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March 20, 2014

Sent via Electronic Mail
madeleine.bordallo@mail.house.gov

The Honorable Madeleine Z. Bordallo
Congresswoman
U.S. House of Representatives
120 Father Dueñas Ave, Suite 107
Hagåtña, GU 96910

Re: Enforcement of COFA Deportation Law a 'Waste of Litigation Resources', ICE

Dear Congresswoman Bordallo,

In October of 2013, I issued corresponding Freedom of Information Act (FOIA) requests to the U.S. Attorney for Guam and the Immigration and Customs Enforcement (ICE) Office of the Department of Homeland Security. I issued these FOIA requests to obtain deportation documents that I believed might answer two questions: First, what is the specific legal rationale for deportation? And, second, how many deportations have been ordered under the authority granted by Section 214.7 of Title 8 of the Code of Federal Regulations?

Thanks to a conference call I shared with various Department of Homeland Security officials yesterday morning, I can inform you that I am both insulted and puzzled by the answers I was provided.

Participating in the conference call were Field Legal Operations/Office of the Principal Advisor (OPLA) Deputy Director Matthew M. Downer, Honolulu OPLA Chief Counsel Patricia A. Beattie, San Francisco District Office Deputy Director Erick S. Bonnar, Honolulu Field Office Assistant Director Michael A. Samaniego, and Guam Field Office Supervisory Detention and Deportation Officer Vida A. Leon Guererro. Also included in the call was Arthur Clark, chief policy advisor of the Office of the Governor.

The federal officials referenced above made three facts absolutely clear:

> **1) ICE will not enforce the provisions of Title 8, Section 214.7 of the Code of Federal Regulations, relative to the habitual residence in the territories and possessions of the United States and consequences thereof of, as the agency's legal officers believe that enforcing the provision would be a "waste of litigation resources".**

2) The same legal officers were unaware of any action brought under this provision, and as such, are relying only on their individual experience and personal judgment to deem this provision unenforceable before the courts.

3) The ICE officials are only willing to consider deportation actions brought under Section 237 of the Immigration and Naturalization Act (INA) (8 U.S.C. § 1227). However, any desire to increase successful deportation rates above their current levels must be matched by revisions to our criminal laws, allowing such laws to be more compatible with federal deportation requirements. In spite of this representation, ICE is unwilling to provide any guidance on the criteria used to determine if an individual can be deported or the manner in which our criminal statutes must be amended to be compatible with federal deportation actions.

According to Attorney Downer, and contrary to representations given by San Francisco District Director Timothy Aitken during our meeting in his office in January, ICE officials have specifically discussed the provisions of 8 C.F.R. § 214.7 since 2010. Based on representations made by Attorney Downer, ICE officials believe that this section is a "rusty bear trap" they dare not approach. Though he and other ICE officials believe cases pursued under this provision to be a "waste of litigation resources", this assertion is without a rational basis as no litigation has been pursued under this provision. Sadly, yesterday morning's teleconference revealed that those who simply don't agree with federal law could choose to ignore it. In an attempt to discern the statutory roadblocks that might prevent ICE from enforcing this provision, I asked these officials to provide specific recommendations that would make this statute worthy of their action. **These officials said they were barred from advising on policy.**

While I do not agree with the sentiments expressed above, and I was nearly compelled to end the call immediately after these sentiments were expressed; I chose to continue this meeting in the hope that a rational alternative might be provided. To that end, ICE officials stated that they would only consider deportation actions brought under Section 237 of the INA. This "judgment call" drastically limits the conditions for removal. For example, of the nearly 300 COFA citizens presently confined at the Department of Corrections, just 26 individuals have been issued a "detainer" under federal deportation proceedings. Under Section 237, ICE officials represented that Guam's criminal statutes must be amended to ensure consistency with deportation requirements. Except for one example related to the element of "recklessness" as it relates to a charge of "aggravated assault in our criminal code, **these officials said they were barred from advising on policy.**

As such we are placed between a proverbial rock and a hard place. On the one hand we are told our laws are not conducive to federal deportation proceedings, but the entity in charge of deportations will not advise us on specific amendments or statutory elements required for a successful deportation.

As such, I am forced to believe that federal officials are aware of our challenges but are otherwise unwilling to throw a life raft large enough to help us stay afloat. Without adequate Compact reimbursements or the federal government's willingness to house COFA prisoners in federal penitentiaries, deportation seems to be our only reasonable avenue for relief. The conversations I have had with ICE officials in recent months have only amplified my doubts regarding the sincerity of the federal government in relation to its COFA policies.

In May of 2011 you co-authored a letter, attached hereto, addressed to then Secretaries Clinton and Salazar of the U.S Departments of State and Interior, respectively, and signed by prominent Members of Congress from both Houses.

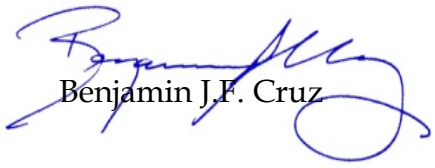
In this letter, you joined other Members in reasserting that while "***the policy of allowing FAS citizens into the U.S. for work, study, and residence is sound***", "***recent trends indicate that the current implementation of that policy is unsustainable.***"

Also mentioned in this letter were specific policy actions recommended for consideration at bilateral talks to take place in the summer later that year. These recommendations included immigration orientation for new residents, funding for the operation of a dialysis clinic in the FSM, and migrant screening; however it appears that none of your recommendations have been implemented in any meaningful way.

When we holistically assess our discourse with the federal government regarding this issue, it is clear that we are faced with an administration that ignores the expressed statutory will of the Congress, abandons the states and territories it has obligated for years to come, and denies the implementation of sound policy even when it was recommended by lawmakers like Senator Daniel Inouye—a man who at the time was third in the line of Presidential succession.

To the extent that this information may advise your future actions and policies, I sincerely hope we can address ICE's ongoing disregard of the law and its many costs to our communities.

Sincerely,



Benjamin J.F. Cruz

Enclosure

Congress of the United States

Washington, DC 20510

May 12, 2011

The Honorable Hillary Rodham Clinton
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Kenneth L. Salazar
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Secretaries Clinton and Salazar:

We are writing to follow-up on the October 6, 2009 letter to Assistant Secretaries Kurt Campbell (DOS/EAP) and Anthony M. Babauta (DOI/OIA) in which several of us requested assistance in developing policy options to manage the growing cost of providing healthcare to migrants to the U.S. from the Freely Associated States of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau (the "FAS"). These costs, as well as other social service costs, are a consequence of the policy established under the Compact of Free Association Act of 1985 (P.L. 99-239), and continued under the Compact of Free Association Amendments Act of 2003, ("CFAAA") (P.L. 108-188) which provide FAS citizens with the privilege of being admitted into the United States "to lawfully engage in occupations, and establish residence as a nonimmigrant."

The earlier letter stated the belief that the policy of allowing FAS citizens to enter the U.S. for work, study, and residence is sound. However, recent trends indicate that the current implementation of that policy is unsustainable. FAS migrant's increasing reliance on social services in the United States, and the costs associated with that reliance, is greater than was anticipated when the Compact was negotiated twenty five years ago, and it well exceeds the $30 million provided under the CFAAA to defray these costs.

After consideration of possible options available, we believe that a portion of Compact sector grant assistance should be utilized to mitigate the costs associated with Compact migration. During the bilateral meetings to be held this summer, we ask that the United States Government formally express the concerns of the U.S. regarding compact impact costs, and request formal adoption of the policies outlined below.

First, we believe it is important for potential FAS emigrants and those residing in the U.S. to understand that the privilege of entering the U.S. as a nonimmigrant is primarily intended to provide educational and employment opportunities, so that FAS citizens can return home with skills and experience that will permit them to contribute to

the development of their nations. Or, for those who remain in the U.S., that they will obtain steady employment and not become overly reliant on U.S. social programs. Specifically, we request that a portion of Compact Education Sector grant funding be used to fund a program to educate FAS citizens on the intent of the open migration policy and the expectations of those who enter the U.S. under the Compact.

Second, it appears that the single greatest compact impact cost is for services to those who need long-term medical treatment for conditions such as diabetes. Accordingly, we request that a portion of the Infrastructure Sector and Health Sector grant funding be committed to the establishment and operation of dialysis treatment facilities in the FSM and the RMI so that patients will not need to seek treatment in the U.S.

Third, we believe that consideration needs to be given to reducing the number of migrants who are likely to become a public charge. Accordingly, we request that the bilateral meetings consider screening measures that could be implemented by the FAS governments to reduce the rate of migration of persons who are likely to develop an over-reliance on social services.

Finally, we ask that you report to Congress by October 1, 2011 on the outcome of the bilateral talks including the decisions made regarding the policies outlined above. It is in the interest of all parties that the increasing costs of Compact migration be effectively managed before they become a source of serious friction in relations.

We expect that these policies will be agreed to during the upcoming bilateral meetings and that all parties will remain committed to the spirit of cooperation that has ensured the success of the Compacts for twenty-five years.

Thank you in advance for your consideration of our requests.

Sincerely,

Lisa Murkowski
U.S. Senator

Jeff Bingaman
U.S. Senator

Daniel Akaka
U.S. Senator

Daniel Inouye
U.S. Senator

Mazie Hirono
Member of Congress

Colleen Hanabusa
Member of Congress

Madeleine Bordallo
Member of Congress

John Boozman
U.S. Senator

Mark Pryor
U.S. Senator

CC: The Honorable Lorin Robert
Secretary of Foreign Affairs
Federated States of Micronesia

The Honorable John Silk
Minister of Foreign Affairs
Republic of the Marshall Islands.