
**REPORT TO THE
PRESIDENT ON
902 CONSULTATIONS
RELATED TO THE DHS
DISCRETIONARY PAROLE
PROGRAM**

**Special Representatives of the United States and the
Commonwealth of the Northern Mariana Islands**

May 15, 2019



About the 902 Consultation Process Between the United States and the Commonwealth of the Northern Mariana Islands

The Covenant to Establish the Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Covenant) governs relations between the United States and the Commonwealth of the Northern Mariana Islands (CNMI).

Section 902 of the Covenant provides that the Federal Government of the United States and the Government of the Northern Mariana Islands “will designate special representatives to meet and consider in good faith such issues affecting the relationship between the Northern Mariana Islands and the United States as may be designated by either Government and to make a report and recommendations with respect thereto.” These intermittent discussions between the United States Federal Government and the CNMI have become known as 902 Consultations.

By letter dated October 19, 2018, CNMI Governor Ralph DLG Torres requested U.S. President Donald J. Trump initiate the 902 Consultation process regarding discretionary parole policies of the U.S. Department of Homeland Security. Super Typhoon Yutu impacted CNMI on October 25, 2018, and CNMI requested a delay in the consultation to allow them to focus on response and recovery from the typhoon. On February 26, 2019, President Trump designated Douglas W. Domenech, U.S. Department of the Interior Assistant Secretary Insular and International Affairs, as the Special Representative for the United States Federal Government for this 902 Consultation. Governor Torres was designated the Special Representative for the CNMI.

Special Representatives and Team Members of the United States Federal Government and the Commonwealth of the Northern Mariana Islands

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Letter to the President from Special Representatives with Signatures

May 15, 2019

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

We are pleased to send you this report on Section 902 Consultations between the United States Federal Government and the Commonwealth of the Northern Mariana Islands (CNMI). This report offers recommendations on how the Federal Government can help to strengthen the CNMI's economy in the long-term while safeguarding important national security and public safety objectives.

The United States and CNMI Special Representatives and their teams developed these recommendations over the course of two consultation meetings; site visits to the Commonwealth by the 902 Federal team; and Federal team discussions with CNMI officials, community leaders, and businesses. Based on these discussions, the Special Representatives identified several recommendations that reflect shared opinions.

We are grateful you provided the opportunity for 902 Consultations between the United States Federal Government and the Commonwealth of the Northern Mariana Islands and present these recommendations to you. We urge that steps be taken to support implementation of the recommendations and that this report and its recommendations be transmitted to the United States Congress.



Douglas W. Domenech
U.S. Special Representative

Sincerely,



Ralph DLG. Torres
CNMI Special Representative

Background on 902 Consultations

The Commonwealth of the Northern Mariana Islands

The Commonwealth of the Northern Mariana Islands (CNMI) is a U.S. territory located in Micronesia in the western Pacific Ocean. The CNMI is comprised of fourteen of the fifteen islands in the Mariana Islands archipelago; the southernmost island in the archipelago is Guam, another U.S. territory. Less than 50 miles north of Guam is Rota, the most southern island of the CNMI. From there, the archipelago stretches in a northward arc toward Japan spanning 300 miles with a total land area of 183.5 square miles. The principal inhabited islands are Saipan, Rota, and Tinian, in the southern end of the archipelago. The northern islands include the largely uninhabited islands of Farallon de Medinilla and Pagan as well as additional uninhabited islands.

According to the 2010 U.S. Census, the CNMI has a population of 53,900 people, a 22.2% population decline from the previous census in 2000. About 90% of residents live on Saipan, the largest island and the capital of CNMI.

The Federal Government's relationship with the CNMI is of the utmost importance. We are connected through a shared identity as American citizens, a storied history, common values as well as a shared desire to see the CNMI prosper. Our relationship with the CNMI is also of strategic importance in the Pacific and a continued positive relationship remains in the best interest of our national defense strategy and of Americans everywhere.

CNMI Covenant and Section 902 Consultations

After World War II, the Northern Mariana Islands were part of the Trust Territory of the Pacific Islands, administered by the United States on behalf of the United Nations. On February 15, 1975, representatives of the United States and the Marianas Political Status Commission signed the Covenant to Establish the Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Covenant). That same year, the people of the Northern Mariana Islands voted to become a territory of the United States and overwhelmingly supported the Covenant in a plebiscite, with 78.8% voting in favor of it. The U.S. Congress subsequently passed the Covenant and President Gerald Ford signed it into law on March 24, 1976, as Public Law 94-241.¹ In accordance with Section 1003 of the Covenant, certain sections became effective in 1976 and in 1978. On November 3, 1986,

¹ See 48 U.S.C. 1801.

President Ronald Reagan issued Presidential Proclamation 5564, placing the Covenant into full force and effectively establishing the CNMI as a part of the American family.

Section 902 of Article IX of the Covenant provides: “The Government of the United States and the Government of the Northern Mariana Islands will consult regularly on all matters affecting the relationship between them. At the request of either Government, and not less frequently than every ten years, the President of the United States and the Governor of the Northern Mariana Islands will designate Special Representatives to meet and consider in good faith such issues affecting the relationship between the Northern Mariana Islands and the United States as may be designated by either Government and to make a report and recommendations with respect thereto.”

Section 902 primarily provides the CNMI a process allowing for formal discussions on any issue concerning the federal government, upon concurrence by the United States, which culminates in a report to the President. Through the years, 902 Consultations have been used as a means to address issues involving the CNMI and federal laws, regulations, and actions.

History of 902 Consultations

Although either the President or CNMI Governor can request a 902 Consultation, to date, the CNMI governors have initiated all requests for consultations. Prior to 2019, seven different individuals have been designated by the United States as Special Representatives for 902 Consultations, spanning five presidential administrations. These Special Representatives often had other individuals from various federal agencies present at the meetings in order to help address the issues raised by the CNMI. The CNMI has sometimes appointed several Special Representatives for a single 902 Consultation and designated one spokesperson for the group.

The first 902 Consultation began in 1986, during the Reagan Administration. Since then, there have been at least fifteen meetings associated with 902 Consultations. The locations for the meetings have varied, occurring in the CNMI, Washington, D.C., Hawaii, and other locations in the continental United States.

Past 902 Consultations involved a variety of issues, often within a single meeting. Issues have ranged from sovereignty and self-government, Micronesian war claims, submerged lands ownership, fisheries, tariffs, immigration and labor issues, essential air service, banking regulations and laws, military activities, and a non-voting delegate for the CNMI.

Compilations of documents from past 902 Consultations indicate that discussions have resulted in U.S. position papers, proposed legislative or regulatory changes, or interagency agreements. However, only the consultation that occurred in 2016 resulted in an official final report being issued to the President or Congress.

The Current 902 Consultation Process

Appointment of Special Representatives

By letter dated October 19, 2018, CNMI Governor Ralph DLG Torres requested U.S. President Donald J. Trump initiate the 902 Consultation process regarding discretionary parole policies of the U.S. Department of Homeland Security. Due to Super Typhoon Yutu, CNMI officials asked the federal government to delay the request to allow for CNMI officials to focus on response and recovery issues. On February 26, 2019, President Trump designated Douglas W. Domenech, U.S. Department of the Interior Assistant Secretary, Insular and International Affairs, as the Special Representative for the United States for this 902 Consultation, while Governor Torres was designated to serve as the CNMI Special Representative.

In order to address the CNMI's issues comprehensively, the U.S. Special Representative solicited the support of the U.S. Departments of the Interior, Homeland Security, State, Defense, and several Executive Office of the President personnel from the Office of Management and Budget, National Security Council, Domestic Policy Counsel, White House Counsel, and White House Intergovernmental Affairs. All offices designated high-level officials to work as part of the U.S. team with U.S. Special Representative Domenech.

Summary of Issues

The CNMI letter to President Trump requesting this 902 Consultation identified the primary issue as the impact of a possible revocation of the existing parole policy for Chinese nationals would have on the CNMI's access to the Chinese tourist market and how it would imperil the CNMI's economic survival. At the first consultation meeting on February 26, 2019, the Special Representatives identified this issue as the focus of this 902 Consultation.

Procedures Governing 902 Consultations

At the onset of the first 902 Consultation meeting on September 30, 1986, representatives of the United States Federal Government and the CNMI agreed to procedures to govern the 902 Consultations process. These procedures generally lay out the structure for meetings, the delineation of issues, and the process for creating a report and recommendations that are the final product of any 902 Consultations process.

The report would discuss the issues that are the subject of the consultations and the Special Representatives' recommendations on the resolution of those issues. If the Special

Representatives conclude they cannot agree on a recommendation or language for a recommendation, the draft report shall contain the separate views of the parties, which are not subject to approval by the other side.

On completion of a draft report, the Special Representatives circulate the draft to the CNMI Governor, Legislature, and relevant CNMI agencies, and to any officers or agencies of the Executive Branch of the Federal Government that must approve the report. Once approved, the report is prepared in final form, signed by both parties, and submitted to the President of the United States, with a recommendation to submit the report to the Congress of the United States and to the Governor of the CNMI. If approved by the President, the report is then officially transmitted. As stated earlier, only one report to the President from prior 902 Consultations has ever been submitted.

These 902 procedures may be amended at any time by mutual agreement of the parties.

Timeline of Consultations

This 902 Consultation process involved two rounds of meetings between the Special Representatives. The first meeting occurred at the Department of the Interior on February 26, 2019, and consisted of the CNMI team presenting its position paper on the parole issue and various related issues and challenges.

On April 2-3, 2019, the Federal team traveled to the CNMI to conduct another round of 902 Consultation meetings, and participated in site visits on the islands of Saipan and Tinian. The consultation involved the U.S. team's presentation of its position paper and discussion among the teams, as well as panel presentations by representatives of local law enforcement, the tourism industry, the CNMI legislature, and the Commonwealth Healthcare Corporation. These discussions and site visits provided critical firsthand information about the economic, environmental, health, and social challenges facing the CNMI people, private industry, and government. Adding to these challenges is ongoing recovery from recent storms, Typhoon Mangkhut and Super Typhoon Yutu.

After the second round of meetings, and based on the fruitful discussions at those meetings, the U.S. Special Representative began writing the initial draft report for circulation to the CNMI Special Representative and to both teams. The U.S. and CNMI Special Representatives then engaged in follow-on communications to resolve any concerns with the initial draft and offered edits where desired. The Special Representatives settled on mutually agreeable language.

Parole Policy in the CNMI

Background on Parole in CNMI

On May 8, 2008, Public Law 110-229, the Consolidated Natural Resources Act of 2008 (CNRA), became law, ushering in a significant change in the nature of immigration to the CNMI. Subtitle A of Title VII of the CNRA brought the CNMI under the jurisdiction of U.S. immigration law, removing the CNMI's authority to control its own immigration policies and programs. These change made it necessary for foreign visitors to the CNMI to obtain visas from the Department of State or be covered by the Guam-CNMI Visa Waiver Program (GCVWP), which allows visa-free entry into Guam or the CNMI for citizens of certain countries.

The People's Republic of China (PRC), however, is not among the countries covered by the GCVWP. On January 16, 2009, DHS published interim final regulations for the GCVWP. DHS concluded that travel by Chinese nationals provide a "significant economic benefit," as defined in the CNRA, which would ordinarily mandate the PRC inclusion among countries eligible for visa-free travel. DHS, however, concluded that political and security concerns weighed against including the PRC in the Guam-CNMI VWP, although DHS left open the possibility of doing so at a later point after introducing additional security measures, such as electronic travel authorization to screen and approve potential visitors. The omission of the PRC from the GCVWP meant that travel by its nationals to the CNMI would be more time-consuming and restricted than prior to the enactment of the CNRA.

On October 21, 2009, nearly a year after the decision to exclude the PRC from the GCVWP, former Secretary of Homeland Security Janet Napolitano announced that she would exercise her discretionary authority to parole into the CNMI visitors, for business or pleasure, who are nationals of the PRC and Russia. Parole would be authorized for PRC and Russian nationals for a period not to exceed 45 days into CNMI, and CNMI only. The carriers transporting the PRC nationals traveling to the CNMI would be responsible to ensure that such travelers have a nonrefundable and nontransferable roundtrip ticket, complete necessary forms, and have a valid machine readable passport. Effective January 15, 2012, this policy was extended to include Russian visitors to Guam.

Secretary Napolitano justified this exercise of parole based on her discretionary parole authority and the authority to administer the Nation's immigration laws. See Immigration and Nationality Act, as amended (INA) secs. 103(a), 212(d)(5); 8 U.S.C. 1103(a), 1182(d)(5). Although parole is an authorized entry into the United States, it does not constitute an admission to the United States. INA secs. 101(a)(13)(B), 212(d)(5)(A); 8 U.S.C. 1101(a)(13)(B), 1182(d)(5)(A). Parole may be granted to an alien, regardless of her or his

inadmissibility, as a matter of discretion “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A). Under the 2009 and 2012 discretionary parole policies, nationals of Russia may be allowed to enter Guam and the CNMI and travel between Guam and the CNMI, and nationals of the PRC may be allowed to enter the CNMI, visa-free for a period of stay up to 45 days, provided the traveler meets certain conditions.

Pursuant to these policies, nationals of Russia and the PRC seeking entry are required to: i) possess a valid, unexpired machine-readable passport; ii) not have previously violated the terms of any prior travel to the United States; and iii) obtain a valid completed Customs and Border Protection (CBP) Form I-94, Arrival/Departure Record, and Form I-736, Guam-CNMI Visa Waiver Information.

Visitors who are paroled under this authority may not engage in local employment or labor for hire. Parole authorization is limited to Guam and the CNMI only and does not permit travel to another location within the United States.

Impact of Parole on the CNMI

The grant of parole to PRC nationals has had a significant positive impact on the CNMI economy and the CNMI government believes that Chinese tourism is essential to its survival. By 2009, due to the elimination of import tariffs as a result of multilateral trade agreements, all of the garment manufacturing factories that used to be the mainstay of the CNMI economy went out of business and the island's economy was in its sixth consecutive year of economic decline. In the year following the CNRA's enactment, the CNMI's GDP decreased by 17.5% and Gross Business Revenues declined by approximately 9%. The 2010 decennial census produced by the U.S. Census Bureau registered a dramatic reduction in the CNMI's population, which shrunk by 22% since 2000, and 51% of the population was at or below the federal poverty line.

The resulting economic collapse saw a period of prolonged government austerity, largescale unemployment, and dramatic increases in the rates of poverty among the population. Only recently has the CNMI begun to emerge from this collapse, driven by increased visitor arrivals, including those from the PRC. The CNMI economy has just recently rebounded to pre-depression levels but is just 5% the size of the smallest U.S. mainland state's economy. Wages are now on average above \$12 per hour, yet the CNMI wages still lag far behind that in the United States. The median income of individuals in the CNMI is \$18,000 lower than the national average. Rates of those without health insurance is 37% higher in the CNMI than the nation and the poverty rate is 39% higher than the national average.

Tourism remains the only industry remaining that is contributing to economic growth, employment, and government revenues. Today, Korea represents the largest source country

for tourists to the CNMI, representing 49% of total arrivals in 2018 - a total of 295,260 in 2018. China is now the second largest, with 39% of total arrivals and 236,577 tourists from China arriving in 2018. According to data collected by the Marianas Visitors Authority, the average visitor from China spends \$758.20 per trip to the CNMI. In 2018, the direct impact of Chinese arrivals amounted to \$183,736,155 and directly provided \$31,497,372 in government revenue – or 12.2% of the government’s budgetary resources.² Total economic impact provided by the Chinese market amounts to \$526,138,807, or 33% of total economic activity in the CNMI.³

CNMI perceives that the existence of parole allows it to effectively compete for the tourism business of PRC nationals, primarily as it allows visitors to avoid delays and expenses associated with obtaining the otherwise-required B-2 tourist visa. The majority of PRC travelers arrive on charter aircraft operated by travel companies that directly market the speed and ease of short term visits to the CNMI. The CNMI believes that PRC tourists who take the additional steps to obtain a B-2 visa will simply bypass the CNMI for other U.S. destinations, such as Hawaii or the mainland U.S., so that the loss of parole status would lead to significant negative economic impacts for the CNMI, along with the essential government services that the PRC tourist dollars support.

One of the challenges tied to the existence of CNMI Parole is a recent increase in Chinese “birth tourism.” Birth tourism involves pregnant alien women visiting a nation temporarily to have a child that would acquire that nation’s citizenship through *jus soli*, commonly known as birthright citizenship. Overall births in the CNMI have been falling, but operational intelligence and media reports have indicated that births to visitors from the PRC rose 175 percent between 2010 and 2012,⁴ and last year outnumbered those of any other ethnicity. Media reports further state that from January 2014 to October 2016, a total of 1,034 births of Chinese parents were recorded, comprising 32.92 percent of total births on Saipan.⁵ This represents a substantial increase since 2009, when there were reportedly only eight births to Chinese parents.⁶

In 2017, a federal indictment charged a Chinese national with harboring illegal aliens, unlawfully employing aliens, and money laundering, all tied to allegedly operating an unlicensed business that offered trip packages to the CNMI for pregnant women seeking to give birth in the U.S.⁷

² CNMI Public Law 20-67

³ Based on CNMI 2017 Nominal GDP figures provided by the U.S. Bureau of Labor Statistics

⁴ <https://cis.org/North/More-BirthTourism-Births-Indigenous-Births-CNMI>

⁵ <https://www.saipantribune.com/index.php/births-foreign-parents-raise-questions/>

⁶ *Ibid*, <https://www.saipantribune.com/index.php/births-foreign-parents-raise-questions/>

⁷ <https://www.saipantribune.com/index.php/fbis-informant-physician/>

The rise of birth tourism has had deleterious effects for CNMI residents, including a diminishment of available resources at the Commonwealth Healthcare Corporation and the fiscal costs associated with tourists who fail to pay the costs of natal treatment.

The Way Forward

Review of U.S. Parole Policies

President Trump signed Executive Order (EO) 13767 on January 25, 2017, directing the Secretary of Homeland Security to “take appropriate action to ensure that parole authority under section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(d)(5)) is exercised only on a case-by-case basis in accordance with the plain language of the statute, and in all circumstances only when an individual demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole.”⁸

In compliance with EO 13767, DHS is reviewing a broad spectrum of existing parole policies, and therefore reviewed the parole policy applicable to the CNMI. The CNMI requested the 902 Consultation to discuss the impact of this review on the CNMI.

Recommendations by the Special Representatives

The following recommendations by the Special Representatives are based on the information provided above, information contained in each party’s position paper, information presented at the formal 902 Consultation meetings, and information presented during related meetings and site visits in the CNMI. These informative and productive interactions resulted in a finding by both Special Representatives that the CNMI’s access to the PRC tourist market is of critical importance to the CNMI’s economy and should be facilitated to the greatest degree possible, while at the same time recognizing that national security, public safety, and immigration concerns warrant certain modifications be made to either the parole system or the existing GCVWP visa waiver program. With that as a basis, the Special Representatives agree to the following recommendations:

RECOMMENDATION #1 – Modify Parole Program with Enhanced Security Provisions

Modify the current parole program to include reducing the maximum period of parole from 45 days to 14 days and electronic screening and vetting prior to arrival at the port of entry. These enhancements will allow for information exchange and cooperation to combat human trafficking and unlawful employment. This will be an interim step until the completion of the addition of the People’s Republic of China to the CNMI Economic Vitality & Security Travel Authorization Program (see Recommendation 2). Until the modifications are enacted, current

⁸ <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/>

parole policies will remain in place. DHS will work with CNMI officials to ensure a smooth transition.

RECOMMENDATION #2 – Create CNMI Economic Vitality & Security Travel Authorization Program (EVS-TAP) as a Sub-Program of the GCVWP

The Special Representatives support creation of a new sub-program of the Guam-CNMI Visa Waiver Program (GCVWP) that balances visitor ease with enhanced security provisions and transparency. The GCVWP provides for the addition of countries to the program. The Secretary of Homeland Security may grant a request by the Governor of Guam and the Governor of the CNMI to add a country to the program and initiate the lengthy and complex process to “promulgate regulations with respect to the inclusion of that country and any special requirements the Secretary of Homeland Security, in the Secretary’s sole discretion, may impose prior to allowing nationals of that country to obtain the waiver provided by this subsection.” 8 U.S.C. § 1182(l)(6). That authority would allow the Secretary to impose additional conditions, such as installing an electronic automated screening platform for use by PRC nationals entering into the CNMI under the GCVWP.

Within CBP regulations, the Special Representatives recommend that DHS create a restricted travel authorization program under the authorities of the GCVWP and add the People’s Republic of China to this sub-program. The sub-program, the CNMI Economic Vitality & Security Travel Authorization Program (EVS-TAP), would include additional restrictions that do not currently pertain to the rest of the GCVWP. Under this visa-free travel program, travelers would only be allowed to enter the CNMI and would not be permitted to enter Guam, the mainland, or any other U.S. location. Travelers under the EVS-TAP will be subject to electronic screening and vetting prior to entry as in the previous recommendation. The U.S. will explore adding bonding requirements as discussed in the Consolidated Natural Resources Act of 2008. 8 U.S.C. § 1182(l)(3)(b). Travel authorization under the EVS-TAP would be for a maximum of 14 days in lieu of exceptional circumstances.

RECOMMENDATION #3 – Pursue 287(g) Agreement and Additional Ways to Collaborate on Immigration Enforcement

The U.S. Department of Homeland Security will begin negotiations with the Commonwealth of the Northern Mariana Islands to enter into a 287(g) agreement as defined in the Immigration and Nationality Act (INA § 287(g)). A 287(g) formal written agreement deputizes selected state and local law enforcement officers to perform the functions of federal immigration agents under the supervision of Immigration and Customs Enforcement (ICE). Additionally, the Administration assumes that DHS and the Commonwealth will be able to collaborate and onboard pilot programs designed to improve security protocols and visa integrity.

As each side had concerns about the practice of birth tourism in the CNMI, that issue may be addressed in a collaborative manner between the governments, with each government taking appropriate steps within its jurisdiction and both sides acting together when necessary.

RECOMMENDATION #4 – Elevate Focus on U.S. Territories in the Pacific by Engaging the President’s Advisory Commission on Asian Americans and Pacific Islanders

Under the President’s Advisory Commission on Asian Americans and Pacific Islanders, the U.S. Federal Government and the Government of the CNMI, along with other U.S. territories in the Pacific, will maintain a long-term dialogue on domestic policy issues affecting the Pacific territories. The CNMI-focused discussion will convene with the goal of working collaboratively toward a robust and diversified CNMI economy.