THE UNITED STATES VIRGIN ISLANDS
OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE
Charlotte Amalie, V.I. 00802
340-774-0001

March 19, 2020

The Honorable Nancy Pelosi
Speaker of the House
United States Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
House Minority Leader
United States Capitol
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, DC 20510

Re: Urgent Request for Relief – Coronavirus Legislation

Dear Speaker Pelosi, Leader McCarthy, Leader McConnell, and Leader Schumer:

On behalf of the Government of the U.S. Virgin Islands (USVI), I write to request your assistance in confronting the growing threat of the coronavirus pandemic to the health of the USVI's citizens and the economy and government that supports them. This correspondence presents both immediate and long-term requests for action to protect the public health of Virgin Islands residents and visitors and to enable and enhance the financial development and stability of the USVI Government.

The impact of the pandemic on our economy and our ability to continue basic governmental functions is already severe and worsening by the hour. As you know, our economy is heavily dependent on a tourism sector that is being ravaged by the pandemic: tourist expenditures constitute 30% of GDP, and tourism-related businesses employ 25% of the civilian labor force. Because our Territory is reachable only by air and sea, the sudden, dramatic, and accelerating drops in air traffic, cruise ship arrivals, and hotel bookings in recent days threaten to devastate, if not eliminate, economic activity and dramatically depress government revenues generated by this critical sector of our economy.

Depressed business activity in the tourism-related sector has already led to job losses, increased unemployment claims, reduced spending, and drastically shrinking government revenues. The reduction in local expenditures, in turn, will adversely affect all non-tourism-related businesses, which may themselves be forced to cut operations and staff, further reducing government revenues. Coupled with the 90-day extension of the April 15 income tax filing deadline (which automatically applies to the USVI as a mirror tax code jurisdiction), the loss of incoming gross receipts revenues in the midst of

what would normally be high tourist season (and the period of highest government revenues) will reduce the government's cash on hand to dangerously low levels and jeopardize our ability to make payroll and perform basic governmental functions.

Initial projections suggest that the coronavirus crisis could result in a reduction of the Territory's GDP by a staggering 15.7%. For context, such a reduction would be roughly on par with the impacts of the Great Recession on USVI, and much worse than the immediate economic impact of the catastrophic 2017 hurricanes.

In addition, the recent drop in oil prices adds additional risk exposure to the Limetree Bay refinery, one of the largest employers in the territory.

The timing of this economic blow is particularly cruel, as it comes just as our vital tourism industry was making progress in recovering from the catastrophic hurricanes of 2017. Even tourism-dependent jurisdictions with healthy economies face severe fiscal stress from the pandemic; the U.S. Virgin Islands, so recently emerging from the worst disaster in recent history, faces an existential economic threat.

To stave off that threat, we have identified a series of economic recovery and stimulus measures that would help restore the Territory to a sound economic footing in both the short and long terms and ask that these measures be included in the proposed economic stimulus package.

Immediate Funding Needs

Emergency Funding for Displaced Revenues

First, and most urgently, I request that Congress provide emergency funding to offset the catastrophic loss in revenues resulting directly from the pandemic. Our government cannot operate on projected revenues that fall nearly $250 million below pre-crisis projections. The need for immediately available funds is particularly acute in light of the 90-day extension for filing income taxes: the Territory was expecting to receive approximately $112 million in income tax revenues in April, the great majority of which will now not be received until August. Absent an immediate infusion of cash to offset those losses, the Territory will be forced to miss payrolls and slash public services—including critical health services—at exactly the moment when they are needed most.

We estimate that a direct infusion of $250 million for fiscal year 2020 and $250 million for fiscal year 2021 will be necessary to offset the loss of government revenues resulting directly from the pandemic and prevent serious disruptions in public services.

Emergency Economic Impact Payments and Mirror Code Reimbursements

The Department of the Treasury has proposed two rounds of direct payments to taxpayers, to be administered in part by the Internal Revenue Service (IRS). Any direct-payment program administered by the IRS could result in mirror-code jurisdictions like the Virgin Islands shouldering the full cost of the program—an expense they could not possibly bear. In previous crises, Congress avoided this

unintended effect by reimbursing the mirror-code territories for the costs of the stimulus. The most analogous example is the Economic Stimulus Act of 2008, which required Treasury to "make a payment to each possession of the United States with a mirror code tax system in an amount equal to the loss to that possession by reason of" the stimulus payments made to taxpayers. Pub. L. 110-185 §101(c)(1)(A).

A similar provision is appropriate here. To avoid an up-front cost that would inadvertently cripple the Virgin Islands Government, I request that any payment program to be administered by the IRS be accompanied by language providing for full pass-through payment to the Virgin Islands and other mirror-code territories.

Emergency Funding for Hospitality Industry

The pandemic's cost for the Virgin Islands' hospitality industry will be extreme. Because Virgin Islands' tourism is entirely dependent on commercial airlift and cruise ship traffic, the massive slowdown in both those sectors has placed many local businesses in immediate danger of closure. Many of these businesses have only recently recovered from the devastation wrought by the 2017 hurricanes, making their ability to withstand a new financial shock extremely limited. And because the Territory is more dependent on its hospitality industry than almost any other U.S. state or territory, widespread failures in that industry will have outsized impacts on the rest of the Territory's economy. Initial projections from the Department of Labor suggest that the first wave of job losses will result in furlough or termination of nearly 12,000 local workers from the hospitality sector. The resulting payout of unemployment benefits over 14 weeks will cost the Virgin Islands government more than $94 million.

Accordingly, we strongly urge that any federal funding directed to the hospitality industry include the Virgin Islands, and that special accommodation be made to provide funding to this industry in the Virgin Islands in light of the Territory's dependency on its tourism product.

Emergency Funding for Distance Learning

The children of the Virgin Islands already suffered major setbacks to their educations caused by the 2017 hurricanes, which closed all schools for several months and many others for long periods, forcing thousands to attend school in temporary structures and in double sessions. These effects were particularly harmful to the 100% of Virgin Islands students who receive free breakfast and lunch from school, fully 43% of whom live below the poverty line.

As the pandemic forces our schools to close yet again, it is imperative that the Virgin Islands education system continue to serve its students. We are not currently equipped to conduct distance-learning on the scale necessary to continue education for the duration of the pandemic, leaving the Territory's children at serious risk for the loss of educational opportunities.

The Virgin Islands Department of Education has conducted a study to identify the extent of its distance learning needs. That study has identified an urgent need for investment in new infrastructure, equipment, training, curriculum development, training, and maintenance to create and support a functioning distance learning system. The projected costs to establish and maintain that system for one year are conservatively estimated to be $24,510,000.

We request that the forthcoming stimulus package include at least that amount to allow our education system to continue to function, and our children to continue to learn and develop, for the duration of the crisis.

Cancellation of Community Disaster Loans

In the aftermath of the 2017 hurricanes, the Government of the Virgin Islands and three of its instrumentalities—the Territory's two major hospitals and its Water and Power Authority—obtained Community Disaster Loans (CDLs) to offset revenues lost from the physical and economic devastation caused by the storms. The aggregate principal amount of those loans is approximately $300 million, with $145 million allocated to the central government, $51 million to the two hospitals, and $94.5 million to the Water and Power Authority. The terms of the CDL promissory notes are extremely restrictive, requiring the obligors to obtain express consent of the U.S. Treasury before undertaking any new obligations that exceed $25,000.

Even before the COVID-19 outbreak, the Territory was likely to qualify for loan cancellation under the terms of the CDL promissory notes, as well as under 44 C.F.R. § 206.376, which permits cancellation if the "revenues of the local government during the three-full-fiscal-year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget for the local government." The imminent fiscal crisis resulting from the pandemic makes cancellation eligibility a certainty and a necessity.

The crisis also makes the need for cancellation urgent: on April 1, the Government faces interest-only payments exceeding $3 million, with another $3 million due in October. With the dramatic drop in government revenues resulting from the pandemic, those payments represent an unbearable financial burden on our government (including our hospitals and public utility) that needs every dollar to fund critical public services. The Government cannot afford to take revenue desperately needed for the current crisis and use it to fund debt service from the previous one.

In light of the exigent circumstances, I request that Congress act immediately to cancel the CDLs in their entirety.

Small Business Loan Forgiveness

Following Hurricanes Irma and Maria just two years ago, a significant number of Virgin Islands businesses obtained disaster loans from the Small Business Administration. Many of these businesses were just getting back on their feet before the COVID-19 pandemic hit the Territory. Virgin Islands businesses need loan forgiveness to ensure their survival in yet another distressed revenue environment. I ask that any program for SBA loan forgiveness be extended to Virgin Islands businesses or that special accommodation be made to bring debt relief to small business owners in the Virgin Islands.

Waiving Local Cost Share for FEMA Public Assistance

Under the Insular Areas Act, 48 U.S.C. § 1469a, all federal agencies have the discretion to waive the entire local match for the Insular Areas (*i.e.*, the U.S. Virgin Islands, American Samoa, Guam, and

the Commonwealth of the Northern Mariana Islands) for federal funding programs. Such waivers are commonly granted for disaster assistance following catastrophic events. For example, states affected by Hurricanes Katrina and Rita were granted extensive cost-share waivers for FEMA assistance. Similarly, in recognition of the severity of Hurricanes Irma and Maria, FEMA invoked its Insular Areas Act authority to waive the 25% non-federal matching requirement for the Hazard Mitigation Grant Program in the USVI. However, FEMA has not waived the local match for most categories (Categories C-G) of public assistance in response to the hurricanes, requiring the GVI to come up with potentially hundreds of millions of dollars in local match under those programs—amounts that could and should be better spent on disaster recovery and economic development. With the coronavirus crisis now enveloping the Territory and crippling its ability to generate revenues sufficient to pay the local match, I request that Congress waive the match requirement for all categories of FEMA public assistance to which it still applies.

Longer-Term Economic Sustainability Measures

The Virgin Islands is uniquely vulnerable to pandemics and other disasters that affect travel because of its heavy dependence on tourism. In the long term, it is my government's goal and intention to reduce that dependence and diversify our economic base, making us more economically stable, sustainable, and resilient. My administration has identified several low-cost legislative measures that will allow the Virgin Islands to develop a robust, self-sufficient economy. All of these are long-standing requests that are within the jurisdiction of Congress. Several are already the subject of bills, and none will receive a significant CBO score.

Mirrored Tax Credits

In the Virgin Islands, unlike States and non-mirror-code territories, tax credits like the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) are funded by the Virgin Islands government, not the federal government. As such, they impose significant costs (in the form of lost revenue) on the Territory that are not borne by the other jurisdictions. Earlier this year, the House passed a bill (H.R. 5687) that would have relieved the Territory of a substantial portion of those costs.

We request that the federal government reimburse to the local treasury the cost of the EITC and CTC, to avoid placing an additional revenue burden on the Territory that it cannot afford, and to free up approximately $19 million annually for use on other critical priorities. There is ample precedent for such reimbursement going back to the 1970's (such as for the making work pay tax credit in the American Recovery and Reinvestment Act of 2009 (ARRA), and for the EITC and CTC in the House-passed Emergency Supplemental Appropriations for Disaster Relief and Puerto Rico Disaster Tax Relief Act, 2020 (H.R. 5687)).

Equal Treatment with Puerto Rico on Controlled Foreign Corporations and GILTI Tax

Increasing outside investment is a critical step in the Territory's effort to create a sustainable, diverse economy. At present, such investment is inappropriately discouraged by a quirk in the Internal Revenue Code under which investors in certain Virgin Islands corporations are required to include in

their gross income their "global intangible low-taxed income" ("GILTI") from those corporations, while similarly situated Puerto Rico corporations (and corporations formed under the laws of other Territories) are not. This inequity results in diversion of needed capital investments away from the Virgin Islands: since the enactment of the GILTI tax in 2017, numerous U.S. investors have either declined to do new business in the Virgin Islands or left the Territory entirely. The discrepancy in the treatment of investors in Virgin Islands corporations versus Puerto Rico corporations is not justified by any principle of tax policy, and results in an artificial distortion of the investment market that materially undercuts the Virgin Islands economy.

As a general matter, Virgin Islands and other territorial corporations should be treated more favorably than foreign corporations. This is easily fixed by excluding corporations formed in the Virgin Islands from the definition of "controlled foreign corporation" for purposes of Section 951A of the Internal Revenue Code (IRC). We believe that this simple, equitable change would materially improve the ability of the Virgin Islands to attract outside investment, thus reducing its dependence on volatile tourism revenue. My administration can provide appropriate language for the proposed fix upon request.

Tax Residency and Income Sourcing Rules

Minor changes to the IRC's residency and income sourcing rules would also materially improve the Territory's attractiveness to outside investment.

Under Section 932 of the IRC, a "bona fide" resident of the USVI (i.e., a tax resident) may satisfy his or her U.S. income tax obligations by filing in, and paying the applicable tax to, the USVI. The USVI Government has consistently maintained that the proper test for bona fide USVI residency should be the test applied under Section 7701(b) of the Code to determine whether a foreign individual residing in the United States has sufficient presence in the United States to justify subjecting that individual to U.S. taxing jurisdiction in the same manner as U.S. citizens. Under that test, such foreign individual must be physically present at least 183 days in any one tax year, or an average of 122 days a year over any three-year moving period. Under current regulations, Virgin Islands residents are subject to a more stringent multi-part test that requires the taxpayer to satisfy three distinct criteria: a physical presence test, a "tax home" test, and a "closer connection" test. This produces the incongruous result that tax residency is materially more difficult to establish in the Virgin Islands than it is for non-resident aliens in the United States. This discrepancy undermines the Territory's Congressionally sanctioned economic development program, which uses residency-based tax incentives to draw new residents and businesses to the Territory.

In addition, changes to the IRC in 2004 limited income "effectively connected" to the Virgin Islands to exclude all U.S. source income—a restriction that effectively discriminates against U.S. source income vis a vis foreign-source income. Further, an anomaly in the IRC allows Puerto Rico to provide more favorable tax treatment of capital gains derived from the sale of personal property held by a Puerto Rico taxpayer than the tax treatment by the Virgin Islands of capital gains derived from the sale of similar property by U.S. citizen (and resident) taxpayers in such mirror code jurisdictions.

There is no sound tax policy reason for such discrepancies, which make the Virgin Islands a less attractive target for investment that is urgently needed to enable financial stability and survival. A simple fix to Section 937(b)(2) of the Internal Revenue Code would solve the income sourcing problem, and a simple fix to Section 865(j)(3) would ensure parity of tax treatment with Puerto Rico and other U.S. possessions with respect to the treatment of capital gains. These problems have already been proposed in H.R. 411 and H.R. 412, which have been referred to the House Committee on Ways and Means.

Captive Insurance

The U.S. income limitation imposed by the Jobs Act has resulted in unjustified and sometimes illogical restrictions on the Territory's Congressionally authorized economic development program. For example, a Virgin Islands captive insurance company that insures foreign risks would qualify for Virgin Islands tax incentives, while a similar company that insures U.S. risks would not, ironically placing USVI companies at a competitive disadvantage vis a vis Bermuda and other Caribbean companies. This discrepancy can be resolved by establishing an explicit exception for the Territories from the Subpart F provisions applicable to captive insurers organized as controlled foreign corporations. Such an exception would make the Virgin Islands a significantly more attractive destination for the captive insurance industry, which currently favors non-U.S. jurisdictions.

Rum Tax Cover-Over

Congress has historically provided that all federal taxes on all products—including rum—manufactured in the Virgin Islands be returned, or "covered-over," to the local treasury. Rum tax revenues covered-over to the USVI constitute a major source of funding for the Territory, and are used to finance essential public services and to pay debt service on the USVI's bonds and facilitate the Territory's future access to the capital markets. In 1984, Congress increased the excise tax on rum from $10.50 per proof gallon to $12.50, but provided that the proceeds of the $2.00 increase in the tax would—for the first time in the history of the Territorial relationship—be retained by the U.S. Treasury rather than be covered over to the Virgin Islands. After Congress increased the excise tax on rum (and other distilled spirits) to $13.50 per proof gallon, Congress acted to restore the principles of the original tax relationship and raised the amount subject to cover-over to $13.25 per proof gallon for a temporary two-year period. Congress has extended the "temporary" cover-over rate ever since (it is currently extended through 2022), but the timing of the extensions often causes budget planning problems and uncertainties for the Government of the Virgin Islands that can be avoided by making the temporary cover-over rate permanent.

I request that Congress enact legislation making the temporary cover-over rate permanent and thereby avoid the need to extend the rate in the future and the associated budgeting problems and uncertainties.

Additional Funds for Border Control

The Territory has recently seen an increase in undocumented aliens attempting to enter the Territory. The coronavirus pandemic has highlighted deficiencies in the Territory's border-control measures. As the easternmost Atlantic territory of the United States, the Virgin Islands should be a model of good border security. I request that Congress provide sufficient funds for the Customs and Border Patrol to undertake effective border control of our coastlines and waters against incursions by undocumented foreign nationals.

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All of these measures are designed to increase the Territory's ability to attract outside investment, increase its revenue base, and diversify away from the dependence on tourism that has made the Territory so uniquely vulnerable to periodic shocks from natural disasters like the hurricanes of 2017 and the growing pandemic of 2020.

We look forward to working with you in rebuilding the Virgin Islands and improving the lives of our fellow Americans.

Sincerely,



Albert Bryan Jr.
Governor

cc: The Honorable Stacey Plaskett, Member of Congress