

GAO

Testimony  
Before the Subcommittee on Insular Affairs, Oceans and Wildlife,  
Committee on Natural Resources,  
House of Representatives

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For Release on Delivery  
Expected at 3:00 p.m. EST  
May 18, 2010

COMMONWEALTH OF  
THE NORTHERN  
MARIANA ISLANDS

DHS Needs to Conclude  
Negotiations and Finalize  
Regulations to Implement  
Federal Immigration Law

Statement of David Gootnick, Director  
International Affairs and Trade



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Madame Chairwoman and Members of the Subcommittee:

Thank you for the opportunity to discuss our work on the status of efforts to establish federal border control in the Commonwealth of the Northern Mariana Islands (CNMI) and implement the Consolidated Natural Resources Act of 2008 (CNRA)<sup>1</sup> with regard to foreign workers, visitors, and investors in the CNMI.

In May 2008, the United States enacted CNRA, amending the U.S.-CNMI Covenant<sup>2</sup> to establish federal control of CNMI immigration.<sup>3</sup> CNRA contains several CNMI-specific provisions affecting foreign workers and investors during a transition period that began in November 2009 and ends in 2014.<sup>4</sup> In addition, CNRA amends existing U.S. immigration law to establish a joint visa waiver program for the CNMI and Guam by replacing an existing visa waiver program for Guam visitors. During the transition period, the U.S. Secretary of Homeland Security, in consultation with the Secretaries of the Interior, Labor, and State and the U.S. Attorney General, has the responsibility to establish, administer, and enforce a transition program to regulate immigration in the CNMI. CNRA requires that we report on the implementation of federal immigration law in the CNMI.

My remarks today will summarize findings from our recent report<sup>5</sup> regarding (1) steps that the Department of Homeland Security (DHS) has taken to establish federal border control in the CNMI; (2) actions that DHS has taken to implement programs for workers, visitors, and investors; and (3) unresolved operational challenges that DHS has encountered.<sup>6</sup> We

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<sup>1</sup>Pub. L. No. 110-229, Title VII, 122 Stat. 754, 853 (May 8, 2008). 48 U.S.C. § 1806 note.

<sup>2</sup>Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. No. 94-241, § 1, 90 Stat. 263 (Mar. 24, 1976), 48 U.S.C. § 1801, as amended).

<sup>3</sup>From 1978 to 2009, the CNMI administered its own immigration systems.

<sup>4</sup>CNRA authorizes a CNMI-only transitional worker program that may be extended indefinitely past 2014 at the discretion of the Secretary of Labor.

<sup>5</sup>GAO, *Commonwealth of the Northern Mariana Islands: DHS Should Conclude Negotiations and Finalize Regulations to Implement Federal Immigration Law*, GAO-10-553 (Washington, D.C.: May 7, 2010).

<sup>6</sup>CNRA additionally requires that we report on the impact of implementation of CNRA on the CNMI economy, among other topics. As agreed with your offices, we will issue a subsequent report addressing these topics.

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conducted this performance audit from September 2009 to May 2010 in accordance with generally accepted government auditing standards.<sup>7</sup>

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## Summary

DHS and its components have taken a number of steps to secure the border in the CNMI and to implement CNRA-required programs for foreign workers, visitors, and foreign investors. However, the components face certain operational challenges that they have been unable to resolve with the CNMI government.

**Steps taken to establish border control.** DHS and its components have taken the following steps, among others, to establish federal border control in the CNMI.

- *Customs and Border Protection (CBP).*<sup>8</sup> Since November 2009, CBP has inspected arriving travelers in Saipan and Rota.
- *Immigration and Customs Enforcement (ICE).*<sup>9</sup> Also since November 2009, ICE has identified individuals who may be in violation of U.S. immigration laws and has begun processing some aliens for removal.
- *U.S. Citizenship and Immigration Services (USCIS).*<sup>10</sup> In March 2009, USCIS opened an application support center. For calendar year 2009, USCIS processed 515 CNMI applications for permanent residency and 50 CNMI applications for naturalization or citizenship.
- *DHS.* DHS has taken several department-level actions to facilitate implementation of CNRA but has not finalized an interdepartmental

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<sup>7</sup>See GAO-10-553 for a full description of our report's scope and methodology and a list of related products.

<sup>8</sup>CBP is the lead federal agency charged with keeping terrorists, criminals, and inadmissible aliens out of the country while facilitating the flow of legitimate travel and commerce at the nation's borders.

<sup>9</sup> ICE is responsible for enforcing immigration laws within the United States, including, but not limited to, identifying, apprehending, detaining, and removing aliens who commit crimes and aliens who are unlawfully present in the United States.

<sup>10</sup>USCIS processes applications for immigration benefits—that is, the ability of aliens to live, and in some cases to work, in the United States permanently or temporarily or to apply for citizenship.

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agreement regarding implementation of CNRA and has not yet specified its resource requirements for this effort as directed by Congress.<sup>11</sup>

**Actions taken to implement worker, visitor, and investor programs.**

DHS has begun to implement CNRA-required programs for foreign workers, visitors, and foreign investors but has not yet finalized key regulations. As a result, certain transition programs remain unavailable. (See app. I for CNRA's key provisions for foreign workers, visitors, and foreign investors.)

- *Foreign workers.* On October 27, 2009, DHS issued an interim rule to implement a CNMI-only work permit program required by CNRA for foreign workers not otherwise admissible under federal law. However, a November 2009 U.S. District Court ruling, responding to an amended lawsuit by the CNMI government, prohibited implementation of the interim rule, stating that DHS must consider public comments before issuing a final rule. As a result, CNMI-only work permits are not currently available.
- *Visitors.* DHS has established the Guam-CNMI visa waiver program. However, the program does not include China and Russia, two countries that provide significant economic benefit to the CNMI. Currently, DHS allows nationals from these two countries into the CNMI for up to 45 days without a visa under the Secretary of Homeland Security's parole authority. DHS is reconsidering whether to include these countries in the Guam-CNMI visa waiver program.
- *Foreign investors.* DHS has proposed a rule to allow a large proportion of investors holding CNMI foreign investor permits to obtain U.S. CNMI-only nonimmigrant treaty investor status during the transition period. In comments on the proposed rule, the CNMI government stated that it would exclude many current CNMI investors from qualifying for CNMI-only nonimmigrant treaty investor status. DHS plans to issue a final rule in July 2010; until then, the program is not available.<sup>12</sup>

**Unresolved operational challenges.** DHS components and the CNMI government have not yet negotiated solutions to operational challenges

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<sup>11</sup>H.R. Rep. No. 111-298, at 59 (2009) (Conf. Rep.).

<sup>12</sup>CNRA establishes that current CNMI foreign investors who meet certain requirements can convert from a CNMI long-term investor to a U.S. CNMI-only nonimmigrant treaty investor status during the transition period.

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regarding access to CNMI airport space, detention facilities, and databases.

- *Airport space.* Lacking long-term occupancy agreements and adequate space at CNMI airports, the agency is operating in facilities that do not meet its standards for holding cells and secondary inspections.
- *Detention facilities.* Lacking an agreement with the CNMI government regarding detention space, ICE has released a number of aliens with criminal records into the community under orders of supervision and has paid to transport several detainees to Guam and Hawaii.
- *Databases.* Lacking direct access to the CNMI's immigration and border control databases,<sup>13</sup> ICE officials have instead directed data requests to a single CNMI point of contact, limiting their ability to quickly verify the status of aliens and potentially compromising the security of ongoing operations.

In our May 2010 report, we recommended that the Secretary of Homeland Security work with the heads of CBP, ICE, and USCIS to establish strategic approaches and time frames for concluding negotiations with the CNMI government regarding access to CNMI airport space, detention facilities, and information about the status of aliens. DHS agreed with our recommendation. The Guam government made several observations regarding the Guam-CNMI visa waiver program, whereas the CNMI government raised concerns about the scope of our report and its support for several findings. In responding to the CNMI's concerns, and after considering technical comments from DHS and DOL, we modified our report as appropriate.<sup>14</sup>

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<sup>13</sup>In February 2010, we reported on the status, during the transition of CNMI immigration to federal control, of several databases that the commonwealth has used to record the permit status of certain aliens and to track the arrivals and departures of travelers. For more information , see GAO, *Commonwealth of the Northern Mariana Islands: Immigration and Border Control Databases*, GAO-10-345R (Washington, D.C.: Feb. 16, 2010).

<sup>14</sup>See GAO-10-553 for a fuller description of DHS's and the CNMI's written comments and our response.

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## DHS Has Begun Implementing Border Control

**Customs and Border Protection.** From November 28, 2009, to March 1, 2010, CBP officers working at the Saipan and Rota airports processed 103,565 arriving travelers, granting 11,760 (11 percent) parole.<sup>15</sup> During this period, more than 80 percent of arriving travelers came from Japan or South Korea. Of arriving travelers from China and Russia, 86 percent (10,398 of 12,131) and 90 percent (1,027 of 1,146), respectively, were paroled into the CNMI only, under DHS authority. In addition, CBP signed right-of-entry agreements with the CNMI government that gave the agency access to the airports to prepare for implementation of federal border control.

**Immigration and Customs Enforcement.** Since November 28, 2009, 10 ICE officials detailed to Saipan have identified aliens in violation of U.S. immigration laws and have processed or detained aliens for removal proceedings. From December 7, 2009, to March 1, 2010, ICE identified approximately 264 aliens subject to possible removal from the CNMI—including approximately 214 referrals from the CNMI Attorney General's office with pending CNMI deportation orders<sup>16</sup> and 49 referrals from the ICE Office of Investigations and the community—and requested immigration status information about these individuals from the CNMI Department of Labor. As of March 1, 2010, ICE officials had processed 72 of the 264 aliens for removal proceedings. As of March 26, 2010, ICE officials told us they had not deported any of the 72 aliens being processed for removal but that 31 were scheduled for immigration hearings by the end of March 2010 and 9 had agreed to waive their right to a hearing and to be deported after completing their criminal sentences.

**U.S. Citizenship and Immigration Services.** In March 2009, USCIS opened an Application Support Center in Saipan and stationed two full-time employees at the center to provide information services, interview residents currently eligible to apply for lawful permanent resident status

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<sup>15</sup>On October 21, 2009, the Secretary of Homeland Security announced to Congress and the Governors of the CNMI and Guam that she will exercise her discretionary authority to parole into the CNMI visitors for business or pleasure who are nationals of the Russian Federation and the Peoples Republic of China. Parole is determined on a case-by-case basis and all applicants for admission are subject to inspection and removal if determined to be inadmissible for reasons other than lack of visa. See GAO-10-553 for a summary of arrivals processed by CBP officers at the Saipan and Rota airports from November 28, 2009 to March 1, 2010, including those admitted from primary and secondary screening areas, granted parole, and refused entry from the secondary screening area.

<sup>16</sup>With the implementation of the INA, the CNMI courts no longer have the authority to issue deportation orders.

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or citizenship, and process requests requiring biometric services such as fingerprints or photographs. For calendar year 2009, USCIS processed 515 CNMI applications for permanent residency and 50 CNMI applications for naturalization or citizenship, more than doubling the number of interviews conducted for applications for residency or citizenship from calendar year 2008, according to data provided by USCIS officials. By March 17, 2010, USCIS had also received 1,353 advance parole requests and approved 1,123 of them.<sup>17</sup> USCIS also granted parole-in-place status to 705 individuals for domestic travel and granted 24 group paroles.

**Department of Homeland Security.** To facilitate implementation of CNRA in the CNMI, DHS led meetings with the other departments charged with implementing CNRA; reported to Congress on the budget and personnel needed by the DHS components; and initiated outreach to the CNMI government. However, DHS has not finalized an interdepartmental agreement with other U.S. departments regarding implementation of CNRA and has not specified changes in its resource requirements as directed by Congress.

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<sup>17</sup>A grant of parole is official permission for an otherwise inadmissible alien to be physically present in the United States temporarily. USCIS can issue advance parole to aliens in the United States who need to travel abroad and return and whose conditions of stay do not otherwise allow for readmission if they depart.

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## **U.S. Agencies' Implementation of CNRA Programs for Workers, Visitors, and Investors Is Incomplete**

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### **DHS Has Taken Steps to Create CNMI-Only Work Permit Program, but Program Is Not Yet Available**

DHS issued an interim rule for the CNMI-only work permit program on October 27, 2009, but a court injunction has prevented implementation of the rule.<sup>18</sup> The interim rule establishes (1) the number of permits to be issued, (2) the way the permits will be distributed, (3) the terms and conditions for the permits, and (4) the fees for the permits. In issuing the interim rule, which was scheduled to take effect on November 27, 2009, DHS announced that it would accept comments in the development of the final rule but was not following notice-and-comment rulemaking procedures, asserting that it had good cause not to do so.

In its November 2, 2009, amendment to its ongoing lawsuit to overturn portions of CNRA, the CNMI filed a motion for a preliminary injunction to prevent the operation of the DHS interim rule.<sup>19</sup> The CNMI argued in part that DHS had violated procedural requirements of the Administrative Procedure Act, which requires notice and the opportunity for public comment before regulations can go into effect.

On November 25, 2009, the federal District Court for the District of Columbia issued an order prohibiting implementation of the interim rule, stating that DHS must consider public comments before issuing a final

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<sup>18</sup>The interim rule comprises regulations to implement the CNMI-only work permit program, established in CNRA, for foreign workers not otherwise admissible under federal law. DHS created a new transitional worker classification to implement the CNMI-only worker permit provision of the legislation. Commonwealth of Northern Mariana Islands Transitional Worker Classification, 74 Fed. Reg. 55094 (Oct. 27, 2009).

<sup>19</sup>This court order only addresses the specific transitional worker program that was the subject of the interim rule, and does not enjoin any provision of CNRA or other related regulations from taking effect.

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rule.<sup>20</sup> In response to this preliminary injunction, DHS reopened the comment period from December 9, 2009, until January 8, 2010. As of May 18, 2010, DHS had not yet issued a final rule, and as a result, CNMI-only work permits are not available.

DHS received numerous comments on the interim rule from the CNMI government, a private sector group, and interested businesses and individuals.<sup>21</sup> The CNMI government commented that the rule was incomplete and would damage CNMI workers, employers, and community. In addition, the Saipan Chamber of Commerce raised concerns regarding the economic impact of the regulations and made a proposal to make it easier for workers with the CNMI-only work permit to return from travel outside the commonwealth.

DHS plans to issue a final rule for the CNMI-only work permit program in September 2010.

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### DHS Has Implemented the Guam-CNMI Visa Waiver Program but Is Reconsidering Inclusion of China and Russia

On January 16, 2009, DHS issued an interim final rule for the Guam-CNMI joint visa waiver program, which went into effect November 28, 2009. The program is intended to allow visitors for business or pleasure to enter the CNMI and Guam without obtaining a nonimmigrant visa for a stay of no longer than 45 days. DHS's rule designates 12 countries or geographic areas, including Japan and South Korea,<sup>22</sup> as eligible for participation in the program.<sup>23</sup> DHS considered designating Russia and China as eligible for participation, because visitors from those countries provide significant economic benefits to the CNMI. However, because of political, security, and law enforcement concerns, including high nonimmigrant visa refusal rates, DHS deemed China and Russia as not eligible to participate in the program.

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<sup>20</sup>Commonwealth of the Northern Mariana Islands v. United States, No. 08-1572 § 2009 WL 4070877 (D.D.C. Nov. 25, 2009).

<sup>21</sup>In addition, the CNMI government proposed text for the rule that would implement the commonwealth's comments.

<sup>22</sup>Japan and Korea are the two largest tourism markets for the CNMI and Guam.

<sup>23</sup>DHS included Australia, Brunei, Hong Kong, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Taiwan, and the United Kingdom.

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In developing the Guam-CNMI visa waiver program, DHS officials consulted with representatives of the CNMI and Guam governments, both of which sought the inclusion of China and Russia in the program. In May 2009, DHS officials informed Congress that the department is reconsidering whether to include China and Russia in the Guam-CNMI visa waiver program.

On October 21, 2009, the Secretary of Homeland Security announced to Congress and the Governors of the CNMI and Guam the decision to parole tourists from China and Russia into the CNMI on a case-by-case basis for a maximum of 45 days, in recognition of their significant economic benefit to the commonwealth.

Public comments on the regulations from the Guam and CNMI governments and private sectors emphasized the economic significance of including China and Russia in the program. Guam officials argued that tourist arrivals in Guam from traditional markets were declining and that access to the China tourism market presented an important economic benefit. CNMI officials noted that the CNMI economy would be seriously damaged unless the CNMI retained access to the China and Russia tourism markets.

The regulations became effective on November 28, 2009. DHS plans to issue a final rule for the program in November 2010.

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### Proposed DHS Rule to Provide CNMI-Treaty Investor Status to Foreign Investors Is Not Yet Final

In September 2009, DHS proposed a rule to allow a large proportion of CNMI foreign investor permit holders to obtain U.S. CNMI-only nonimmigrant investor treaty status during the transition period.<sup>24</sup> According to the proposed rule, eligibility criteria for this status during the transition period include, among others, having been physically present in the CNMI for at least half the time since obtaining CNMI investor status. Additionally, investors must provide evidence of maintaining financial investments in the CNMI, with long-term business investors showing an investment of at least \$150,000.

In commenting on the proposed rule, the CNMI government stated that about 85 of 514 long-term business entry permit holders could not qualify

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<sup>24</sup>E-2 Nonimmigrant Status for Aliens in the Commonwealth of the Northern Mariana Islands with Long-Term Investor Status. 74 Fed. Reg. 46,938 (Sep. 14, 2009).

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if an investment level of \$150,000 is required. The CNMI also reported that 251 of the 514 permit holders were granted at a \$50,000 required investment level and were “grandfathered” in 1997, when the minimum investment requirement was increased. The CNMI projected that after the end of the transition period, only 42 of 514 long-term business entry permit holders may be able to meet the minimum investment level to qualify for federal investor status.

DHS accepted comments on the proposed rule until October 14, 2009, and intends to issue a final rule in July 2010.

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## DHS Components Have Been Unable to Negotiate Solutions to Certain Operational Challenges with the CNMI Government

### Long-Term Occupancy Agreements for Airport Space

CBP and the CNMI government have not yet signed long-term occupancy agreements that would allow CBP to reconfigure space that the CNMI government has provided in CNMI airports.<sup>25</sup> As a result, the agency is operating in facilities that do not meet its standards for holding cells and secondary inspections.<sup>26</sup>

The current configuration of CBP’s space at the Saipan airport does not include holding cells that meet federal standards.<sup>27</sup> As a result, CBP lacks

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<sup>25</sup>In technical comments on a draft of this report, CBP noted that although its right-of-entry agreements with the CNMI give the agency access to the airports, CBP must negotiate and finalize a long term lease, or similar legal document, with the CNMI government before proceeding with facility configurations.

<sup>26</sup>The CBP Airport Technical Design Standards describe basic CBP facility requirements for international airports and reflect U.S. policy, procedures, and minimum development standards for design and construction of CBP facilities at airports. These standards specify space requirements for CBP operations based on the size of the airport and the number of passengers processed per hour.

<sup>27</sup>CBP facility standards require separate holding cells for men, women, and juveniles.

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space to temporarily detain individuals who may present a risk to public safety and to its officers. In addition, owing to a lack of adequate space for secondary inspections, CBP officers process parole applications at the airport in primary inspection booths, resulting in increased wait times for arriving visitors who are not applying for parole.<sup>28</sup>

U.S. law requires international airports to provide, without charge, adequate space to the U.S. government to perform its duties.<sup>29</sup> However, the CNMI government stated that the port authority is not in a financial position to provide space to CBP without charge. In commenting on a draft of our report, the CNMI stated that the commonwealth is not prepared to enter into negotiations with CBP unless it is assured that the request for space has been cleared at least at the assistant secretary level at DHS and that the department has received the necessary assurance from Congress that the funds necessary to fulfill CBP's space needs will be available.

As of April 2010, CBP continued to seek access to approximately 7,200 additional square feet of space at the Saipan airport, and the two parties had not concluded negotiations regarding long-term occupancy agreements for space at the Saipan and Rota airports. Key differences related to cost have not yet been resolved.

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#### Detention Space in CNMI Correctional Facility

ICE has been unable to conclude negotiations with the CNMI government for access to detention space in the CNMI correctional facility. In March 2010, ICE estimated that it required 50 detention beds for its CNMI operations. Under a 2007 agreement between the U.S. Marshals Service and the CNMI Department of Corrections, the CNMI adult correctional facility in Saipan provided the U.S. government 25 detention beds at \$77

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<sup>28</sup>At other U.S. airports, applications for parole are generally completed in the secondary inspection area because the parole process may require additional questions, verification in databases not immediately available in the primary inspection area, and manager approval. After our visit to the CNMI, CBP officials told us that they were considering establishing a separate line in the primary screening area at the Saipan airport for visitors applying for parole.

<sup>29</sup>8 C.F.R. § 234.4. Moreover, designation as an international airport may be withdrawn if proper facilities are not provided or maintained by the airport. International airports are also required to provide, without cost to the federal government, proper office and other space for the sole use of federal officials working at the airport. 19 C.F.R. § 122.11.

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per bed per day.<sup>30</sup> As of September 2008, less than 30 percent of the facility's beds (134 of 513) were filled.

To obtain needed detention space, ICE proposed to either amend the 2007 U.S. Marshals Service agreement before it expired on April 1, 2010, or establish a new agreement with the CNMI government. As of March 2010, after a year of negotiation, ICE had not finalized an agreement with the CNMI government owing to unresolved cost documentation issues, according to a senior ICE official.

Since January 2010, negotiations between ICE and the CNMI regarding detention space have been on hold. Given the current lack of needed detention space, ICE has identified three alternatives regarding detainees it seeks to remove from the CNMI while removal proceedings are under way: (1) release detainees into the CNMI community, under orders of supervision; (2) transport detainees to other U.S. locations; or (3) pay the CNMI's daily rate for each detainee, if the CNMI provides appropriate documentation justifying its proposed rate. According to ICE officials, because of flight risk and danger to the community, ICE prefers to detain aliens with prior criminal records while they await their immigration removal hearings. However, since November 2009, ICE has released 43 detainees into the CNMI community under orders of supervision, including 27 with prior criminal records. According to ICE officials, orders of supervision are appropriate for detainees who do not present a danger to the community or a possible flight risk. In addition, as of March 2010, ICE had paid a total of approximately \$5,000 to transport two detainees to Guam and one to Honolulu.

Since January 2010, negotiations between ICE and the CNMI government regarding access to detention space have been at an impasse.

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<sup>30</sup>The agreement allows ICE and the Department of Justice's U.S. Marshals Service and Bureau of Prisons to house federal detainees with the CNMI Department of Corrections. ICE officials reported that as of March 1, 2010, the 25 beds provided for in the contract were filled, in part with the aliens that ICE arrested during their attempt to enter Guam on January 5, 2010.

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## Direct Access to CNMI Immigration and Border Control Data

As of March 1, 2010, DHS components lacked direct access to CNMI immigration and border control data contained in two CNMI databases, the Labor Information Data System (LIDS) and the Border Management System (BMS).<sup>31</sup> The CNMI government assigned a single point of contact in the CNMI Department of Labor to respond to CBP, ICE, and USCIS queries from the database, most commonly for verification of an individual's immigration status. DHS component officials have expressed concerns about the reliance on a single CNMI point of contact.

ICE officials expressed the following concerns, among others:

- Relying on one CNMI point of contact to verify immigration status for individuals subject to ICE investigations could compromise security for ongoing operations.
- Because the CNMI point of contact is an indirect source, basing ICE detention and removal decisions on data provided by the point of contact could lead to those decisions' eventual reversal in court.

USCIS officials' concerns included the following:

- Direct access to LIDS would allow USCIS to verify information provided by applicants for immigration benefits such as advance parole.
- Direct access to the data would facilitate the processing of applications for CNMI-only work permits and for CNMI-only nonimmigrant treaty investor status.

In February 2010, CNMI officials reported that the point of contact assigned to work with the U.S. government had promptly supplied information on individual cases to U.S. officials from immigration and border control databases. A senior CNMI official also stated that if the point of contact is unable to respond to future DHS inquiries in a timely manner, CNMI officials would be willing to engage in additional discussions regarding more direct access to LIDS and BMS. However, according to ICE officials, the CNMI responses to ICE inquiries have not been timely and have not always

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<sup>31</sup>The LIDS database is used to record the permit status of certain aliens who are required to have current work or equivalent permits in order to remain in the CNMI. BMS, an automated arrivals and departures database, contains data from passports, visas, alerts, and permissions (extensions of stay, changes of status, or other modifications of entry conditions) as applicable for all persons entering the CNMI. See [GAO-10-345R](#).

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provided sufficient information. We examined ICE records of 68 inquiries and found that CNMI response times ranged from 16 minutes to around 23 hours, averaging roughly 4-and-a-half hours. ICE officials reported that the responses contained first and last names and LIDS numbers but rarely included biographical or other identifying information.

DHS has communicated, at the department and component levels, with the CNMI government regarding access to CNMI immigration data.

- During a September 2009 meeting between the Governor of the CNMI and the Secretary of Homeland Security, the Governor proposed providing restricted access to information contained in LIDS and BMS, for a fee and in exchange for airline flight entry data.
- On February 18, 2010, the Governor sent a letter to CBP reiterating the CNMI's request that DHS share advance passenger information provided by the airlines.
- On March 31, 2010, CBP responded to the CNMI letter, stating that the CNMI's intended use of the advance passenger information did not justify the data's release to CNMI authorities.

As of March 2010, DHS and the CNMI government were at an impasse regarding any exchange of passenger information for CNMI immigration and border control data.

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## Concluding Remarks and Prior Recommendation

DHS components have taken a number of steps since November 28, 2009, to ensure effective border control procedures in the CNMI. Additionally, DHS and other agencies have taken steps to implement CNRA provisions for workers, visitors, and investors, although the programs for workers and investors are not yet available to eligible individuals in the CNMI. Despite the DHS components' progress, however, their inability to conclude negotiations with the CNMI government regarding access to airport space, detention facilities, and CNMI databases has resulted in continuing operational challenges. Although the DHS components have made continued efforts to overcome these challenges without department-level intervention, in each case, their efforts have encountered obstacles. Negotiations with the CNMI government for long-term access to the CNMI airports have not been concluded, and key differences remain unresolved; meanwhile, negotiations for access to CNMI detention facilities and databases have reached impasse. Without department-level leadership as well as strategic approaches and timeframes for concluding its

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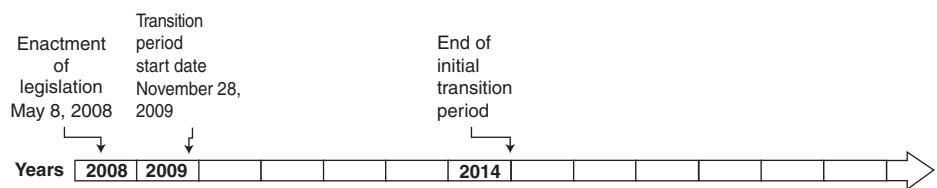
components' negotiations with the CNMI, DHS's prospects for resolving these issues is uncertain.

To enable DHS to carry out its statutory obligation to implement federal border control and immigration in the CNMI, we recommended that the Secretary of Homeland Security work with the heads of CBP, ICE, and USCIS to establish strategic approaches and timeframes for concluding negotiations with the CNMI government to resolve the operational challenges related to access to CNMI airport space, detention facilities, and information about the status of aliens. DHS agreed with our recommendation.

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Madame Chairwoman, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

# Appendix I: Key Provisions for Foreign Workers, Visitors, and Foreign Investors in Consolidated Natural Resources Act of 2008 and Other U.S. Immigration Provisions



## Foreign workers

CNMI-only work permit program	A solid dark grey bar begins at the 2009 mark and extends to the right with a dashed arrowhead.
Exemptions from certain visa caps for nonimmigrant workers	A solid dark grey bar begins at the 2009 mark and ends at the 2014 mark, indicated by a vertical bracket above the axis.
Nonimmigrant worker visas generally available under U.S. law	A solid dark grey bar begins at the 2009 mark and extends to the right with a solid arrowhead.
Employment-based permanent immigration status generally available under U.S. law	A solid dark grey bar begins at the 2009 mark and extends to the right with a solid arrowhead.

## Visitors

Joint Guam-CNMI visa waiver program	A solid dark grey bar begins at the 2009 mark and extends to the right with a solid arrowhead.
Visa Waiver Program	A solid dark grey bar begins at the 2009 mark and extends to the right with a solid arrowhead.
U.S. visitor visas for business or pleasure generally available under U.S. law	A solid dark grey bar begins at the 2009 mark and extends to the right with a solid arrowhead.

## Foreign investors

Current CNMI foreign investors to convert to U.S. CNMI-only nonimmigrant treaty investors	A solid dark grey bar begins at the 2009 mark and extends to the right with a solid arrowhead.
Nonimmigrant treaty investor status generally available under U.S. law	A solid dark grey bar begins at the 2009 mark and extends to the right with a solid arrowhead.
U.S. immigrant foreign investor status generally available under U.S. law	A solid dark grey bar begins at the 2009 mark and extends to the right with a solid arrowhead.

- Begins with transition period start date and ends December 31, 2014, under P.L. 110-229, enacted May 8, 2008.
- May be extended indefinitely for up to 5 years at a time by the U.S. Secretary of Labor.
- Begins with transition period start date and continues permanently.

Source: GAO analysis of P.L. 110-229 and current U.S. immigration law.

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# Appendix II: GAO Contact and Staff Acknowledgments

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## GAO Contact

David Gootnick, (202) 512-3149 or [gootnickd@gao.gov](mailto:gootnickd@gao.gov)

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## Staff Acknowledgments

In addition to the person named above, Emil Friberg, Assistant Director; Michael P. Dino, Assistant Director; Julia A. Roberts, Analyst-in-Charge; Gifford Howland, Senior Analyst; Ashley Alley, Senior Attorney; and Reid Lowe, Senior Communications Analyst, made key contributions to this report. Technical assistance was provided by Martin De Alteriis, Ben Bolitzer, Etana Finkler, Marissa Jones, and Eddie Uyekawa.

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