

CONGRESSWOMAN MADELEINE Z. BORDALLO
STATEMENT FOR THE RECORD ON S. 1237 THE OMNIBUS TERRITORIES ACT
AND S. 1268 THE PALAU COMPACT RENEWAL
11 JULY 2013

Chairman Wyden and Ranking Member Murkowski, thank you for the opportunity to testify on legislation pending before the Senate Committee on Energy and Natural Resources. In particular, I appreciate providing testimony on S. 1237 the Omnibus Territories Act and S. 1268 a bill to renew the Compact with the Republic of Palau. I appreciate the concerted effort to advance legislation and policies that are important to the people of the U.S. territories. Moreover, I appreciate this Committee's continued leadership in finally passing the renewal of the Compact with the Republic of Palau.

S. 1268 – Palau Compact Renewal

Before I address specific provisions in S. 1237, I want to address the critical importance of advancing S. 1268 the renewal of the Palau Compact. Palau is one of our closest and strongest allies. Renewal of the Palau Compact has lingered in the U.S. Congress for over four years and this is simply unacceptable. Moreover, I am deeply concerned by this Administration's lack of focus, effort and attention to this critical issue. Our lack of action on renewing the Compact has very significant impacts for the geopolitical situation in the Western Pacific.

The Compact with Palau as well as the Federated States of Micronesia and Republic of the Marshall Islands is predicated on continued U.S. military access to these areas. In fact, the Compact gives the United States strategic control over a vast area of the Asia-Pacific region. In order to have base rights for 50 years we provide Palauans with free access to the United States and limited direct financial assistance to the Palau government. The current Compact agreement would provide Palau with \$215.75 million for 14 years and phase out assistance in fiscal Year 2023, a year before the next review.

If we do not follow-up with our commitment to Palau we risk our strategic positioning in this area of the world. The lack of leadership from the Obama Administration and lack of action from the U.S. Congress on this compact renewal risks undermining our strategic goal of rebalancing to the Asia-Pacific region. Time after time I meet with officials from foreign governments who embrace the rhetoric behind the rebalance to the Asia-Pacific region yet express concern about the lack of tangible resources or commitment in the rebalance. The inability to renew the Compact reflects that lack of commitment. The total cost of the Compact renewal is only \$215 million over 14 years. To put that figure in perspective, since 2009 we have spent \$85.6 million in foreign assistance to China.

Several years ago the Congressional China Caucus in the House of Representatives held a briefing from Department of Defense and Department of State officials on the importance of renewing the Palau Compact. The Department of Defense briefer presented a map of the Western Pacific and highlighted the importance of the first and second island chains in U.S. defense posture. Palau is on the front lines of the first island chain and truly critical to our

national security, diplomatic and economic interests in the Asia-Pacific region. Our assistance to Palau is a small price to pay for this important partnership.

I find it incomprehensible that we cannot find a reasonable offset to move the Palau Compact renewal legislation forward. I hope that the Obama Administration will renew their leadership role and work with Congress to find an appropriate offset for this critical legislation. I fear that further inaction will undermine the strength of our alliance with Palau and that has serious consequences for the Asia-Pacific region and for my constituents on Guam.

It is also important to remain mindful of the impacts of Compact migrants on affected jurisdictions like Guam, Hawaii and the CNMI. The Compacts, while important to our national interest, do have negative consequences for local affected jurisdictions. The amount of Compact-Impact funding in a given fiscal year is not nearly enough to cover the expenses incurred by local governments who provided services to Compact migrants. I appreciate that S. 1237 takes some important steps to address the issue of unreimbursed Compact-Impact but this issue requires creative solutions during these tight budgetary times.

S. 1237 – Omnibus Territories Legislation

Of similar importance is today's legislative hearing on S. 1237. I appreciate the efforts of Chairman Wyden and Ranking Member Murkowski to finally act on a variety of provisions and policies that are important to the people of the U.S. territories including my constituents on Guam. There has been little action on issues important to the U.S. territories over the past several years and this bill and hearing are an important step forward. I thank the Chairman and Ranking Member and look forward to working with them to advance this legislation.

Section 12 – Guam War Claims Review Commission

Of particular importance to the people of Guam is section 12, the text of the Guam World War II Loyalty Recognition Act. Guam war claims legislation is one of my top legislative priorities and I appreciate its inclusion as part of the overall omnibus legislation. Bringing resolution to a painful chapter in Guam's history is critical. In particular, this bill would implement the recommendations of the Guam War Claims Review Commission, which was appointed by Secretary of the Interior Gale Norton and established by an Act of the 107th Congress (Public Law 107-333). The Review Commission, in a unanimous report to Congress in June 2004, found that there were significant disparities in the treatment of war claims for the people of Guam as compared with war claims for other Americans. The Review Commission also found that the occupation of Guam was especially brutal due to the unfailing loyalty of the people of Guam to the United States of America. The people of Guam were subjected to forced labor, forced marches, internment, beatings, rapes and executions, including public beheadings. The Review Commission recommended that Congress remedy this injustice through the enactment of legislation to authorize payment of claims in amounts specified.

It is important to note that the Review Commission found that the United States Government seized Japanese assets during the war and that the record shows that settlement of claims was meant to be paid from these forfeitures. Furthermore, the United States signed a Treaty of Peace

with Japan on September 8, 1951, which precludes Americans from making claims against Japan for war reparations. The treaty closed any legal mechanism for seeking redress from the Government of Japan, and the United States Government has settled claims for U.S. citizens and other nationals through various claims programs authorized by Congress.

Further, this section addresses concerns that have been raised about this legislation in the past. First, the text reflects a compromise that was reached with the Senate when they considered the legislation as a provision of the National Defense Authorization Act for Fiscal Year 2011. That compromise removes payment of claims to heirs of survivors who suffered personal injury during the enemy occupation. The provision continues to provide payment of claims to survivors of the occupation as well as to heirs of citizens of Guam who died during the occupation. The compromise continues to uphold the intent of recognizing the people of Guam for their loyalty to the United States during World War II.

The provision also contains an offset for the estimated cost of the bill. Many have expressed concern that there was no offset to pay for the cost of the bill. Guam war claims has a very simple offset that will pay for the cost of the provision over time. The bill would be paid by section 30 funding remitted to Guam through the U.S. Department of Interior at any level above section 30 funds that were remitted to Guam in fiscal year 2012. With the impending relocation of Marines from Okinawa to Guam as well as additional Navy and Air Force personnel relocating to Guam, it is expected that Guam will receive additional section 30 funds. Claims would then be paid out over time based off the additional amounts that were made available in any given year. Not only does this offset address payment of claims but it impacts my jurisdiction only and is a credible source of funding that will ensure that claims will be paid.

I have talked to local leaders about this offset and the Guam Legislature supports this approach provided that use of the Section 30 funds does not set precedence for using these funds in the future which I do not believe it does. As a community, we agree that we must find the means to resolve this longstanding injustice, and the Section 30 offset is a placeholder for the Administration to work with Congress in funding this requirement. We do intend to seek subsequent appropriations from the Obama Administration should this authorization pass so that our Section 30 funds which are intended to address local needs will continue to be made available to the Government of Guam.

Again, resolving this issue is a matter of justice for the people of Guam. This carefully crafted compromise legislation addresses the concerns over the cost of this provision. This provision represents a unique opportunity to right a wrong because many of the survivors of the occupation are nearing the end of their lives. It is important that Congress act on the recommendations of the Guam War Claims Review Commission to finally resolve this longstanding injustice for the people of Guam.

Section 13 – Use of Certain Expenditures as In-Kind Contributions

I strongly support section 13 of the underlying bill as it is an innovative way to mitigate the impacts of Compact migrants on affected jurisdictions. Essentially the provision would allow affected jurisdictions to consider the cost of providing local services to Compact migrants as an

in-kind contribution for the purposes of providing matching funds to certain federal grant programs.

Jurisdictions which are greatly impacted by Compact migrants spend a significant amount of local funds to support the social needs of these migrants. As I discussed earlier, the free access of these migrants to the United States is the key underpinning of these compact agreements. While Congress does appropriate an annual Compact-Impact funding, those funds are insufficient to cover the entirety of impacts imposed by these migrants. This has been affirmed by a GAO report 12-64 in 2011.

The provision will also help to address a key concern and recommendation from that GAO report. In particular, passage of this provision will require the Office of Insular Affairs to develop a mechanism to ensure that there is accurate and uniform way to account for the amount of local funds that supplement federal funding to support the Compact migrants.

The Guam Legislature has passed a resolution that asks me to seek additional Compact-Impact funding. While we continue to engage the Administration and Congress on this issue, we recognize that an appropriation in the amounts requested by the Guam Legislature is not feasible or possible under the current budgetary and political environment here in Washington DC. That is why we must look for other solutions that will have a tangible benefit for the affected jurisdictions. I believe that this provision will help defray the cost of supporting Compact migrants over time and help affected jurisdictions apply for federal programs that support the needs of local citizens.

Section 14 – Improvements in HUD Assisted Programs

I also strongly support inclusion of section 14 in the Omnibus legislation. The provision would very simply clarify an apparent vagueness in current statute. The provision would make clear that U.S. citizens and U.S. nationals have preference when applying for Section 8 housing on Guam. In 1999, Public Law 106-504 amended Section 214(a) of the Housing Community Development Act of 1980, to make citizens of the Freely Associated States (FAS) eligible for federal programs, grant assistance, and services of the United States, “provided that, within Guam any such alien shall not be entitled to a preference in receiving assistance under this Act over any United States citizen or national resident therein who is otherwise eligible for such assistance.”

Congressman Robert Underwood further clarified congressional intent of this legislation by stating on the Floor of the House on June 29, 1999 “American citizens in need of social services such as housing are not displaced by these very migrants. Our omnibus legislation will ensure that American citizens are not left in the back of the line for housing, for public housing.”

The Guam Housing and Urban Renewal Authority (GHURA) promulgated regulations for public housing assistance on Guam that provided, among others, priority for U.S. citizens or nationals to receive assistance over FAS citizens. On May 11, 2012, GHURA received guidance from the U.S. Department of Housing and Urban Development (HUD) that “it is legally inconsistent with

HUD's statutory and regulatory scheme for GHURA to afford U.S. citizens a priority of COFA citizens in Guam on the basis of U.S. citizenship or nationality along."

I wrote to HUD on July 9, 2012 to request reconsideration of this guidance because I believed that HUD's distinction between "preference" and "priority" with regard to GHURA's tenant selection process misapplied the intent of Congress to not displace U.S. citizens and nationals by permitting FAS citizens in the U.S. to benefit from federal social programs.

HUD responded on August 3, 2012 and reaffirmed its guidance. The Department concluded that while the statute make explicit that FAS citizens cannot receive a housing preference over U.S. citizens, it does not provide that U.S. citizens may receive a preference over FAS citizens on the basis of national origin alone. The letter indicates that in some cases an FAS citizen could receive Section 8 benefits before a US citizen based off local requirements.

I was deeply concerned by this interpretation by HUD and appreciate that this provision is included further clarifying Congressional intent and correcting HUD's misplaced guidance and interpretation of the underlying statute.

Section 16 – Waiver of Local Matching Requirements

Finally, I strongly support section 16 that will increase the waiver on local matching requirements from \$250,000 to \$500,000 on most federal grant programs. This provision will help our local jurisdictions compete for federal grant programs. The territories have limited resources and often times the matching requirements inhibit them from competing for critical federal funds. The initial underlying law that waived matching requirements was set back in 1977 and has not been adjusted since then.

Again, I greatly appreciate the leadership of this Committee in holding a hearing on this bill and its important provisions. I look forward to working together along with other Delegates from the territories to ensure this bill becomes law. I look forward to your questions.