword', depend on where persons are physically situated? No, if you violate a U.S. law making criminal drug dealing which you committed in Florida, and you go to the CNMI after your dealings, you are hauled into the U.S. Court in the CNMI under U.S. domestic law enacted by the U.S. Congress to face the consequences."

"And so," Jorgensen paused, "none of this is a surprise or revolutionary. There is no Rocket Science involved. No intellectualism requiring an Einstein geneology. Goodness, if a 'Dolt' like me can understand this, than the intellects heading the CNMI's Judiciary five years ago, like the CNMI's attorneys back then, certainly understood this."

Why, then, was the simmering issue not fully and finally resolved five or more years ago? And why, too, did the CNMI Governments of the 1990s, under former Governors Froilan Tenorio and Pedro Tenorio, and with knowledgeable CNMI legislators like House Speaker Beningo Fitial in control, not only fail to restrict the number of PRC nationals entering the CNMI but, rather—well aware of this dire scenario, overwhelmingly detrimental impact, and imminent demise of the CNMI's garment industry come the subsequent Babauta administration—opt instead to permit thousands upon thousands more PRC garment workers (estimated at 15,000 or so) entry for employ in the CNMI's garment industry now in the throes collapse on Saipan? "Perhaps," Jorgensen surmised, "the fellows then heading the CNMI Judiciary, and the highly paid in-the-know attorney then employed to counsel the CNMI—like Herbert Soll, Mark Zachares, Robert Goldberg, and David Sosebee—were playing checkers rather than chess with the issue. Focused on emotions, personalities, on what they perceived as their source of immediate irritation, rather than focusing more professionally on the big picture at hand. Kind of like having anger and vengeful thoughts cloud and interfere with objective reason. Or like playing a game of pool, and looking only at the cue ball and a single target-ball, rather than looking all 16 balls and where they are situated on the table. Or, maybe, they simply lacked the backbone, impartiality, or political will to timely, rationally, equitably, or lawfully deal with the long range asylum/refugee/torture protection issue, in lieu of directing hostility, discouragement, retribution, and attempted intimidation, at who and what they perceived to be the irritant—while foolishly hoping that this tactic would, in turn, have a 'chilling effect' on the few pro-rights lawyers and lay persons willing to become and remain involved, while making the irritant, and the ultimate problem, either disappear under the carpet, or go away forever."

CNMI Judiciary: Failure/Lost Confidence/Hostility/Retribution

Pressed to document what some perceive, and previously characterized by Jorgensen, as the CNMI Judiciary's hostility or vindictiveness regarding the asylum/refugee/torture protection issue, and respecting those attorneys and others asserting asylum/refugee/torture claims for protection between 1999 and 2002, Jorgensen cited historical background, multiple lawsuits, and related proceedings documented in records located in the U.S. Court/Saipan, the CNMI Superior Court, quasi-judicial entities including the CNMI and Hawaii bar associations, and other materials.

"Now bear in mind, that CNMI Judiciary insiders, like the CNMI judges and attorney/law clerks of the 1990's, had first glimpsed the imminent CNMI asylum headaches more than 10 years ago, during the early 1990's. Just as the CNMI Judiciary was the first venue in which came to light the so-called 'Article XII' real estate claims[16] which gave rise to protractive, vexatious, litigation during the late 1980's and into the 1990's, with the effective destruction of the CNMI's previously-vibrant economy in its wake, and the resulting insistence by CNMI leadership at that time—folks like Former CNMI Governor Froilan Tenorio and longtime CNMI House Speaker/member Benigno Fitial[17]—that a CNMI Garment Industry reliant nearly exclusively upon a labor force of Peoples Republic of China nationals should be vastly and swiftly expanded, to its year 2003 level of 15,000 or so foreign workers, as a principal means of 'improving' the CNMI economy ruined by Article XII claims barred after only after this ruin had occurred. And in both instances—both the looming asylum matter and the Article XII land claims, the CNMI Judiciary had first crack and best opportunity at providing immediate, rational, lawful, and equitable solutions to these relatively simple issues. But instead, these CNMI judges of the 1990's—many still there or CNMI-employed—did just the opposite. And as a clearly foreseeable consequence, both the number and scope of asylum claims, like Article XII claims before them, have dramatically increased, mushroomed, and escalated, to the point where the CNMI's present leadership, headed by Governor Juan Babauta, now has been forced into dealing with a crisis respecting asylum/refugee/torture protection, which crisis was thrust upon his administration not only by predecessors like former CNMI Governors Froilan Tenorio and CNMI House Speaker

[16] The CNMI has its own constitution which, at Article XII, restricts ownership of land to "persons of Northern Mariana Islands ('NMI') descent" meaning, essentially, that persons of NMI descent may lease their land pursuant to 55-year leases to others, but not sell the land. This, in turn, means that persons of NMI descent may travel 100 or so miles south to Guam, a U.S. Territory, and purchase land from their cousins or uncles, or go to the U.S. Mainland and buy land from Statesiders, but these same Guamanians and Statesiders, like all others, may not purchase land within the CNMI—only lease the land for 55-year terms. During the 1980's, massive investment was infused into the CNMI by way of property leases by persons of NMI descent to Japanese, U.S., Asian, Australian, and other investors. Land values skyrocketed and so, apparently, did greed. Persons who had leased their properties, then saw the investors profit either by subsequent development like hotel/residential construction, or subleasing to others, for profit. And so a legal theory revolving the so-called "resulting trust" theory was devised by a few attorneys, including Theodore Mitchell, in an effort to reclaim the property leased by the original owners of NMI descent, who naturally wanted also to keep the lease payments they had received. Never mind that some of the lawyers closely involved in the underlying transactions later became judges with the CNMI Judiciary with some on the bench even today. The lawsuits were entertained by the CNMI Judiciary for years and years. And then for more years when CNMI advocates of this reclamation, seeing the writing on the wall by virtue of the right then to appeal CNMI trial court rulings through the U.S. Court system, prevailed upon the CNMI Legislature to create their own CNMI Supreme Court, with many of these same CNMI judges aboard. Naturally, the litigation went on and on given life by this new CNMI Supreme Court. And so the investors said "Good-bye" to the CNMI in droves, astounded not only by the fact of the claims, but even more so by perceived complicity of the CNMI Judiciary in not only entertaining the claims, but effectively protracting matters for years on end, thereby applying the death knell not only to multimillion-dollar-commercial investors, but scores of local residents not of NMI descent who simply wanted to build family homes on leased real estate in the CNMI. With outrage and fierce repercussion from the international business community which, ever since, generally has viewed CNMI investment as a highly speculative endeavour. Japan Air Lines' headache with the Nikko Hotel property on Saipan is just one example.

[17] As previously mentioned in passing, at n.8 above, Tenorio (CNMI Governor between 1993 and 1997) and Fitial (longtime CNMI House or Representative member, perennial employee/promoter and/or beneficiary of Saipan garment-industry-magnate Willie Tan, and current/longtime Speaker of the CNMI House of Representatives dubed the "Garment House" by many) have announced their candidacies for election as the CNMI's next Governor, to be decided in Fall 2005 elections. Key/longtime friends of the CNMI's garment industry, they were at the CNMI helm as events relating to initial requests for asylum/refugee/torture protecton, by CNMI-situated persons, came to insiders' knowledge during the early-mid 1990's, as described previously here, e.g., in the text at n. 8, and in the lurid orderal of Messrs. Sui and Hossain published in an article titled "Sweatshop 'Til You Drop" by Ben Jacklet, which can be viewed as a 2-part Feature at theStranger.com (Vol. 8 No. 25 March 11-17, 1999).

Benigno Fitial, but equally if not exponentially-more-so by the CNMI Judiciary which, with a few exceptions,[18] failed dismally in its many, many, many opportunities during the 1980's and 1990's to avoid the unequivocally and forseeably detrimental impact of these asylum and Article XII issues on the CNMI General Public."

"And so, the first asylum/refugee/torture protection claim was filed, during Fall of 1999 as Civil Action No. 99-0046, as a civil lawsuit in the U.S. District Court for the Northern Mariana Islands on Saipan, after a Peoples' Republic of China ('PRC') citizen named Rui Liang, who had been previously shot with a gun by PRC soldiers as he protested against the PRC government at Tiannamon Square, was detained on Saian at the detention centre operated by DOLI but referred to during that period as the 'Goldberg Gulag'," said Jorgensen. "And the second, Civil Action No. 00-0005, was also filed in the U.S. Court during the mid-February of 2000."

"Now bear in mind, that no advance-plan or pre-set agenda existed regarding the filing of these Federal lawsuits. A shot had been fired across the CNMI's bow a few months earlier—with the publication of the fact that CNMI-situated persons were entitled to seek the full extent of U.S. Treaty-obligated asylum/refugee/torture protections while in the CNMI, the CNMI's head-lawyer Mark Zachares denied this but then immediately sealed the CNMI's borders to further entry by PRC nationals, only to reverse this short-lived policy right away. And more importantly, my law practice had been whittled down to just a few cases, due to my intended permanent departure from the CNMI during Fall 1999, where my wife had moved in anticipation of giving birth to our first son on November 15, 1999. So my bags were packed, with the CNMI nothing but a memory in the rearview mirror, we thought."

"But then along came Mr. Liang, whose plight was disclosed to me by former CNMI-attorney John Chambers, in whose office my belongings were being stored in a makeshift preparation for my departure from the CNMI. And so Mr. Liang needed legal help respecting 'asylum' and, there being no other CNMI-situated lawyers willing to step up and confront the CNMI Government—out of concerns of reprisal many claimed—I agreed to help and filed the first U.S. Court case, 99-0046."

"A few months later, with Mr. Liang still locked away by the CNMI, a note was handed to me as I visited Mr. Liang at the internment prison. The note was provided by person who, like Mr. Liang, was imprisoned there. And the note was from Juyel Ahmed who, under the auspices of the so-called 'Goldberg Gestapo' had seen fit to lock this man, Juyel Ahmed, away for 20 months—from July 1, 1998 until we secured his release on March 15, 2000—with no rights to counsel, visitation, ad nauseam.[19] This the result of Mr. Ahmed's staunch refusal during this 20-month period, to cooperate with Mr. Goldberg's threats and extensive efforts to have Mr. Ahmed deported to his country of origin, where Mr. Ahmed had been subjected to politi-

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[18] One such exception, in Jorgensen's view, might be Timothy H. Bellas, who in his capacity as a CNI Superior Court Judge, had the courage to issue a March 15, 2000 Order Granting Temporary Restraining Order And Expedited Hearing (For Publication) on behalf of Juyel Ahmed—the asylum/refugee/torture applicant jailed jailed indefinitely throughout the 20 preceding months, between July 1, 1991 and March 15, 2000 in the CNMI's "Goldberg Gulag" immigration detention center as documented in Judge Bellas' order at p.2—in CNMI Superior Court Special Proceeding No. 00-0101A, Juyel Ahmed v. Major Ignacio Celis et.al. But even Judge Bellas was unwilling to address Ahmed's claim to asylum/refugee/torture protection—basing Ahmed's release, instead, upon Constitutional prohibitions respecting indefinite jail terms of detention, as noted at page 2 of the order—leaving Ahmed to seek immediate asylum/refugee/torture protection against deportation by the CNMI (then set for March 16, 2000) from the U.S. down the road. And not long afterwards, Bellas was gone, having been rejected by CNMI voters for retention to the CNMI Judiciary's bench.

[19] The length of incarceration and related conditions were partially, and mildly, detailed in the Superior Court order described at footnote 18 above. For much greater detail, and insight as to atrocities inflicted upon Mr. Ahmed first as a political prisoner in his country of origin, then later as described in allegations made against then-CNMI Assistant Attorney General/DOLI attorney Robert Goldberg (which allegations Goldberg never denied under oath before the U.S. Court/Saipan) pertaining to Ahmed's 20-month stretch in the Gulag on Saipan, reference should be made to the declarations submitted by Mr. Ahmed under penalty of perjury, as exhibits to the complaints filed on his behalf in the U.S. Court/Saipan, Civil Action No. 00-0005. For strategic/practical reasons, claims asserted versus Goldberg and his boss Mark Zachares—also an attorney, and then Secretary of the CNMI's Department of Labor and Immigration—were later dismissed without opposition or appeal by Jorgensen/Ahmed. Yet a few years later, after Goldberg departed the CNMI and sought admission to the Bar of the State of Hawaii during 2004, none of multiple CNMI-situated lawyers contacted, would furnish documentary evidence of similar conduct/allegations against Golberg, see e.g. the U.S. Court/Saipan ruling in the Gorromeo case (where Goldberg/Goldberg purported to justify warrantless searches of persons/property) the Office of Disciplinary Counsel of the Hawaii State Bar Association—as a consequence of which Goldberg, almost certainly the most often-sued-lawyer in the history of CNMI-employ, with almost-certainly the highest-per-lawyer CNMI Government payout for being sued, has now been permitted to engage in the practice of law on the Island of Kauai in the State of Hawaii.

cally-motivated tortures including having his face placed into boiling water, having his feet sliced open, and having sand put into his sliced feet, while incarcerated by his government in that country."[20]

"Since Mr. Ahmed had not been permitted to have visitors, or use the telephone, or consult a lawyer, his note to me pitifully begged that he be permitted to seek representation, release, and asylum/refugee/torture protection, and that I assist him in this endeavor."

"Now bear in mind that between the few months which had passed—between the filing of the first case on Mr. Liang's behalf, around September 1999, and the filing of the second case, during mid-February, 2000—there had been threats and intimations of physical violence made against myself and my wife. These we reported to the FBI Office on Saipan, where we later met with an FBI agent and detailed some of the facts. On another occasion, I was told by a CNMI-lawyer that while observing his son's baseball game on Saipan, that he had been confronted by Saipan Garment Manufacturing Association President Richard Pierce, who had angrily blurted out: 'Does Jorgensen have a deathwish!?!' "

"Yet during this same period of six-months-or-so, between September 1999 and February 2000, there were also a few CNMI-situated persons offering 'pat-on-the-back' type encouragement, though primarily in hushed-private-encounters. You see, they also were concerned about retaliation/retribution, merely for being seen with me."

"And many, many, prospective clients interested in seeking asylum/refugee/torture protection, were referred to me during this same period. One source of these referrals, according to many of these prospective clients, was CNMI-situated attorney Pamela Brown, who was then employed as U.S. Ombudsman on Saipan. And Ms. Brown's husband, Mark Blackburn, was one of the few people kind enough, during this period, to approach me in a Saipan restaurant, introduce himself, and voice his appreciation for my efforts on behalf of these persons seeking human rights protections. And, as the world turns, around six-months into the CNMI Administration headed by present Governor Juan Babauta, Ms. Brown was appointed the CNMI's Attorney General Attorney General. Around mid-2001 after Governor Babauta's initial appointee—CNMI Attorney Robert Torres, previously employed as a lawyer for the U.S. Government's Immigration and Naturalizaton Service, I am told—inexplicably resigned his appointment as CNMI Attorney General. Needless to say, from the moment of Ms. Brown's appointment, onward through today, she has not returned a single one of my telephone calls, including those in which I left messages requesting return calls along with my contact numbers, on her direct-line answering machine at her office."

"Meanwhile, my personal circumstances had also changed drastically. My newborn son, who arrived on November 15, 1999, could use a little fatherly-attention it seemed. Together with my wife, the whole family had moved to Palau—leaving the personal threats, intimidation, and threatened reprisals behind, and leaving me alone on Saipan. With no office. Until soon-to-be-departing CNMI lawyer V.K. Sawhney offered me the use of his office."

"Well it being apparent that no other CNMI-situated lawyers would help these people, I opted to extend my CNMI stay, for just a few months, we anticipated. And ironically, it was during this several-month period during early 2000, that a series of events—originated and apparently conceptualized by by then-CNMI Judiciary officials, CNMI attorneys, and the CNMI Legislature in an effort to hasten my CNMI departure, with vindictive retribution the game-plan—which ultimately caused me to remain in the CNMI, and to be retained as counsel in these proceedings, until their final disposition during the Summer of 2003. Because, had this vindictive retribution not transpired, the entire matter of asylum/refugee/torture protection might have been swept under the rug by the U.S. and the CNMI—I was one step from leaving, for good, when this 'CNMI-Brain-Trust' came after me and, unwittingly, inflamed the issue exponentially. With 'Yours Truly' not only still around, but poised to file yet another lawsuit—which occurred on May 22, 2001, in the U.S. District Court proceeding Jiang v. CNMI, et.al., Civil Action No. 02-0023."

"Digressing back to mid-February 2000, and Mr. Ahmed's 20-month internment at the 'Goldberg Gulag'. There being no CNMI-licensed attorneys interested in or

[20] Mr. Ahmed's graphic description of these torture sessions at the hands of government officials in his homeland, and the subsequent deprivations to which he was then subjected at Mr. Goldberg's instruction while in "the Gulag" on Saipan, are extensively detailed under penalty of perjury in the first several documents appended as Exhibits to the complaints filed on Mr. Ahmed's behalf in Civil Action No. 00-0005, U.S. District Court for the Northern Mariana Islands, on Saipan.

willing to assist Mr. Ahmed, I agreed to help him in the U.S. District Court on Saipan, where, I have been fully licensed to practice law since 1986."[21]

"You see," Jorgensen explained regarding CNMI attorney/court admissions, "like many present/past CNMI Justices and Judges, present/former CNMI Attorney Generals, CNMI Assistant Attorney Generals, CNMI hearing officers, and other attorneys—among them, I am told, such unforgettable luminaries as Justice Alexandro C. Castro, former CNMI Attorney General Herbert Soll, former CNMI Attorney General Sebastian Aloot, former CNMI Attorney Acting Attorney General Maya Kara, former CNMI Secretary Mark Zachares, former CNMI Assistant Attorney General/DOLI Prosecutor Robert Goldberg (throughout the majority of his CNMI-employment), legions of CNMI-employed attorneys past/present (who are supposed to be the best around since they represent the CNMI public most closely), former CNMI Supreme Court Justice Pro Tem Larry Lee Hillblom (co-founder of DHL Worldwide Express), roughly 20 or 30 of the principal attorneys involved in the Hillblom case during that time, and many other lawyers—I have opted not to complete the CNMI Bar Examination required to seek full admission to practice before the CNMI Judiciary.[22] And I remain staunchly resolute, staunchly opposed to the notion of taking this exam, and unapologetic for this, for a variety of very good reasons. These reasons include my firm, oft-publicized, unabated, and quite discouraging perception that the CNMI Judiciary, during 1999 and 2000, engaged in unlawful, unethical, and impartial activities and misconduct. Like the retention of interest-income during Spring 2000, which interest-income was owned by persons/entities including the Estate of late DHL co-founder Larry Lee Hillblom—an estate conservatively valued at U.S. $800 million—to which persons/entities the CNMI Judiciary owed broad fiduciary duties breached by the CNMI Judiciary in trying to keep for itself this interest-income.[23] Like the issuance of a CNMI Judiciary order during mid- or late-1999, as this Hillblom Probate matter wound towards final disposition in Spring 2000, by which the CNMI Judiciary out-of-the-blue purported to rescind the pro hac vice admissions of 20 or 30 or more non-CNMI-lawyers admitted years earlier to participate in the Hillblom case—and who had already irrevocably invested enormous amounts of time/costs/resources into this representation—unless they coughed-up payments to the CNMI Judiciary of an outrageously exorbitant

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[21] Admission to practice law before the U.S. District Court for the Northern Mariana Islands, through the late 1980's, was permitted—as in many U.S. District Courts in the States—where an applicant had been admitted to practice law in one of the 50 States of the United States. And since Jorgensen had earlier taken and passed the Hawaii Bar Examination, and been admitted to practice law in all Hawaii state and federal courts, he was duly admitted to practice before the U.S. Court on Saipan. As well as the High Court of the Trust Territory of the Pacific Islands, the Republic of Palau (Belau), and the United States Court of Appeals for the Ninth Circuit.

[22] The CNMI Judiciary was originally comprised of the Commonwealth Trial Court with appeals heard by the Appellate Division headed by a three-member panel including the Judge of the U.S. District Court for the Northern Mariana Islands along with two of his designees as Appellate Justices. This changed when, during 1989, the CNMI Legislature—in the midst of so-called Article XII real estate claims—created a CNMI Supreme Court. Along with a name change for the trial court, the CNMI Judiciary then was transformed into the Superior Court of the Commonwealth of the Northern Mariana Islands ("CNMI Superior Court") at the trial court, and the CNMI Supreme Court. At this stage, all CNMI Supreme Court rulings were appealable directly to the U.S. appellate system, via the United States Court of Appeals for the Ninth Circuit. This appellate jurisdiction was then divested a few years ago. Meanwhile the CNMI Judiciary has constructed for itself a judicial centre carrying 3 names: "House of Justice", "Imwal Aweewee" (Carolinian Language), and "Guma Husticia" (Chamorro Language)—interestingly, some have noted, the term "Guma" in the Tagalog language predominant in the nearby Republic of the Philippines, means "Rubber"; and so, it is not uncommon for CNMI-situated foreigner laborers from the Philippines to speak of the "Rubber-Stamp-Justice-Center" when discussing CNMI labor, immigration, or judicial goings-on. And fortunately for the foreigners, there remains, on Saipan, the U.S. District Court for the Northern Mariana Islands having federal civil and criminal jurisdiction, including jurisdiction over admiralty and bankruptcy matters, and with a Judge appointed by the U.S. Government following extensive background, competence, and related examination.

[23] This unlawful conduct, in turn, constituted the grounds upon which I Jorgensen then prepared and filed a lawsuit on March 27, 2000, on behalf of CNMI attorney/guardian ad litem James E. Hollman—titled Hollman v. CNMI and designated Civil Action No. 00-00012—in the U.S. Court/Saipan, in which Hollman prevailed upon determination by the U.S. District Court/Saipan that the CNMI law, upon which the CNMI Judiciary had premised its claim to entitlement of these funds and resulting misconduct reportedly vis-à-vis then-CNMI Superior Court Presiding Judge Edward Manibusan, was in fact unconstitutional, of no force/effect, and therefore unlawful, as substantiated on appeal by the CNMI to the United States Court of Appeals for the Ninth Circuit.

$5,000 fee per attorney by the end of the month.[24] Like orders during Spring 2000 awarding $400,000 or so in 'bonus' payments to the CNMI Judiciary's own Special Research Attorney Diane Bergstrom, former CNMI Supreme Court Justice/CNMI Superior Court Judge Pedro Atalig, and Atalig's longtime acquaintance Diego Mendiola[25] appointed as 'Special Administrator' or something official-sounding by the CNMI Judiciary, which payments were apparently to be made out of Estate assets owned by the Estate[26] and Heir Claimants over which the CNMI Judiciary had jurisdiction and resulting fiduciary obligations to protect. And I will not even begin to discuss the creation, funding, and subsequent activities of the so-called 'Charitable Trust' established for creation/perpetuation of the CNMI Judiciary's 'law library', named something like the 'Larry Lee Hillblom Memorial Law Library', reportedly also funded with Estate assets and then headed by various court favourites—the names I heard were, again, of Pete Atalig, Diego Mendiola, Alex Castro, and others, but no follow-up was conducted. With the exception, perhaps, of follow-up by columnist Ruth Tigh, who suggested or intimated that naming the CNM Judiciary's law library after a paedophile as she viewed Hillblom to be, whose Estate vigorously contested paternity/support claims by his four illegitimate children from their respective four mothers who gave birth in their teens, and/or where significant Estate assets were purportedly diverted to establish this Trust and subsequent activities by its members, might appear somewhat disconcerting, in the sense of fiduciary/impartiality judicial conflicts—on the order, I suppose, of the anomaly of using funds from the Estate of Pablo Escobar—Columbia's drug baron hunted by the U.S. in the early 1990's—to fund and establish of an Anti-Drug Monument next to the U.S. Supreme Court with trustees from the Court itself in charge. Or, maybe, like using White Supremist funds to erect a Civil Rights monument to the Ku Klux Klan under control a judicially-created board of trustees. A spectre like that—especially if established and funded by Estate assets to which the CNMI Judiciary itself owed a duty of protection—might be quite inappropriate, Ms. Tighe seemed to indicate.".

"Now given these circumstances, my conclusion remains today as it was during February 2000 with Mr. Ahmed's case: completing and passing the CNMI Bar Exam would place me squarely under the figurative thumb of the CNMI Judiciary which has itself a less than admirable history with a proclivity—particularly during 1999 and 2000—towards unethical, unlawful, misconduct and with a retaliatory bent towards any lawyer who stands up and says this before the CNMI Judiciary or publicly or in papers filed with a Saipan court. No admission to practice before the CNMI Judiciary for me, thank you very much—I will stick to using my admission before the U.S. District Court when litigating on Saipan."

"And so, when there was filed the initial documents, in the CNMI Superior Court, seeking Mr. Ahmed's release from CNMI detention at the 'Goldberg Gulag', such as the initial Application seeking issuance of a Writ of Habeas Corpus filed February 24, 2000 in the CNMI Superior Court, and the Supplement to this Application filed February 28, 2000, my name did not appear as his counsel because I was not admitted to practice law on his behalf before that court. Rather, those two documents were lawfully signed by me in the same manner that CNMI law permits any person—whether or not a lawyer—to sign for someone who, like Mr. Ahmed, was locked up in jail and therefore was unavailable or prevented from signing this Application himself. That is, in full accordance with and as expressly permitted by then-CNMI

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[24] This transpired during 1999 as the probate matters involving the Estate of former DHL co-founder Larry Lee Hillblom—which Estate was conservatively valued at U.S. $800 million—was winding down in Hillblom, Probate No. 95-626, CNMI Superior Court.

[25] Atalig and Mendiola, like Supreme Court Justice Alexandro Castro who presided over much of the Hillblom proceedings (designated Special Proceeding No. 95-626 in the CNMI Superior Court), originate from the CNMI island named Rota, located roughly 125 miles southeast of Saipan, and 30 miles north of Guam. Numbering around 2,000 inhabitants before the CNMI was formally established 20 years ago, it would be appear highly unlikely that Atalig, Mendiola, and Castro were not longtime, childhood, friends and relatives. Other family ties included persons/entities designated/retained/paid for performing related services including Pedro Atalig's brother Antonio Atalig (a CNMI attorney), Pedro Atalig's sister Benita Atalig Manglona (a CNMI accountant), and extended een ven to the court-reporting service used (reportedly owned by a female relative of both CNMI Supreme Court Chief Justice Juan Demapan and his co-Justice Alexandro Castro).

[26] These "bonus" payment orders reportedly directed payments totalling U.S. $400,000 or so to former CNMI Supreme Court Justice Pedro Atalig, a Special Research Attorney ordered hired by the court (whose salary was reputedly also paid, ultimately, from costs deducted from Estate assets), and Diego Mendiola who served in a related capacity appointed by the court—perhaps a type of "Special Administrator".

law set forth in the CNMI's Commonwealth Code[27]—which law was specifically cited to the Superior Court judge at the outset within both the original Application filed February 24 and the Supplement filed February 28. And bear in mind what is—or at least from an objectively reasonable CNMI Judiciary's perspective what should have been—the infinitely-more important concern here: Not who signs or files what document with what particular court, which is really a matter of 'form over substance' in the context of a fellow locked away by the CNMI, and there held incommunicado for 20 months while denied access to legal representation; But, most importantly the immediate presentation to the CNMI Judiciary of an Application seeking Mr. Ahmed's release to enable him to obtain, complete, and file an application seeking U.S. asylum/refugee/torture protection, the mere filing of which then would automatically preclude Goldberg, the CNMI Judiciary itself, and all others, from having Mr. Ahmed deported to his country of origin."

"The CNMI Judiciary's response? Astonishment? Outrage? Indignation? Yes, absolutely! But not at Mr. Ahmed's plight. Freedom for Ahmed after 20 months lockup in the Gulag? Nope. No freedom for Mr. Ahmed. Not then. Rather, outrage, indignation, retaliation, and vilification directed, not one iota at the CNMI officials involved, but instead squarely pointed at Mr. Ahmed's counsel—'Yours Truly'—for having the backbone to bring all of this to light in the hallowed 'Halls of CNMI Justice', with the local media reporting this publicly! And, presumably, with around 15,000 CNMI-situated PRC nationals, then employed in the 'Pride of the CNMI', its garment industry, suddenly sitting up, looking at a newspaper article or television report about this publicly-disclosed asylum/refugee/torture protection from the U.S., and saying to themselves: 'You mean, we can do that too?!?' ".

"Well, not until the U.S. Court became involved was Mr. Ahmed's release[28] ensured by the CNMI Judiciary. And even then—following Mr. Ahmed's release by order of then-CNMI Superior Court Judge Timothy Bellas on March 15, 2000[29]—it was noted in Judge Bellas' order that the CNMI intended to deport Mr. Ahmed the very next day, March 15, 2000. This, of course, the same CNMI which claimed, in justification of Mr. Ahmed's 20-month detention at the Gulag, an absolute inability throughout those 20 months to accomplish the bureaucratic paperwork necessary to deport Mr. Ahmed!".

"Now Judge Bellas appeared to have at least read and considered the merits underlying the Habeas Corpus Application submitted for Mr. Ahmed on February 24, 2000, and the Supplement filed four days later, on February 28, 2000. This much could be gleaned, at that time, from the subsequent March 15, 2000 order commanding Mr. Ahmed's release, in which Judge Bellas specifically referred to the CNMI Superior Court's previous order dated March 9, 2000, which denied the February 24/28 Habeas Corpus request".

"But what could not be gleaned from Judge Bellas' order then, or from prior and subsequent CNMI Superior Court documents on public file in Ahmed's case before the CNMI Judiciary, was that Judge Bellas' boss, the CNMI Superior Court's Then-Head-Honcho—Presiding Judge Edward Manibusan—had also read and taken keen interest in the February 24/28 Habeas Corpus Request signed by me on Mr. Ahmed's behalf as unequivocally permitted by specific CNMI law cited in those documents. But this interest on the part of the CNMI's Presiding Judge, as much later-after-the-fact discovered, bore little if any relation to the facts, legal merits, or equitable considerations furnished to the entire CNMI Judiciary[30] and so crucial to Mr.

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[27] Jorgensen explained that the relevant law was either 6 CMC section 7102 or 7 CMC section 7201 or both.

[28] This involvement arose by way of Ahmed's inclusion as a Plaintiff in Civil Action No. 00-0005, U.S. District Court for the Northern Mariana Islands, initially filed February 9, 2000 on behalf of 17 new clients. These did not include Ahmed, who became an additional claimant, named as Plaintiff in this 00-0005 proceeding, shortly afterwards, when Jorgensen received the note smuggled to Jorgensen via another person from Ahmed in prison. Ahmed's then became the lead name in that proceeding's caption, which had originally been filed on behalf of the 17 or so others. Following Ahmed's joinder in this suit, a conference was convened in the U.S. Court chambers by Chief Judge Alex R. Munson, at which parties' counsel were clearly apprised of the direction the proceedings were likely headed. Jorgensen attended this conference along with CNMI counsel.

[29] Ahmed v. Major Ignacio Celis et.al., Special Proceeding No. 00-0101A, CNMI Superior Court, March 15, 2000, Order Granting Temporary Restraining Order And Expedited Hearing.

[30] That both the CNMI Superior Court and the CNMI Supreme Court were provided this information is also a matter of public record by effect of publicly-filed pleadings—Judge Bellas' March 15, 2000 order, for example, make express reference to the CNMI Superior Court's previous order dated March 10, 2000, the March 10, 2000 notice by which the March 9, 2000 order was then appealed to the CNMI Supreme Court. See, Ahmed v. Major Ignacio Celis et. al., Special Proceeding No. 00-0101A, CNMI Superior Court, Order Granting Temporary Restraining

Ahmed's plight. And far more to do with the rather unseemly—if not utterly seedy—side of the outlook and priorities, made institutionally clear to CNMI attorneys and the CNMI Public by the CNMI Judiciary and the CNMI House of Representatives, in tandem with the CNMI's Office of the Attorney General. All emanating, that is, from Judge Manibusan's immediate reaction both to CNMI-situated persons seeking asylum/refugee/torture protection, and far more vindictively at the lawyer—yours truly—who dared to publicly come forward and represent these asylum-seekers in the year 2000."

"And what was Presiding Judge Manibusan's reaction? This 'keen interest'? This 'immediate reaction' by Judge Manibusan which, disgracefully, was not disclosed to me—not EVER by Judge Manibusan, the other CNMI Judges, the Attorney General and his assistant attorneys involved, and not by anyone else until a year or more later?"

"Well this luminary of the CNMI Judiciary—now, incidentally, the recently-elected President of the CNMI's Bar Association—submitted to this same CNMI Bar Association of which I was not a member, a letter dated March 1, 2000.[31] Now this was just 24-hours, one single day, after the filing of the supplement to Ahmed's initial application filed 3 days earlier, on February 24, 2000."

"And to whom was this letter from the CNMI's Presiding Judge Manibusan sent? Why to Elaine Paplos, an attorney then-serving as 'Chair' of the CNMI Bar Association's 'Disciplinary Committee'. Of course, the letter omitted mention of the fact that Ms. Paplos was also a CNMI-employed attorney. Apparently employed, that is, by the CNMI's Office of the Attorney General which, via Assistant Attorney Generals Robert Goldberg—of 'Goldberg Gestapo/Goldberg Gulag' fame—and David Sosebee and Herbert Soll, were actively and vociferously contesting Ahmed's request for release from 20-month detention, while purporting to justify the absurdly-gross length of indefinite incarceration."

"In this March 1, 2000 letter, Judge Manibusan maintained that the February 24, 2000 and February 28, 2000 submissions filed on Mr. Ahmed's behalf, and bearing my signature as permitted by law, 'appear to constitute the practice of law by someone [Bruce Jorgensen] not admitted to practice before this court' for the ostensible purpose of 'a determination by the disciplinary [CNMI Bar Association's] committee.' Again, let me emphasize—this was with no notice to me, no notice to Mr. Ahmed, no disclosure by the CNMI Office of the Attorney General or its attorneys—Ms. Paplos, Mr. Sosebee, Mr. Goldberg, or Herbert Soll, and no notice by Presiding Judge Manibusan. And no knowledge by me until a year or so later."

"As this March 1, 2000 ethics-attack launched without notice to me, another circus was concocted, this time in tandem with Benigno Fitial, former and current Speaker of the CNMI House of Representatives—more commonly termed the 'Garment House' for its reputed propensity to rubber-stamp CNMI legislation deemed appropriate for the benefit of the CNMI's garment industry."

This circus began unfolding on March 14, 2000—the day before Mr. Ahmed was to be released from the Gulag—with the March 14, 2000 adoption of CNMI House Resolution Number 12-32, signed by Fitial but written by others.[32] Fitial, himself termed the 'Garment Speaker' by CNMI-folks-in-the-know, who had zero prior dealings with me, suddenly issued this Resolution calling on the Office of the CNMI Attorney General's office to 'investigate' my purportedly 'unauthorized' practice of law apparently in representing Mr. Ahmed, and for filing and later winning a lawsuit in the U.S. Court which prevented the CNMI Judiciary from keeping, for itself, the many hundreds-of-thousands-of-dollars in income-interest earned on the Hillblom Estate funds ordered transferred from U.S. Trust or other reputable international

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Order, at p. 2 enumerated paragraph 7 (noting that an appeal to the CNMI Supreme Court had been filed March 10, 2000 with the CNMI Supreme Court).

[31] The letter, written on Superior Court of the Commonwealth of the Northern Mariana Islands letterhead, and an official seal below which appeared the words "EDWARD MANIBUSAN PRESIDING JUDGE", WAS ADDRESSED TO Elaine Paplos, Chair, Disciplinary Committee, NMI Bar Association, P.O. Box 7917 SVRB, Saipan, MP, and signed by Presiding Judge Manibusan above the signature line "Edward Manibusan Presiding Judge". And who was this Ms. Paplos? Why a CNMI-employed attorney, reportedly working at that time as an Assistant Attorney General with the CNMI's Office of the Attorney General opposing Ahmed's release and arguing for his continued detention.

[32] The CNMI House Legal Counsel, at that time, Stephen MacKenzie, soon departed the 'Legislative Circus' under Fitial, and now practices law in the State of Vermont. Resolution 12-32, though reportedly drafted by MacKenzie, was conceptualized by others. Guess who?

financial institutions to a CNMI-situated bank for 'administration' by the CNMI Judiciary via Presiding Judge Manibusan."[33]

"And so this Fitial-Resolution-Circus opened a second-prong of this attack, in which Presiding Judge Manibusan became even more inextricably intertwined. And next on this front came—you guessed it—the CNMI's Office of the Attorney General lawyers. Up stepped Assistant AG David Sosebee, commonly known as 'Jollibee', who penned off a quick letter to Alex R. Munson, the Chief Judge of the U.S. District Court on Saipan.

[Sic] to rescind my admission to practice there, which request was denied and deemed inappropriate the next day by U.S. Judge Alex R. Munson."

"The next CNMI-sanctioned kicker? Well, what was left? How about a 'Wrongful Termination' of one of their longtime CNMI-employed attorneys? The attorney in question, a friend then-serving as CNMI Department of Commerce Hearing Officer—who prefers anonymity—was perceived by mere association as being a 'Jorgensen Sympathizer', that is, a CNMI-employed-attorney believed to have empathy towards my activities on behalf of Mr. Ahmed and/or other CNMI-situated persons seeking asylum/refugee/torture protection, and their pitiable plight. And to hold in well-deserved disdain the activities engaged in by Goldberg and his cohorts. And then further to make this clear in a letter referring to Goldberg as a 'nebbish' who 'could not get [romantically involved] in a female prison, to which Goldberg, and his colleagues in the CNMI Office of the Attorney General who enabled his misdeeds—by way of a self-appointed 'PC-Patrol' or something, ostensibly took phenomenal umbrage—never bothering with the accuracy or aptness of this description given the matters at hand. And viewing with far less umbrage, apparently, Goldberg's emphatic declarations, to the attorney-in-questions and others, in public on Saipan,[34] that Goldberg intended to use his CNMI-bestowed-authority over Immigration/Detention to ensure, lawfully or otherwise, that a Muslim Imam then enroute to the CNMI would be denied entry, regardless of any laws involved, because of Goldberg's fanatically-anti-Muslim views—which statements, and oft-exhibited-anti-Muslim-extremism, by Goldberg, led ultimately to his being finally subpoenaed to testify under oath, during Summer 2003, at which point the lawsuits—by then, 3 different lawsuits[35] consolidated into one proceeding involving 50 or so CNMI-situated persons seeking asylum/refugee/torture protedtion—were swiftly disposed of by 'Global Settlement', with the Defendants demanding confidentiality of settlement terms."

"Well this CNMI-employed lawyer had the misfortune of having his employment contract come up for renewal in the midst of Spring 2000. Needless to say, this man's contract was not renewed. And only a short while ago, and only when he successfully sued the CNMI Government, was he rehired and provided monetary com-

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[33] This attempt to keep interest-income was, in turn, the result of legislation authored by the CNMI House, which legislation Presiding Judge Manibusan had then sought to implement, by way of a notice advising the CNMI General Public that if no objections were received, the law permitting the CNMI Judiciary to keep these funds itself would take effect. Any member of the CNMI General Public could submit any such objection—in writing. But only one of the 30-plus lawyers involved in the Hillblom probate, indeed only one person at all, objected—that being attorney Bruce L. Jorgensen. This was done by way of a letter, written by Jorgensen to the CNMI Judiciary in Jorgensen's capacity as counsel for Guardian ad litem James E. Hollman in a Hillblom-related proceeding before the U.S. Court/Saipan (where Jorgensen is admitted to practice). This letter, it was later claimed, further evidenced Jorgensen's alleged 'unauthorized practice', despite the fact that Jorgensen was admitted in the U.S. Court, was correct, and then filed on March 27, 2000, and won, a civil lawsuit, Hollman v. CNMI, Civil Action No. 00-0012, U.S. Court/Saipan, declaring this interest-income-grab-legislation unlawful.—during which period, Judge Manibusan, himself, delivered to the U.S. Court, before final disposition had occurred, a check totalling several thousand dollars as repayment of the interest-income withheld by the CNMI Judiciary from Jorgensen's client, Vo Minh Tan, via his Guardian ad litem Hollman. Whether the CNMI Judiciary kept for itself from other Hillblom claimant or parties before the court, or returned to them, funds withheld by Presiding Judge Manibusan and his personnel under guise of this unlawful CNMI law, remains uncertain. What is known, however, is that interest-income being generated on the Hillblom Estate assets—conservatively estimated at U.S. $800 million—was massive, reportedly amounting to hundreds-of-thousands-of-dollars each month.

[34] These declarations were uttered, by an irate-sounding Goldberg, to the attorney-in-question, to Jorgensen, and to others present, at a Saipan-situated restaurant. Aware of the serious implications suggested by effect of these declarations, as well as Goldberg's frequently-displayed extremist-opposition-to-any-person-Muslim, no public reference or disclosure of the declarations was made at the time of this 'PC-Patrol' attack on, and vilification of, the attorney-in-question. But he, too, was subpoenaed in order to describe Goldberg's statements, anti-Muslim rhetoric, and anti-Muslim activities, via deposition testimony, during 2002, just before settlement.

[35] In addition to the Civil Action No. 99-0046 and 00-0005 proceedings, a third lawsuit was filed during May 2002, designated Civil Action No. 02-0023, in the U.S. Court/Saipan.

pensation for the CNMI's wrongful termination of his employment.[36] In hindsight though, perhaps he is lucky that Goldberg and his cohorts never instituted 'Thought Crime' laws, or focused more than passing attention on the types of atrocities inflicted upon the Chinese populace by their government—like Mao Tse Tung's 'Re-Education Camps' to which, had the notion occurred to then-CNMI-lawyers to create these camps in tandem with the CNMI's immigration Gulag, this poor fellow would almost certainly have been relegated."

"And so, around came May 18, 2000. Mr. Ahmed was by then out of the Goldberg Gulag, thanks solely to the U.S. Court/Saipan, which had also thwarted the Jollibee's and the Garment Speaker's bad intentions towards me. But to their credit respecting attempted retribution, the day ended with newfound retaliation—the filing of a lawsuit against me by the CNMI's Office of the Attorney General—that is, I suppose, Jollibee and Herbert Soll—designated Civil Action No. 00-0255, in the Superior Court lawsuit. Before what CNMI Judge? Why, before CNMI Presiding Judge Edward Manibusan, the same fellow who just a few weeks earlier had filed the secret March 1, 2000 request for a 'determination' as to whether my prior activities—including both my efforts on Mr. Ahmed's behalf and my asserting in Hollman v. CNMI the unlawfulness of the CNMI Judiciary's intent to keep for itself the Hillblom interest-income—constituted 'unauthorized practice of law' ".

"And some memorable 'judging' did Judge Manibusan perform. He apparently deemed by act of magic the CNMI's application for 'entry of default' to be a 'motion for default judgment'. Which I learned by way of a December 21, 2000 headline newspaper article he granted. The newspaper having received notice of this ruling—reportedly by transmittal of a copy of his order by his then-assistant Tina Pangelinian—while my attorney and I were left to receive notice by reading the newspaper after publication. This, in turn, gave rise to additional interests."

"First of interest, this cost me a job previously tendered to me in the Republic of Palau, to which my family and I had relocated earlier that year. The tender was revoked, which revocation made express reference to the default judgment issued by Judge Manibusan against me."

"Second of interest, was the apparently unlawful nature of the default judgment itself. Signed by Judge Manibusan, the order purported to preclude my practice of law not only before the CNMI Judiciary—where I was not and did not wish to be admitted—but to further preclude my practice of law, in any new lawsuits before the U.S. Court/Saipan. Mind now, the fact that Judge Manibusan still had not—nor did he ever—disclose to me the fact of his March 1, 2000 letter requesting a 'determination' of my activities from the CNMI Bar. How this Presiding Judge might have convinced himself that he saw no impropriety, impartiality, or conflict-of-interest in all of this, remains a curiousity?!?"

"Luckily, somebody in the CNMI Bar's Disciplinary Committee, determined that my actions described in Judge Manibusan's secret letter of March 1, 2000 did not constitute the unauthorized practice of law. This determination, however, was not disclosed until August 13, 2001, 17 months after Judge Manibusan's submission."

"Meanwhile, the U.S. Court on Saipan determined that Judge Manibusan's order prohibiting me from taking on new U.S. Court cases was not worth the ink used to write it. This was emphasized in a series of hearings including one on April 6, 2001. But this did nothing to change the minds of those in Palau who earlier had rescinded my job offer."

"Needless to say, few CNMI attorneys wanted to be seen in my general vicinity, let alone work cases with me in fear of the CNMI's wrath. And so when approached to represent yet another CNMI-situated PRC national desperately seeking asylum/refugee/torture protection on Saipan, few lawyers would even discuss the prospect of serving as my Saipan-situated 'local counsel' then required by U.S. Court rules. This poor woman, named Xiu Ying Jiang, had fled PRC after being physically forced by PRC government officials to undergo a sterilizaton preventing her from having any more children, as depicted in graphic photographs of Ms. Jiang's resulting scars. No CNMI lawyer would help as she had no money, she was prevented by the CNMI from lawfully working, and other lawyers had been exposed the the CNMI Judiciary's 'chilling effect'—as in, 'If you help these asylum-people you just might get what Jorgensen got'."

"The one fellow willing to help was a young lawyer, named Joseph Arriola. Several years earlier he had served as Judge Manibusan's law clerk. But he also bore

[36] This attorney, James E. Hollman, was represented in this lawsuit by CNMI lawyer G. Anthony Long. Mr. Hollman had earlier fulfilled his guardian ad litem duties, on behalf of a minor/child heir claimant in the Hillblom probate, as Plaintiff in the previously-documented Hollman v. CNMI, Civil Action No. 00-0012, civil lawsuit described at notes 22 and 31 above filed March 27, 2000 in the U.S. Court/Saipan.

the distinction of nexus to me, having demonstrated the audacity to help me by serving as my lawyer before Judge Manibusan in defense of the 'unauthorized practice' allegations against me."

"And so Mr. Arriola stepped in as my 'local counsel', suit was filed on Ms. Jiang's behalf, and the U.S. Court/Saipan provided immediate, equitable, injunctive relief. This, despite the CNMI's arguments, for instance, that Ms. Jiang's two minor children should not be permitted to attend school while seeking asylum within the CNMI, which Judge Munson rebuked."

"The Jiang suit was filed on May 22, 2002. CNMI retribution was again swift. For his assistance, the CNMI rewarded Mr. Arriola with a lawsuit, in which the CNMI sued him for assisting in the unauthorized practice of law—that is, for helping me to help Ms. Jiang who already had prevailed on equitable issues. This lawsuit was filed in the CNMI courts, of course, on August 6, 2002, titled CNMI v. Arriola. And this, despite the CNMI being fully aware of Judge Munson's reiterations, time and again during Spring 2001,[37] that I remain to practice law and file new lawsuits in the U.S. Court/Saipan."

"Somewhere during that period, it was also disclosed that then-CNMI Attorney General Herbert Soll had also filed a complaint, asserting 'unauthorized practice of law' by me, with the Hawaii State Bar Association, of which I am a longstanding member. After considerable investment of time gathering and submitting relevant materials, this complaint, too, was deemed to be unfounded. In fact, during this review, it was suggested that these activities by the CNMI Judiciary and CNMI attorneys be submitted to Reader's Digest magazine for inclusion in a 'That's Outrageous' feature."

"Now, you asked for documentation of what I have characterized as the CNMI Judiciary's hostility regarding the asylum/refugee/torture protection issue, and respecting myself and other attorneys willing to assert asylum/refugee/Torture claims for protection between 1999 and 2002? I hope the above has sufficed."

PART 4 TO BE CONTINUED.

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14 JULY 2007 MESSAGE OF INQUIRY RE. GUAM-CNMI ASYLUM/REFUGEE—U.S. CONDUCT

Bruce—Here's a question for you (to draw on your greater repository of legal knowledge and expertise in this area). If a disabled boat is rescued by the U.S. Coast Guard in Guam waters filled with foreign nationals with no documents in their possession, and who originated on Saipan where they may, or may not, have lawful immigration status, is the Coast Guard free to transport them back to Saipan and turn them over to CNMI authorities?

This may be what happened with regard to a recent incident here. See Coast Guard assists disabled vessel (Saipan Tribune, 6/29/07) and 12 rescued from stranded vessel (Saipan Tribune, 6/30/07).

Three of the 12 individuals on the boat are now being prosecuted under CNMI law. The other nine have been released and may, or may not, be subjected to deportation proceedings. The three being prosecuted are the ones the CNMI would deem the most culpable: the boat captain and two alleged organizers of the attempted smuggling operation who (unusually and ironically) are accused of planning and attempting to smuggle themselves, as well as the others, into Guam.

I observed the preliminary hearing, which presented facts somewhat differently than the news stories. The hearsay evidence given in the preliminary hearing was that the vessel was picked up up drifting 20 miles off Guam. The position at the time the distress call was made was not clear, neither was the length of time the vessel drifted. The news account suggests that the vessel was located soon after the call was made and the location fixed as 20 miles off Guam at that time.

In any event, 20 miles off Guam is well within the contiguous zone, a principle purpose of which is to extend jurisdiction for purposes of control of alien smuggling.

The boat captain radioed the U.S. Coast Guard on Guam for help, saying "Illegal aliens on board. We are all surrendering."

I do note that the Law of Convention says States "may exercise control" and authorizes exercise of control both to prevent as well as punish immigration violations.

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[37] Transcripts of Judge Munson's remarks in these proceedings including one of significance on April 6, 2001, attended by CNMI lawyers, may be obtained from the U.S. District Court/Saipan court reporter—Ms. Sanae Schmull—referencing the lawsuit designated U.S. District Court for the Northern Mariana Islands Civil Action No. 00-0017 and titled CNMI v. Jorgensen, which proceeding was removed to the U.S. Court from the CNMI Superior Court where the action originated May 18, 2000 and was designated CNMI Superior Court Civil Action No. 00-0255.

Taken alone, this language could be said to authorize apprehension of aliens in the contiguous zone and removal to a landmass outside U.S. immigration jurisdiction.

What do you think?

Regards,

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