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Written Testimony of
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Before the
Senate Committee on Energy and Natural Resources
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Good morning Chairman Manchin, Ranking Member Barrasso, and members of the Committee:

On behalf of the people of the U.S. Virgin Islands, thank you all for the opportunity to appear before you today to discuss the state of the United States Virgin Islands and the Territory's focal points in 2023. Chairman Manchin, you have been stalwart friend of the Virgin Islands for as long as I can remember. I thank you personally for your friendship with the U.S. Virgin Islands.

I also thank this Committee broadly, along with Congress at large, for the support you gave the Territory in 2022. Thanks to you all. This past year, the Territory began to bounce back from the devastating effects of COVID-19 and continued our rebuilding efforts from a deluge of national disasters. We are making great strides rebuilding. Our overall revenues are up, and our debt burden is down. We have restructured our struggling government employee retirement system, which has been a drag on our fiscal situation for decades. We are rebuilding our housing and infrastructure, and tourism in the Territory is rebounding. I am proud to say that we are laying the foundation for a stable, sustainable prosperity for the people of the U.S. Virgin Islands.

I am going to keep asking you for your support. Virgin Islanders deserve it. We are Americans, and as Governor of the U.S. Virgin Islands I will continue to demand equality until we are treated like every other American. All too often, the Territories are subjected to disparate treatment, afforded unequal funding, provided poor infrastructure, and treated as an afterthought. Our health care system and hospitals, still reeling from natural disaster, do not receive equal funding guaranteed to those on the mainland. Our energy is the most expensive and least reliable in the nation. The “GILTI” tax treats the U.S. Virgin Islands like a foreign country, crippling our access to the tax incentive programs Congress created to spur American investment in the Territory. The U.S. Supreme Court recently held that as Americans who are residents of a Territory, we do not have the right to equal protection under the law and must turn to Congress to demand fundamental social welfare benefits guaranteed to our fellow citizens residing on the mainland. Still, we lack equal representation in Congress. We make strides toward equality every year, but we are not there yet. We face enough challenges inherent to our islands, such as geographic isolation, lack of natural resources, and the prevalence of natural disasters that we, as a U.S. Territory, should not be facing challenges rooted in discriminatory Federal policies and second-class infrastructure that Congress has the power to change. I come before you, expecting action for long overdue change.

Social Programs and Health Care

First, I would like to recognize the monumental step towards social equity Congress did provide the Territory this past year. Historically, Federal law limited the Federal Medicaid Assistance Percentage (“FMAP”) to 55%—far less than what would be guaranteed to the Virgin Islands if it were a State. Since the 2017 hurricanes ravaged the Territory, Congress has temporarily extended the FMAP to 83% from time to time, leaving the Territory facing uncertain funding and chronic “fiscal cliffs” in

Medicare funding. Not anymore. The 2023 Consolidated Appropriations Act (“CAA”) provided the Territory a provision permanently fixing FMAP matching at 83%. The permanent fix is much more representative of the aid we would receive if we were subject to the same rules as a State, and we greatly appreciate Congress righting this historic wrong.

Of course, there is still much work to be done in the sphere of health care and social programs. As you know, the U.S. Supreme Court last year handed down the *Vaello Madero*¹ decision, holding that citizens of the Territories cannot invoke the Constitution’s promise of equal protection under the law to receive Supplemental Security Income or other benefits guaranteed to Americans resident in the States regardless of geographic location or payment of taxes. An American citizen who moves from West Virginia or Wyoming to the Virgin Islands will lose these life-saving benefits. While we believe the decision is wrong, at least we know where we stand now: We have no right to equal protection under the Constitution and no avenue for relief other than through Congress. Therefore, we urge Congress to do what is right. Expand Supplemental Security Income to the remaining Territories, including the Virgin Islands. Principles of simple equity require that result.

Unlike in the 50 states and D.C., annual Federal funding for Medicaid in the U.S. Virgin Islands is subject to an arbitrary statutory cap known as the Section 1108 allotment. Once a Territory exhausts its capped Federal funds, it no longer receives Federal financial support for its Medicaid program during that fiscal year. This funding arrangement is unlike Federal Medicaid funding for states that are treated like an entitlement where Federal dollars are uncapped. With the Territories’ Medicaid funding being capped arbitrarily, Americans in the Territories are denied much-needed Medicaid funds just because they choose to stay home instead of moving to the mainland. This limits our ability to access the

¹ *United States v. Vaello Madero*, No. 20-303, 2022 WL 1177499 (U.S. Apr. 21, 2022).

increased FMAP funding made available in the CAA. Without an accompanying change to the statutory cap, the intent of Congress to assist the Virgin Islands and other Territories' Medicaid programs through the permanent fix to the FMAP made available in the CAA will be offset by the statutory cap on Federal funding. We therefore urge Congress to remove the statutory cap on Federal funding for the Territories' Medicaid programs so that the ability for Medicaid enrollees to access health care services is not threatened.

Hospitals in the Virgin Islands also face disparate treatment under Medicare. Whereas hospitals on the mainland and in Puerto Rico are compensated under the modern Medicare Inpatient Prospect Payment System ("IPPS"), the USVI's two hospitals are paid by Medicare on an outdated payment system called TEFRA. The TEFRA payment system for Territories' hospitals utilizes a reasonable cost payment methodology that is based on a hospital's costs in a given year. The intent is for the hospital's reasonable costs to be periodically rebased so that the payments made under TEFRA for Medicare patients are aligned with the costs a hospital in the Territory incurs in providing that care. However, Roy Lester Schneider Hospital has not had its payments rebased by the Centers for Medicare & Medicaid Services in 41 years and Gov. Juan F. Luis Hospital has not had its payments rebased in 27 years. This anachronism causes the hospitals to lose significant amounts of money in providing essential health care services to Medicare patients and results in much lower levels of compensation for reimbursement compared to hospitals throughout America. We are geographically isolated and our people need first-class local care. We are not second-class citizens. We must address these disparities and provide Virgin Islanders the same access to quality health care their fellow Americans get on the mainland.

Caribbean Energy Grid

We propose bold new thinking around a Caribbean energy grid linking Puerto Rico and the U.S. Virgin Islands. For too long, the people of Puerto Rico and the Virgin Islands have been plagued by extremely expensive and unreliable power. Today, each of the Caribbean Territories faces an acute crisis in power generation and transmission. Problems in power generation and transmission directly impact the quality of life and the safety of Americans living in the Territories. Chronically unreliable and costly power also stifles investment and economic development in the Territories. Americans living on the mainland have reliable power for their hospitals, schools, homes, and businesses. Americans in the Territories deserve the same guarantee of basic services. As the nation looks toward rebuilding aging infrastructure, we ask that Congress join us in bold solutions, linking Puerto Rico and the Virgin Islands together in a new Caribbean energy grid promising increased reliability and lower costs achievable through economies of scale, decreased duplication, and clean, renewable energy.

Reconciling Environmental Protection and Economic Development

Sadly, not much has changed in regard to our oil refinery in St. Croix since this time last year, when I asked for congressional assistance getting the refinery reopened. Nearly our entire industrial economy turns on the refinery. The refinery provided up to \$70 million in annual tax revenues, and without it, the Territory suffers \$633 million in reduced GDP. Additionally, the refinery was one of the largest employers in the Territory, providing skilled jobs, job training, and community development. However, after a two-billion-dollar private investment overhauling the refinery, the U.S. Environmental Protection Agency (“EPA”) shut it down in 2021. It remains closed today.

One of the largest in the Western Hemisphere, the refinery is important for our national energy security. Last year, Putin’s war highlighted the fragility of both national and global energy markets.

Gas prices spiked, and access to winter heating fuel was put in jeopardy. Making matters worse, we face a national shortage in refining capacity, propelled by years of uncertain policy toward fossil fuels that has dampened the investment climate in capital-intensive refining assets. While we are fully supportive of the green revolution and moving aggressively as a Territory and a nation to diversify into renewables, we still need fossil fuel to keep the lights on reliably. We need refining capacity. The refinery on St. Croix can provide the nation with much-needed energy security. The refinery can also provide the U.S. Virgin Islands with much-needed local energy security and economic opportunity and presents the opportunity of a local lifeline to Puerto Rico, which is facing an energy crisis of its own.

My administration has been working very closely with the refinery's owners and the EPA toward reopening the refinery. At the very least, we need to get to a low-risk, limited "topping operation" reopening. This will demonstrate the refinery's viability to investors and demonstrate the refinery's safety to regulators. But at every turn, we have met with resistance. Just a month ago, the EPA ordered that the refinery cannot start its limited topping operation until it gets another permit that will take 18 months to two years. This is too long. We cannot weather another bankruptcy at the refinery. We need a compromise approach that provides both environmental justice and economic opportunity. We therefore ask for your help getting this national asset back online for our Territory and for our Nation's energy security.

Rum Cover-Over

The rum cover-over has defined the political and tax relationship between the U.S. Virgin Islands and the United States since our country acquired the Territory over a century ago. Under this longstanding arrangement, Federal excise taxes on rum manufactured in the Virgin Islands are returned,

or “covered over,” to the Virgin Islands treasury to finance essential public services, pay debt service on the Virgin Islands’ bonds, and facilitate the Territory’s future access to the capital markets.

Decades ago, Congress increased the excise tax on rum from \$10.50 per proof gallon to \$13.50 per proof gallon. However, Congress only extended the cover-over rate to \$13.25 under temporary law. As a consequence, the Territory is short-paid the excise taxes collected and regularly faces a “fiscal cliff,” usually with each “tax extenders” package. The rum cover-over extender expired December 31, 2021 when Congress failed to pass any tax extenders package, abruptly reducing the amounts covered over to the Virgin Islands by more than 20%. The devastating impact on our finances is now unfolding and the situation will rapidly deteriorate unless action is taken by Congress to honor our longstanding cover-over arrangement.

We cannot responsibly plan for our people lurching from one jury-rigged extender to the next. We need permanent and reliable revenue from the taxes collected, consistent with the longstanding bargain struck when the United States acquired the U.S. Virgin Islands. We therefore request that Congress make permanent the rum cover-over at the full \$13.50 rate of excise tax collected and act immediately to restore the cover-over short-paid since December 31, 2021.

General Bond Guarantee

When I appeared before you last year, members of this Committee expressed support for updating the Federal guarantee of certain debt obligations of the Territory. Thank you for working with us on this proposal. This concept has firm precedent under 48 U.S.C. §§ 1574a and 1574b, which provide for a Federal guarantee of U.S. Virgin Islands bonds subject to terms and conditions set by the Departments of Treasury and Interior.

Our proposal would expand and update the existing statutory authority, streamlining and facilitating our access to capital markets, while providing Federal oversight under supervision of Treasury. This would enable the Territory to make cost-effective capital and infrastructure improvements, facilitate our recovery from the hurricanes, reduce debt service costs, and reduce the need for additional Federal aid—all while ensuring prudent financial management under Treasury’s oversight.

Over the last year, we have encountered continued enthusiasm among members of this Committee, and we look forward to working with you to refine and advance the proposal in the 118th Congress.

Not GILTI

The perverse application of the Global Intangible Low-Taxed Income (“GILTI”) is another oversight that harms the Territory. GILTI is meant to keep American companies from stashing profits in tax havens like the Cayman Islands, Ireland, and the Isle of Jersey. However, through oversight, GILTI has been applied to the U.S. Virgin Islands as if it were a foreign country. We are not a foreign country. We are American. In fact, as a “mirror code” jurisdiction, the Territory is governed by the U.S. Internal Revenue Code and we have no power to change that.

We are grateful that Congress enacted Section 934 of the Internal Revenue Code, which allows us to offer tax incentives designed by Congress for the express purpose of *encouraging* U.S. investment in the Territory. However, the misapplication of GILTI takes away what Congress gave in Section 934. We understand that GILTI was not intended to punish the U.S. Virgin Islands, but nevertheless its

treatment guts the Territory's economic development programs.² These programs have been successful in attracting much-needed investment to the U.S. Virgin Islands and are one hundred percent consistent with Congress's longstanding treatment of the USVI under the tax code. Therefore, we request that Congress amend the law to stop treating businesses in the Territory as "foreign" and give us a chance to lift ourselves up by promoting American investment in our beloved Virgin Islands.

Cost-Share Waiver under the Insular Act

Congress acted admirably in appropriating funds for disaster recovery and COVID mitigation in the U.S. Virgin Islands and we are grateful for that. However, much of this funding remains stalled and inaccessible to the Territory because of labyrinthine regulatory requirements, burdensome Federal bureaucracy, and unrealistic local match requirements. Those local match requirements, which typically range from 10% to 25% of project costs, present formidable obstacles to our ability to timely access appropriated funds.

It is the policy of Congress, expressed by statute in 48 U.S.C. § 1469a, that "the administering authority of any department or agency, in its discretion, may waive any requirement for matching funds otherwise required by law to be provided by the Insular Area involved." In practice, however, that authority is rarely used. The policy reasons for the waiver are obvious. While the Insular Areas are in great need of Federal funding, they do not have the resources available to come up with the local match in order to access those funds. I understand the agencies' desire for the Territory to have "skin in the

²A report by the accounting firm EY, attached to this statement as Appendix I, sets forth the economic consequences of the GILTI regime for Virgin Islands investment.

game,” but where that desire effectively forecloses the Territory’s ability to use critically needed Federal funds, it does not serve an appropriate public purpose and contravenes the will of Congress.

I respectfully urge the Committee to require Federal agencies to exercise the authority provided in 48 U.S.C. § 1469a by amending it to provide that each department or agency “shall waive any requirement for matching funds otherwise required by law to be provided by the Insular Area involved.” In so doing, the Territories would be freed from local match requirements that exceed our limited ability to pay and appropriated funds would be allowed to flow as this body intends.

Territorial Highway Program

Before 2012, Congress allocated \$50 million annually to the small Territories through the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (“SAFETEA-LU”) program under the Territorial Highway Program. This funding was in addition to amounts equivalent to the funding for High Priority Projects in the Territories. However, in July 2012, the Moving Ahead for Progress in the 21st Century Act (“MAP-21”) cut the Territorial Highway Program funding by 20%. Notably, this Act maintained highway funding levels for the States, the District of Columbia, and Puerto Rico. The small Territories were left out—another example of Americans receiving poorer treatment simply because of where in the United States they live. We urge Congress to correct this inequity.

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In closing, I would like to thank you again for your time and your attention to the challenges facing our Territory. The U.S. Virgin Islands is my home, and I am so grateful to live there. I am an American, and proud to be one.

We are thankful for the partnership we have with this Committee and the Congress. We are thankful to be Americans, and we want to be treated as equals to all Americans, afforded the same rights, benefits, opportunities, and obligations. Too often, the U.S. Virgin Islands and the other Territories get second-class treatment and get left behind. The U.S. Supreme Court has held that Americans in the Territories cannot rely upon the Constitution's guarantee of equal protection under the law and that they must look to Congress for equal treatment—but we do not have equal representation in Congress either.

Virgin Islanders should not have to move to the mainland to achieve the same benefits and protections afforded other Americans. I call upon each of you and upon Congress to broadly rebalance the relationship with the Territories, with the goal of equal treatment for all Americans regardless of where they call home in our great Nation.

Thank you for considering this testimony and for your support of your fellow Americans in the U.S. Virgin Islands.