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THE SECURITY OF U.S. VISA PROGRAMS

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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THE SECURITY OF U.S. VISA PROGRAMS

TUESDAY, MARCH 15, 2016

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:06 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Lankford, Ayotte, Ernst, Sasse, Carper, Tester, Booker, and Peters.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Good morning. This hearing will come to order.

I want to, first of all, thank the witnesses for your time and your testimony and for appearing here before us today. We do have representatives from the State Department (DOS), the U.S. Citizenship and Immigration Services (USCIS), and the U.S. Immigration and Customs Enforcement (ICE). You will be hearing those acronyms. There are a lot of acronyms in this business. And then, we also have Mr. John Roth, the Inspector General (IG) for the U.S. Department of Homeland Security (DHS).

This hearing is about the security of our U.S. visa systems and programs. I think the potential vulnerabilities came to light, certainly, in the public's awareness, with the attack on September 11, 2001 (9/11), and the fact that so many of the terrorists that killed so many Americans were here on student visas. And then, we also understood—or became aware of—the reality of visa overstays. So, we started understanding the vulnerabilities there.

Back then, we, obviously, had the State Department involved in the acceptance and granting of visas, but we also had Immigration and Naturalization Service (INS). You basically had one agency.

After 9/11, then we kind of took that apart and set up the Department of Homeland Security. Now, we have different agencies. And, I think it is legitimate to ask: Are these agencies working together? Do we have a shared purpose, a shared goal, and a shared mission to, literally, keep this Nation safe? Allow for travel and allow for commerce, but—at the heart of it—are we making sure we can do everything, in an imperfect world, to keep our Nation safe and secure?

So, that is really my primary question and the main purpose of this hearing. Are we doing all that we can to screen and vet visa applicants before they enter the country? And, second, how effec-

tively are Federal agencies managing their responsibilities and working together—including sharing information—through each step of the visa and immigration process to ensure our security?

I would ask that my written opening remarks be entered into the record with consent.[1] And, it has been very kindly granted.

With that, I will turn it over to Senator Carper.

OPENING STATEMENT OF SENATOR CARPER:

Senator CARPER. Thank you, Mr. Chairman. I want to welcome everybody. Thank you for holding the hearing. Thank you all for joining us. Three of the folks sitting in front of us are folks who came before us a year or two ago to be confirmed for confirmation hearings. And, we very much appreciate your service. And, that is not taking anything away from you, Mr. Donahue, but we do not have jurisdiction over the Department of State. We are working on it, but—— [Laughter.]

We are not quite there yet.

But, this hearing is the third in a series we have held to explore whether we are doing enough to address concerns that terrorists might try to exploit international travel to infiltrate our country.

In the aftermath of the Paris terrorist attacks, this Committee first scrutinized the process in place to screen and vet Syrian refugees escaping from the carnage in the Middle East. And, we learned that the U.S. refugee resettlement process involves extensive security screening. Syrian refugees, we were told, undergo multiple rounds of screening over an average period of 18 to 24 months—including in-person interviews by immigration analysts and counterterrorism officials trained in spotting fraud and trained in spotting deception.

The Committee next looked at our Visa Waiver Program (VWP), which allows citizens of certain nations to travel to the United States for a visit without a visa. And, once it became clear that the Paris terrorists held passports from European countries whose citizens enjoy visa waiver privileges, fears, understandably, arose that this program could pose a security threat.

We learned that visa waiver travelers seeking to come to the United States endure nearly the same level of scrutiny and vetting as all other travelers. We also learned that, when it comes to security, nothing is being "waived," as the name of the program incorrectly suggests. And, we learned that, in return for their entry into the Visa Waiver Program, countries—and there are about 38 of them—must share intelligence with the United States, they must open up their counterterrorism and aviation security systems to our inspectors, and they must abide by our standards for aviation and passport security.

As a result, the Visa Waiver Program has now become a key counterterrorism tool. And, what started off as a travel facilitation program has ended up having enormous advantages to us, in terms of protecting our security.

Today, we are going to continue to look at our screening systems for foreigners entering our country. We will examine the depth of security for all forms of visas—whether they happen to be for stu-

[1] The prepared statement of Senator Johnson appears in the Appendix on page 35.

dents, for tourists, for people here on business, or for those seeking to make America their permanent home.

It is a daunting undertaking, given the volume of international travel to the United States. It also involves the coordination of multiple government entities, including the State Department, the Department of Homeland Security, and others that are not represented here today.

Since the 9/11 attacks against our country, there have been notable changes to strengthen our visa security—including recent adjustments made following the attacks in Paris and, more recently, in San Bernardino. For example, amid the Islamic State of Iraq and Syria's (ISIS's) growing online presence, the Department of Homeland Security is exploring ways to expand its use of social media to screen travelers seeking to enter the United States.

I look forward to hearing more about these efforts and also about the contribution of ICE's Visa Security Program (VSP) that may help to identify threats posed by potential travelers early on. We need to know if this program is adding real security and, if so, how to expand its reach.

As with all of our recent hearings, I expect that we will find elements of our visa security that we can improve upon today—understanding that we can never eliminate all risks and should not turn our back on the many benefits of trade, travel, and immigration. Yet, as we continuously improve the security of our immigration system, we must also keep our eye on, perhaps, the even more pressing threat of homegrown terrorism.

For all that we do to strengthen our borders and our immigration security, groups, like ISIS, know all too well that they may bypass our multiple layers of homeland security by using online propaganda to recruit people already inside of our borders—maybe born here—to carry out attacks against the United States. And, in this respect, preventing ISIS's twisted propaganda from mobilizing our young people to carry out terrorist violence may help to combat the long-term terrorist threats to the homeland in ways that aviation screening and watchlist checks can never do.

We look forward to our continued work on this Committee, both on combating homegrown terrorism and on strengthening the security of our immigration systems. And, I hope we can use today's hearing to identify some common-sense improvements to the security of visas.

Thank you all for being here. We look forward to this conversation. Thank you.

Chairman JOHNSON. Thank you, Senator Carper.

Senator Tester can only be with us for a short period.

OPENING STATEMENT OF SENATOR TESTER

Senator TESTER. I will make this very short. And, thank you, Mr. Chairman. I very much appreciate the flexibility.

The Visa Waiver Program, as the Chairman and the Ranking Member have pointed out—they are important programs—important for our economy—but, they are also of concern. In your opening statements, if you could address: the security of the programs you have, first; whether you need additional tools that you do not have that would require this Committee—or another committee—

to take action, second; and the third thing is manpower. Do you have the manpower to carry out the job to make sure that our country is not threatened by the visa program we have now? If you can do that, you will have answered all of my questions.

Thank you.

Chairman JOHNSON. That was under a minute.

It is the tradition of our Committee to swear in witnesses, so if you will all rise and raise your right hand. Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. DONAHUE. I do.

Mr. RODRIGUEZ. I do.

Ms. SALDAÑA. I do.

Mr. ROTH. I do.

Chairman JOHNSON. Please be seated.

Our first witness is David Donahue. He is the Principal Deputy Assistant Secretary for Consular Affairs at the U.S. Department of State. Mr. Donahue has also served as Deputy Assistant Secretary of State for Visa Services in the Bureau of Consular Affairs and as Coordinator for Interagency Provincial Affairs at the U.S. Embassy in Kabul, Afghanistan. Secretary Donahue.

TESTIMONY OF DAVID DONAHUE,[1] PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. DONAHUE. Good morning, Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee. Thank you for the opportunity to testify, today, on the topic of U.S. visa program security.

The Department of State and our partner agencies throughout the Federal Government take our commitment to protect American borders and citizens seriously. And, we constantly analyze and update our clearance procedures. My written statement, which I request be put into the record, describes the rigorous screening regimen that applies to all visa categories.

Let me begin by saying that the visa program is a layered, interagency program focused on national security, beginning with the petition to USCIS, my colleagues here, or a visa application submitted directly to a consular section abroad. During the interview, prior to travel, upon arrival in the United States, and while the traveler is in the United States, our national law enforcement and intelligence communities work together to protect our borders. The vast majority of visa applicants—and all immigrants and fiancé visa applicants—are interviewed by a consular officer. Each consular officer completes extensive training, which has a strong emphasis on border security, fraud prevention, interagency coordination, and interviewing techniques.

One hundred and twenty-two diplomatic security assistant regional security officer investigators at 107 posts worldwide bring additional law enforcement and anti-terrorism expertise to the visa process. All of this applicant data is vetted against databases—including terrorist identity databases that contain millions of records

[1] The prepared statement of Mr. Donahue appears in the Appendix on page 39.

of individuals found ineligible for visas or regarding whom potentially derogatory information exists.

We collect 10 fingerprint scans from nearly all visa applicants and screen them against DHS and the Federal Bureau of Investigation (FBI) databases of known and suspected terrorists, wanted persons, immigration violators, and criminals. All visa applicants are screened against photos of known and suspected terrorists or prior visa applicants.

When an interview raises concerns that an applicant may be a threat to national security or when the interagency screening process shows potentially disqualifying derogatory information, the consular officer suspends processing and submits a request for a Washington-based interagency security advisory opinion review conducted by Federal law enforcement, intelligence agencies, and the Department of State.

The Department of Homeland Security's Pre-Adjudicated Threat Recognition and Intelligence Operations Team (PATRIOT) program and Visa Security Program, managed by our USCIS colleagues or ICE colleagues, provide additional protections in certain overseas posts. DHS Immigration and Customs Enforcement special agents, who are assigned to more than 20 embassies and consulates in high-threat locations, provide on-site vetting of visa applications as well as other law enforcement support and training for our officers.

Security reviews do not stop when the visa is issued. The Department and the partner agency continuously match new threat information with our record of existing visas and will use our authority to revoke visas.

We refuse more than a million applications a year for visas. Since 2001, the Department has revoked more than 122,000 visas based on information that surfaced after issuance of the visas. This includes nearly 10,000 revoked for suspected links to terrorism, again, based on information that surfaced after issuance. Notice of these revocations is shared across the interagency in near real time.

I noticed that you also wanted to talk about our view of the security of the VWP. While that is managed by the Department of Homeland Security, we believe that it does really enhance our national security. It allows us to focus on those places—to have the staffing and the resources in places where we really do need to look deeply into the threat from travelers. It also provides, as was mentioned by Senator Carper, these cooperative agreements with the nations that are sending these travelers to the United States. Therefore, we have better access and a better understanding of the threats they are seeing. They are sharing with us and we are sharing with them. An advanced stage of that, while it is not part of the Visa Waiver Program, is in Canada, where we have a very close relationship in sharing derogatory information back and forth across the border to make sure we have a strong outer border for the United States.

Mr. Chairman and distinguished Members of the Committee, the Department of State has no higher priority than the safety of our fellow citizens at home and overseas as well as the security of the traveling public. Every visa decision is a national security decision. We appreciate the support that Congress has given us as we con-

stantly work to strengthen our defenses. I encourage you, when you are traveling overseas, to visit our consular sections to see, firsthand, the good work that our officers are doing around the world. I look forward to your questions.

Chairman JOHNSON. Thank you, Secretary Donahue.

Our next witness is Leon Rodriguez. Mr. Rodriguez is the Director of U.S. Citizenship and Immigration Services at the U.S. Department of Homeland Security. Prior to this position, Mr. Rodriguez served as the Director of the Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) and as the Deputy Assistant Attorney General (AAG) for Civil Rights at the Department of Justice (DOJ). Director Rodriguez.

TESTIMONY OF THE HONORABLE LEON RODRIGUEZ,[1] DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. RODRIGUEZ. Good morning, Chairman, good morning, Ranking Member, and good morning, Members of the Committee. This is my second time before this Committee to talk about this subject matter and the seventh time that I have testified before some Congressional committee in this fiscal year (FY) on this subject matter. I should hasten to say that this Committee has become one of my favorites, particularly because the level of discourse has always been a civil and intelligent one—not that the questions are easy. I think the questions we are asked are hard questions that we need to be able to answer for the benefit of the American people—but I really do appreciate the tone that you both have set here. Thank you for that.

I believe, as an article of faith, that a healthy and robust immigration and travel system is critical to our economy, critical to the stability of our families, and critical, actually, to the successful conduct of our foreign policy and national security.

I also believe that the most fundamental responsibility of government is to protect the public safety. I have spent a fair part of my career working at the local level and have learned that every time that we issue a driver's license, we need to make sure that we are not issuing that license to someone who may become a drunk driver. Every time we issue a building permit, we need to ensure that that is not a building that will collapse. And, every time we issue some sort of immigration benefit, we need to do everything we can to ensure the security of our country and to ensure that those who mean us harm or who will become threats to our public safety do not exploit the immigration system.

In particular, USCIS, my agency, bears responsibility for screening refugees who are seeking admission to the United States. Since 9/11, we have admitted nearly 790,000 refugees—and I would hasten to add that about 120,000 of those have come from Iraq. In that time, not a single admitted refugee has actually engaged in an act of terrorist violence against the United States. There have been a number—a relatively small number—of terrorist plots or attempts to affiliate with terrorist organizations that have been successfully disrupted by United States law enforcement.

[1] The prepared statement of Mr. Rodriguez appears in the Appendix on page 49.

The reason why we have been successful is the robust screening process that already exists to screen those who are coming to the United States. It is a multi-layered process involving a multitude of Cabinet agencies, law enforcement agencies, and intelligence agencies. It involves intensive interviews conducted by several agencies, in particular by my officers, who are intensively trained and briefed to do the work that they do.

Nonetheless, recognizing evolving threats—particularly those posed by lone wolves inspired by terrorist organizations—we continue to look for opportunities to intensify and strengthen the quality of the work that we do.

An area of particular recent focus has been our review of social media—particularly of those seeking admission as refugees—in order to determine whether there is any derogatory information contained therein. We have undertaken, simultaneously, several pilots to identify automated tools and processes which will further enable us to do this work. But, we have not waited for the conclusion of those pilots to, in fact, begin actively using that as part of our work. And, in those cases where individuals have been flagged as of concern, being particularly among certain refugee streams, we have already been analyzing social media to determine whether any such information exists. We will continue to add capacity in this area. We will continue to strengthen our ability to do that. And, we will add more volume based on our assessment and our intelligence community (IC) partners' assessment of where the highest levels of risk are.

Now, to respond in particular to your question, Senator Tester, we are working to get to the point where we actually can answer your question—where we can identify the resources and personnel that we need. Needless to say, our agency is a fee-funded agency, so the majority of this work is actually funded by our fee-paying customers. But, a lot of that work is also done in concert with various tax-based partners in the law enforcement and intelligence communities—and we will be looking forward to a further conversation should we identify needs as we develop these processes.

Finally, I look forward to addressing the concerns raised in the IG's report. I would like to note a couple of particular findings. First, 93 percent of our customers in the early going of our I–90—that is, our replacement green card—launch reported that they were quite satisfied with the service that we provided. I would also like to note that the IG recognizes that, after July 2015, the conclusion of the audit window, we undertook a number of improvements. And, what I would ask is both for the IG to come back, but also to be able to engage with this Committee about those improvements, so that we can give you the confidence that, in fact, our automation process is successful and is poised for even greater success in the future.

Thank you again for having me here today.

Chairman JOHNSON. Thank you, Director Rodriguez.

Our next witness is Director Sarah Saldaña. Director Saldaña is the Director of the U.S. Immigration and Customs Enforcement at the U.S. Department of Homeland Security. Director Saldaña previously served as United States Attorney for the Northern District of Texas. Director Saldaña.

TESTIMONY OF THE HONORABLE SARAH R. SALDAÑA,[1] DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Ms. SALDAÑA. Thank you. Good morning, Chairman Johnson, Ranking Member Carper, and other Members of this Committee. Senator Tester, I am still having nightmares from seeing that—was it a buffalo or a bison?—the head in your office. [Laughter.]

I am sure I will get over it.

I will say, in all seriousness, that I appreciate the opportunity to talk, today, about this very important subject. I absolutely agree with my colleagues here, with respect to the importance of this issue and these issues. I appreciate what we will hear from the Inspector General, with respect to our programs and the improvements that are recommended—and, obviously, to your questions and suggestions, with respect to how we can do our jobs better.

As you know, Congress authorized our role in this process back in 2002, where we were told, first, to assign agents in diplomatic posts to review visa security activities and, second, to provide training and other assistance to our State Department colleagues. This effort is led by the investigative side of Immigration and Customs Enforcement: Homeland Security Investigations (HSI), with the involvement of our Enforcement and Removal Operations (ERO) folks, and it is accomplished through the program that has been referred to as the Visa Security Program.

Under this program, we have analysts and agents working at 26 visa-issuing posts in 20 countries to identify terrorists, criminals, and other individuals who are ineligible for visas prior to their travel or application for admission to the United States. This fits right in with ICE's larger responsibility to detect, disrupt, and dismantle transnational criminal organizations. But, in the visa security context, obviously, we are trying to stop threats—deter threats—before they reach our nation's borders.

As a result of the additional Ccongressional funding in FY 2015, for which we are very thankful, ICE was able to expand VSP operations to six new issuing posts—the largest expansion in the program's history. We are looking forward to adding four more posts before the end of this fiscal year.

As my colleagues have said, the process begins and ends, obviously, with the Department of State, along with the significant involvement of USCIS. But, this process also presents the first opportunity to assess whether a potential visitor or immigrant poses a threat to our country—and that is where ICE comes in—our law enforcement folks. ICE's actions complement the consular officers' screenings, applicant interviews, and reviews of applications and supporting documentation.

PATRIOT, which the Principal Deputy Assistant Secretary just mentioned, begins our visa screening mission by conducting a first take—an automated screening of visa application information against our vast DHS holdings—all of the information we have, not only from DHS agencies, but from the intelligence community as well. This step occurs before the applicant is even interviewed for the first time. PATRIOT takes a risk-based approach and uses

[1] The prepared statement of Ms. Saldaña appears in the Appendix on page 54.

interagency resources from ICE, U.S. Customs and Border Protection (CBP), and the State Department to identify potential national security and public safety threats.

Where VSP differs from most other government screening efforts is that it leverages the fact that we have agents posted at those visa-screening sites—at the visa sites that the State Department has—and those agents are able to investigate the information that comes up in the applications—to actually supplement the Department of State's interviews of those applicants and to identify previously unknown threats. So, we are very pleased to have those people actually onsite in those 20 different countries.

In FY 2015, VSP—our agents—reviewed over 2 million visa applications—over 2 million—and we determined they identified 64,000 of them for further review. This is a flag that goes up that, perhaps, something there is indicating something to the agent, who is very well trained and versed in intelligence and criminal activity as well as other derogatory information.

After in-depth vetting, the next step, we determined the existence of a little over 7,000 of 23,000 cases in which we saw derogatory information to have some nexus to terrorism, resulting in our recommendation to the Department of State to refuse visas to approximately 8,600 individuals last year. Approximately 850 terrorist database records were created or enhanced. That is the other complement to this mission—and that is, the intelligence gathering that we are able to do through our in-depth vetting and screening.

While I am extremely proud of what our ICE personnel do to screen the visa applicants on the front side, we also actively work to identify and initiate action against overstay violators, which Senator Johnson mentioned earlier. This vetting helps to determine if an individual has overstayed or departed the U.S. In the last 2 years, ICE has dedicated approximately 650,000 special agent hours a year to overstay enforcement.

ICE prioritizes immigrant overstay cases using risk-based analysis through our Counterterrorism and Criminal Exploitation Unit (CTCEU). The CTCEU reviews many leads and further investigates them, referring them to others on the ERO side if we are unable to do anything with them on the investigative side.

We are very proud to include both sides of our house in this effort. I believe we have actually, as a side note, increased the investigative responsibilities of our ERO folks. I look forward to working with this Committee and with our Appropriations Committee to discuss some pay reform with respect to our entire ICE workforce. And, I stand ready to answer any questions you may have.

Chairman JOHNSON. Thank you, Director Saldaña.

Our final witness is Inspector General John Roth, who is the Inspector General for the U.S. Department of Homeland Security. Mr. Roth most recently served as the Director of the Office of Criminal Investigations (OCI) at the Food and Drug Administration (FDA). Prior to this, he had a 25-year career as a Federal prosecutor and senior leader at the Department of Justice. Inspector General Roth.

TESTIMONY OF THE HONORABLE JOHN ROTH,[1] INSPECTOR GENERAL, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. ROTH. Thank you. Chairman Johnson, Ranking Member Carper, and Members of this Committee, thank you for inviting me here, today, to discuss my office's oversight of DHS visa programs. Our recent work has involved a number of audits and investigations, and I will discuss some of our audit results this morning.

Deciding and administering immigration benefits, including visas, is a massive enterprise. USCIS employs about 19,000 people to process millions of applications for immigration benefits. They are required to enforce what are, sometimes, highly complex laws, regulations, and internal policies that can be subject to differing interpretations. They are rightly expected to process decisions within a reasonable timeframe. USCIS and the rest of DHS accomplish their mission while working with an antiquated system of paper-based files more suited to an office environment from 1950 than 2016. This system creates inefficiencies and risks to the program. To give you an idea of the scope of the problem, USCIS spends more than $300 million per year shipping, storing, and handling over 20 million immigrant files.

This week, we published our sixth report on USCIS' efforts to transform its paper-based processes into an integrated and automated system.

We undertook this audit to answer a relatively simple question: After 11 years and considerable expense, what has been the outcome of USCIS' efforts to automate benefits processing? We focused on the progress that was made and the performance outcomes. We interviewed dozens of individuals, including by traveling to the local field locations and talking to over 60 end users who are using Electronic Immigration System (ELIS). And, we literally stood next to them and watched as they struggled with the system.

We found that USCIS has made little progress in transforming its paper-based process into an automated system. Previous efforts, which have cost approximately $500 million to implement, had to be abandoned, recently, in favor of a new system. USCIS now estimates that it will take more than 3 years and an additional $1 billion to automate benefit processing. This delay will prevent USCIS from achieving its workload processing, national security, and customer service goals. Currently, only 2 of about 90 different types of application forms are online for filing.

We found, for example, that the time to process immigration benefits was twice that of the metrics that USCIS had established. Our earlier report on USCIS information technology (IT) systems, published in July 2014, reported that using the electronic files in use at the time actually took twice as long as using paper files. That report reflected user dissatisfaction with a system that often took between 100 and 150 mouse clicks to move among sub-levels to complete a specific process.

As Director Rodriguez said, we acknowledge that DHS has recently taken significant steps to improve the process by which new information technology—including moving from a traditional development methodology to a new incremental approach, called Agile,

[1] The prepared statement of Mr. Roth appears in the Appendix on page 65.

will assist. Implementation of automation is very much a moving target, and USCIS may have subsequently made progress on the problem since the time our field work ended in July 2015. We will obviously continue to monitor the situation and report back to the Committee as necessary.

Separately, in a second, earlier audit, we compared databases belonging to ICE and to USCIS and found that known human traffickers were using work, fiancé, and other family reunification visas to bring their victims into the country. An important finding we made is that the data systems that USCIS uses do not electronically capture important information which would be valuable in investigating human trafficking. Again, this poses risks to the system. We made three recommendations to improve these programs. ICE and USCIS are taking actions to resolve these recommendations and we are satisfied with their progress thus far.

Finally, corrupt and criminal activity on the part of DHS personnel can present a risk to the integrity of the visa process. My written testimony illustrates several examples in which employees or contractors, who are in a position of trust, were able to compromise the system to provide immigration benefits to those who are not entitled to them. This type of insider threat presents significant risks that can only be countered through continual vigilance.

In summary, the size and complexity of the mission, coupled with an archaic method of processing applications, brings significant risk. There is risk to operations in that it makes it more difficult for USCIS to accomplish its mission. There is also risk to our national security in that we may be admitting individuals who do not meet the requirements for a visa. Basic information on visa applicants is not captured in an electronic format and, thus, cannot be used to perform basic investigative steps.

Mr. Chairman, this concludes my prepared statement. I am happy to answer any questions that you or other Members of the Committee may have.

Chairman JOHNSON. Thank you, Mr. Roth.

In my opening comments, I was talking a little bit about missions—the goals of the different agencies. In this Committee we have a pretty simple one: to enhance the economic and national security of America. Pretty all-encompassing. I think a problem we have, in terms of our visa programs, is that you, literally, have the tension of conflicting goals. We want to facilitate travel, commerce, and customer service, as Director Rodriguez was talking about. On the other hand, we want to ensure the security of our homeland and keep Americans safe. There is tension there.

So, I want to first go to Director Rodriguez. Does your agency have a pretty simple mission statement like this Committee does? And, can you tell us what it is?

Mr. RODRIGUEZ. We have a number of different ways, but, certainly, I have been very clear with our staff—in communications to the entire staff that, in fact, to articulate a set of simple principles—and that is, where an individual qualifies for an immigration benefit, they should get that benefit in an efficient and appropriate manner, subject to, first and foremost, national security and fraud prevention. That is a key element of our draft strategic

plan—subject, again, to the legal requirements that I mentioned before and subject to operational feasibility of whatever initiatives we are taking.

Chairman JOHNSON. But, just the way you describe that, the first thing you talked about was providing benefits to your customer. So, I guess, the way I would interpret that is that that is really the first part of your mission—customer service, providing benefits to immigrants to this country, again, subject to security.

Mr. RODRIGUEZ. Right. And, subject to, and in no small way, to be given to national security and public safety. In other words, our staff clearly understands this, which is evidenced by the fact that roughly 900 of our staff members are, specifically, dedicated to the Fraud Detection and National Security Directorate (FDNS)—that if an individual poses a threat, they are denied the benefit—to be very clear about that.

Chairman JOHNSON. Director Saldaña, do you have a relatively simple mission statement for your Agency?

Ms. SALDAÑA. It is comparable to this Committee's, and that is: to ensure the national security and public safety of our country through the enforcement of immigration and customs laws. Huge. Over 400 statutes are implicated by that, but we are game.

Chairman JOHNSON. It is a big mission. It is a serious undertaking. The results of 9/11 and the National Commission on Terrorist Attacks Upon the United States 9/11 Commission, and what they were talking about—the stovepipes—that continues to be a concern of mine. So, you have these cross-purposes. You have two different agencies now split—and I think you were always somewhat split under INS as well. But, I am concerned about that.

Director Rodriguez, are you aware of what happened at the USCIS office in San Bernardino on December 3 following the San Bernardino attack? Are you aware of the events that occurred there?

Mr. RODRIGUEZ. At the USCIS office in San Bernardino.

Chairman JOHNSON. In San Bernardino.

Mr. RODRIGUEZ. I am not, honestly. No, I am not aware that anything occurred at our office.

Chairman JOHNSON. Director Saldaña, are you aware of it?

Ms. SALDAÑA. I think you are referring to our HSI office, Senator Johnson.

Chairman JOHNSON. Correct.

Ms. SALDAÑA. The subject of a letter that you have sent, I believe, to the Secretary of Homeland Security, which has been sent to me for response. I am aware of it.

Chairman JOHNSON. Can you describe what happened from the standpoint—because HSI is under your jurisdiction. Can you just describe, from your standpoint, what you are aware of with respect to that incident?

Ms. SALDAÑA. Well, with respect to the whole San Bernardino incident——

Chairman JOHNSON. No. I am just talking about your HSI agents showing up at the office of USCIS because they were made aware of the fact that Enrique Marquez was, potentially, there for an interview the day after the San Bernardino attack. You are not aware of that?

Ms. SALDAÑA. That I am not aware of. He showed up at USCIS?

Mr. RODRIGUEZ. Yes, Senator, now I am remembering the incident. I believe, if I understand correctly, there was a concern about the manner in which we were providing information about the individuals involved in the attack to HSI. In fact, the intent all along among our staff was to provide that information. It was just a matter of completing a very short process.

Chairman JOHNSON. So, let me just describe—this is from an internal memo written by somebody who contacted our Committee. "At approximately 12:00 p.m. on December 3, the FBI informed HSI and the Joint Terrorism Task Force (JTTF) that FBI field interview agents learned that Marquez and his wife, Maria Chernykh, were scheduled for a meeting at the U.S. Citizenship and Immigration Services office in San Bernardino for noon on December 3. HSI contacted the HSI special agent division requesting a team of armed agents to respond to the San Bernardino USCIS office in order to detain Marquez until an FBI interview team could be dispatched. The special agent division informed the HSI team that the officer in charge of USCIS would not let HSI agents in the building."

So, HSI had a special team show up trying to, potentially, apprehend somebody who, at that point in time, they thought might have been a part of a terrorist plot, and the officer in charge of the USCIS office would not allow those agents in the building.

"The special agent division learned that Marquez and Chernykh did not show up for the meeting. The special agent division requested copies of the Alien Registration File (A File), which USCIS refused. The special agent division was allowed to take a photo of Chernykh's photo, which was contained in that A file."

So, what happened on December 3—and this is kind of getting me to the cross-purposes. So, we had a team, armed up and, potentially, dealing with a terrorist. They had a tip from the FBI that Mr. Marquez might be at the USCIS office and the officer in charge of USCIS—the officers would not allow HSI into the building and would not give them the A file. That is not indicating a great deal of cooperation between two different agencies under DHS, whose supposedly top concern is the security of this Nation. Director Rodriguez, can you explain that?

By the way, we have been told during the gathering of information process that the decision not to let HSI in came from higher up.

Mr. RODRIGUEZ. That much is not correct, in the sense that, once field leadership had consulted with higher-ups, the instruction was, in fact, to facilitate the actions that HSI wanted to take. Unfortunately, this was all—as these situations do—evolving very quickly. Ordinarily, we do not have situations where law enforcement comes into a USCIS office to effect an arrest.

Chairman JOHNSON. But, how can you explain that the officer in charge of USCIS would not allow HSI agents in there when they are saying, "Listen, you could have a potential terrorist here—somebody who was involved in what just happened yesterday, in the slaughter of 14 Americans." And, they do not even allow them in the office? How could that possibly happen?

Mr. RODRIGUEZ. Again, Chairman, I think the point here is that we operate according to certain protocols. That individual was seeking guidance from higher-ups. The guidance was to facilitate what HSI was trying to accomplish. Unfortunately, it all happened so quickly that it was, incorrectly, perceived as our folks trying to, in some way, obstruct what ICE was trying to do.

Do we need to look at our protocols to make sure that those misunderstandings do not occur? That may well be something that we need to do. But, there was never an actual intent to prevent them from doing what they needed to do.

Chairman JOHNSON. It sounds like they were prevented.

Director Saldaña, can you explain this? And, what do you now know about it with, maybe, your memory refreshed?

Ms. SALDAÑA. I will say, in all honesty, Senator, that I had a similar reaction when I first heard about the incident. But, we do forget the number of law enforcement and other people involved in this incident and the confusion and the chaos that was going on in San Bernardino. We had immediate conversations when it came to my attention—and I am having a hard time, right now, remembering exactly. I believe it was the same day, and it was taken care of and clarified immediately. And, we did get the information we needed.

But, I am with the Director. We can always do things better. And, if we do not, as I tell my son, learn lessons from the mistakes we make, then shame on us. But, I believe—he and I meet very often.

Chairman JOHNSON. Coming from the private sector—I am just putting myself in the position of individuals at USCIS. The day after a terrorist attack, if I had a team, armed, coming into my office and saying, "We believe somebody who was involved in that terrorist incident is in your building, we want to come in," I would say, "Come on in." There would not have been a question in my mind. And, yet that is not what happened. It is quite puzzling. Senator Carper.

Senator CARPER. My first question is for you, Ms. Saldaña. Over your right shoulder is a gentleman sitting in the crowd right behind you—in the row right behind you. He looks very familiar—right over your right shoulder in the front row. It looks like his first name might be Jason, and I think he used to work here. He used to sit right behind us here on this dais.

Ms. SALDAÑA. We have spent a lot of time together.

Senator CARPER. It is nice to see you, Jason. Welcome back. Thank you for your service.

A couple of you alluded to one of my favorite aphorisms, that, if it is not perfect, make it better. And, one of those is how we move from a paper process to an electronic process. And, I think the Inspector General and, I think, Mr. Rodriguez both have touched on this—and the IG talked about a project that was abandoned, maybe, within the last year—I think after an investment of, I think you said, $500 million—and you thought that there had been some progress since the July 2015 audit. And, I heard the word "Agile" mentioned, a term describing something. Just help and make some sense of it for me. I think we know that, to the extent that we can take a paperwork process—paper processes and make them elec-

tronic, oftentimes that provides better service and better security. How would this have done that? Where did we go wrong? And, how are we fixing it now? Mr. Rodriguez, lead us off.

Mr. RODRIGUEZ. Yes. So, the question is first to me. Is that correct, Senator?

Senator CARPER. Please.

Mr. RODRIGUEZ. I think it is well known to just about everybody here, including this Committee, that, in fact, there were a number of quite serious and quite protracted false starts with respect to our automation process. We were using what was sort of an antiquated development process, the Waterfall development process, which was directed by an outside entity. We have since migrated to this Agile process, which, essentially, involves multiple contractors competing against each other and also shrinks the development steps in such a way that we can develop a particular item, test it, try it out in the field, make corrections as we need to, and then move on to the next item—instead of trying to do everything all at once.

To understand the timelines here, the first generation was the Waterfall generation. There was a second generation called ELIS. We began, really, the third generation, live, in March of last year, which, in other words, was about a month before the Inspector General's audit began. We launched the I–90, which is our replacement Green Card. That, already, incorporates a number of critical functionalities, which are then going to be used for other applications in the future. We have now processed approximately 300,000 I–90 applications through there and we have also added the Immigrant Visa (IV) payment since that time.

So, we now have, approximately, 16 percent of our overall business on ELIS. What we have done so far, certainly, from a customer perspective, is working quite well. A number of the concerns that our internal employees had either reflected the older generation of ELIS or are things that reflected that early time when we first launched the I–90 application. Many of those issues have since been, not only resolved, but resolved well. Again, that is why I would like to invite the IG to come back and to invite the Committee to scrutinize further what we are doing.

By the end of this year, we will have 30 percent of the business on ELIS, including some of our most complex forms. And, this is where——

Senator CARPER. I am going to ask you to hold it right there because I have some other questions. But, thank you for that explanation.

Inspector General Roth, a quick reaction to what you are hearing from Leon Redbone—excuse me, Leon Rodriguez. [Laughter.]

That is my favorite nickname for him.

Mr. ROTH. I mean, certainly, what we simply did was we went out to where the work is being done and we talked to the USCIS employees who were actually confronted with the system that they had. And, the level of frustration, which is reflected by the glitches and the hiccups in the rollout of the ELIS report, were significant. And, we were able to isolate that and to uncover a few root causes, including that there was a lack of user engagement—that is, the folks in the field did not particularly feel that they were being engaged and listened to in the development of the software. Second,

that the testing was not done on an end-to-end basis—in other words, that the testing of certain elements of the software was done sporadically—but it was not done in a complete way. And, third, that the technical support was lacking.

Now, the Agile development process means that you put out a minimum viable product and then you improve that product as you go. You basically fix the car while it is running, to use an analogy. Here, we thought that the testing, though, was insufficient, that the rollout was too soon, and that the user experience—the folks who were actually using it were highly frustrated with the system.

Those issues—that is, user engagement, testing, and technical support—were the same things that we had seen in the previous version of ELIS—the $500 million one that ultimately had to be scrapped.

Senator CARPER. Alright. Mr. Rodriguez has extended an invitation for your folks to come back and revisit them. I would urge you to do that and to do it soon.

Mr. ROTH. That is part of our audit process. We will, obviously, continue to sort of monitor this situation. We have made specific recommendations—some of which they have agreed with and some of which they have not—and we will continue to monitor and report as appropriate.

Senator CARPER. OK. Good. We will continue to monitor this. Thank you for the update.

Director Saldaña and Mr. Donahue, how do your agencies use social media when you vet and screen visa applicants? And, what challenges have you encountered in doing so?

Ms. SALDAÑA. I will begin with our portion of the responsibility here with respect to the vetting and screening. We are, first and foremost, a law enforcement agency—and HSI is an investigative agency. In all of our investigations and reviews, we use social media to the extent that the evidence leads us there.

So, in the visa screening process, in particular, there is no bar to our use of it. There are occasions where we do. As I mentioned, we go through PATRIOT first. There is a preliminary assessment as to whether there are some indicators for further review. Where there is further review, we might actually use social media—review a person's social media in order to determine whether we should have a further study or whether we should recommend a negative result to the Department of State.

So, we have that under our current authorities—and we have no problem using it when the case indicates we need to.

Senator CARPER. Alright. Mr. Donahue—same question. How do your folks use social media when you vet and screen visa applicants? And, what challenges have you encountered as you do that?

Mr. DONAHUE. Sure. In Consular Affairs, we have used social media for a while. We have it in our regulations. In fact, we just updated our social media regulations. We use it when we see that there is a reason to look further into the case. We are now doing a pilot program in countries of concern to find out how effective it can be. It is a studied program where we are using social media on our IR1—our immigrant visa for spouses—and our K cases to see what kind of especially terrorist-related information we can

find in the process. We do not have the results yet, but we have used it for a long time on the fraud side of the house.

Senator CARPER. OK. Thank you everyone.

Chairman JOHNSON. Senator Sasse.

OPENING STATEMENT OF SENATOR SASSE

Senator SASSE. Thank you, Mr. Chairman.

Director Saldaña, in January, 21-year-old Sarah Root was killed in Omaha by an illegal alien named Eswin Mejia. He was street driving while drunk. This is not the first time that local police had arrested Mr. Mejia for driving drunk. And, after he was arrested for the incident, he posted bail. Prior to being released from jail, however, local police contacted ICE and requested that he be detained because of his immigration status. ICE, however, refused and said that that would not be consistent with the President's Executive Actions on immigration. Mejia was released and disappeared.

Do you think someone who street races while driving drunk and kills another person is a threat to public safety?

Ms. SALDAÑA. Yes.

Senator SASSE. If an illegal alien kills an American citizen, should ICE let that person go free?

Ms. SALDAÑA. Go free? Well, there will be——

Senator SASSE. Which is what happened here.

Ms. SALDAÑA. There will be criminal consequences.

Senator SASSE. We do not know where the man is.

Ms. SALDAÑA. Right. And, sir, I do not understand where you got the information, with respect to our refusing to deal with this individual. That is not my understanding of the facts.

Senator SASSE. This is ICE's public comment. ICE has said this in response to Omaha law enforcement, who said they requested that ICE detain him.

Ms. SALDAÑA. I am ICE and I do not recall making that statement. I would not have said that. What we did do was—we look at every individual case, like we did here with Mr. Mejia, and we determine whether a detainer to recommend to local law enforcement is appropriate. As you know, that has been a subject of much conversation. We are working very hard to get all local law enforcement offices to work with us on it—and we have made some great strides. But, in this case—there is not a single injury or death that occurs at the hands of an illegal immigrant that does not weigh heavily on me, Senator.

Senator SASSE. I believe that. I am going to interrupt because I am quoting your agency here. This is my letter to you, dated February 29. I am quoting your Agency's public statement. This is footnote 4 in my letter. Do you have the letter from February 29? Your agency said in response, "At the time of his January 2016 arrest in Omaha—and local criminal charges, Eswin Mejia, 19, of Honduras, did not meet ICE's enforcement priorities, as stated by the November 20, 2014 civil enforcement memo issued by Secretary Johnson."

Ms. SALDAÑA. Oh, I understood you to be saying that we told local law enforcement we were not going to do anything about him because he did not meet our priorities. That is a statement of fact

in one person's interpretation. Quite frankly, sir, it is very easy to look back and say that that person's judgment was incorrect—and I have some concerns about that.

As I said earlier, for every situation we have that results in something as horrific as this, we always try to learn from it. And, I will be following up to look at the specific individuals involved, how the judgment was formed, and why that was done. But, I misunderstood your question. I understood your question to mean that we told law enforcement that we are not going to do that.

Senator SASSE. Well, the rest of your statement says—your Agency's statement, not you personally—that Mejia is scheduled to go before an immigration judge on March 23, 2017—but he was released by the police once he posted bail. They contacted your agency and asked you to detain him. ICE did not act. How do you explain that to the family?

Ms. SALDAÑA. We tried to act, sir, but I believe it was a matter of hours between the time that we were contacted and the actual release. It is very hard for us to get to every inquiry that is made by law enforcement, and, unfortunately, it had a horrible consequence here. But, we try very hard to respond as quickly as possible. We just cannot get to every site within a matter of hours. I think it was 4 hours, if I am not——

Senator SASSE. I do not know that fact.

Ms. SALDAÑA. If I am remembering correctly. But, that is a fact—that we try very hard to get to and to respond to local law enforcement. It does not do us any good to tell them to cooperate with us if we are not going to respond.

Senator SASSE. My letter to you is from 16 days ago. Can you tell me when I will receive a reply? Because it has details on all of these questions.

Ms. SALDAÑA. Yes, I think we will get you a reply within a couple of weeks—if that is satisfactory. And, if you need it sooner, I will certainly work to try to get that.

Senator SASSE. Could we have that by the end of next week?

Ms. SALDAÑA. Yes, you can.

Senator SASSE. Thank you, ma'am.

General Roth, in November 2014, Secretary Johnson issued a number of memos changing DHS's policies on immigration known collectively as "the President's immigration Executive Aactions." One of these memos addressed changes to ICE's detention policy for illegal aliens. DHS said in that memo that it was designed to identify threats to public safety. Specifically, it says that, unless an illegal alien has been charged with a serious crime, ICE will not likely detain that person. Does this policy mean that ICE does not consider someone a threat to public safety unless they have already been convicted?

Mr. ROTH. Frankly, I was not involved in writing that memo or in developing that policy, so it is difficult for me to respond to that.

Senator SASSE. To your knowledge, though, are ICE officials required to strictly follow the new policy, or is it used as guidance and then there is discretion on a case-by-case basis?

Mr. ROTH. Again, we have not looked at that in any kind of audit or investigation, so I think that question is best directed to members of the administration or to ICE.

Senator SASSE. Does the IG's office have any plans or any current studies of the President's Executive Actions on immigration?

Mr. ROTH. We do not.

Senator SASSE. Director Saldaña, how should ICE officials implement the new detention policies that were put in place in November 2014 with regard to cases like this? You mentioned the timing. Can you give us a broad sense of how you exercise your discretion?

Ms. SALDAÑA. Well, generally speaking—and let me just respond to the tail end of that question that you had, and that is the requirement of conviction. I am happy to share with you this card that we have, which we provide to our ICE officers who are involved in this activity. But, there are many categories here where a conviction is not necessary. If this is a person with a gang affiliation, no conviction is necessary. If there is a person with terrorist ties, no conviction is necessary. There are several that do involve a conviction, but let me point out to you, sir—and I have met with all of our field office directors to specify, clearly, to them that there is always this category—which is kind of an umbrella category—that says that if this does not fit a specific case, but you, as an informed and well-trained officer of Immigration and Customs Enforcement believe that that person presents a public safety threat, you are free to exercise your judgment in the manner consistent with that judgment.

Senator SASSE. But, in this case, Sarah Root is dead. So, what if someone kills a U.S. citizen? That does not meet the threshold?

Ms. SALDAÑA. That was after the fact, sir. What you are saying, as I understand it, is that that person was injured and had not—when that 4-hour period of time—seriously injured, but had not passed away until later. Again, sir, it is easy to look back and say that that judgment was poorly exercised. And, as I said earlier, I intend to learn from this particular incident. I feel terrible for the Root family and—but I can say, I wish I had a 100-percent foolproof method to ensure and—to look in the future and ensure whether somebody is going to commit a crime or not. And, it is very difficult to do that. I hope you take my word that we do the best we can.

Senator SASSE. I hear you. But, it is not the case that he was released and then went and had another drunk-driving, street-racing case. This was drunk-driving, street-racing that killed someone. Then, he posted bond. Then, the Omaha police asked that he be detained. ICE did not detain him and now he has fled.

Ms. SALDAÑA. And, I intend to use this—again, I am going to look further into this and use it for lessons learned if I find that there were serious errors of judgment here. But, many times prosecutorial discretion is just that. It is a judgment that is being exercised by the person based on what they see at the time.

Senator SASSE. Thank you.

Chairman JOHNSON. Senator Peters.

Senator PETERS. Thank you, Mr. Chairman. And, I also want to join to thank our witnesses today for your work. There is no question that the most important duty that we have as members of the Federal Government is to ensure the security of our borders and to ensure the security of the citizens of this country. So, I appre-

ciate all of your efforts in doing that each and every day. And, I know that it is a difficult job that you all have.

I am very proud to represent, as all of you know, a very large and vibrant Arab-American and Muslim community in the State of Michigan. And, I heard, from a number of my constituents, some concerns about the impact that the dual national provisions could have on their families as they are traveling to other Visa Waiver Program countries around the world.

We know that Syria and Iran deem individuals to be nationals of those countries, regardless of where someone was born or whether they have even set foot in that country, simply because their fathers were citizens of those countries. Because the Visa Waiver Program is based on reciprocity, it is possible that a Visa Waiver Program country could impose the same requirements on dual national Syrian and Iranian Americans. So, I would like a response. Is the Administration—it can be from anyone on the panel. Is the Administration concerned that other Visa Waiver Program countries could impose restrictions on American citizens limiting their ability to travel to participating VWP countries without a visa?

Mr. DONAHUE. Thank you for your question, Senator. It certainly is a concern, I think, for the State Department and the Department of Homeland Security. Our Secretaries have been working together on the new legislation regarding dual nationals. We are certainly concerned that citizens who have non-meaningful citizenship that they cannot remove—about the effects that that has on their life. They certainly can apply for a visa and travel to the United States. We are still reviewing that—and, certainly, we are concerned that there could be reciprocity from other countries.

Senator PETERS. Would anybody else like to comment? No?

[No response.]

Also, for the panel, I would like to know—I would like to just get a better sense of how the United States makes dual national determinations. So, for example, would a German citizen who was born and raised in Germany and has never traveled outside of the country, but whose father was Iranian, would he be considered a dual German-Iranian national by the United States?

Mr. DONAHUE. Again, I think we are looking at that. We have not made a final decision on how we are going to manage the dual citizenship.

Senator PETERS. OK. I would love to work with you on that as we go forward. Obviously, we have a situation where a number of folks are going to be in that category and they are just concerned about how the process will work. And, we need to know how the process will work.

Also, Mr. Donahue, given some of your concerns, are there waivers that the State Department would recommend for classes such as journalists, non-governmental organization (NGO) employees, and, perhaps, certain dual nationals that you could offer?

Mr. DONAHUE. Yes, the Secretary of State recommended to Secretary Johnson that there—and Secretary Johnson agreed that that was a reasonable interpretation of the law and that there be waivers for those who are helping us in the work that we are doing. I think, particularly, we think about aid workers who are providing

food and sustenance to the millions of people who are in camps in countries of concern—Syria, for example—going forward.

Again, while these travelers can travel with a visa—it does not affect their travel—it could deter people who want to help us in our work. For example, people who are working for the International Atomic Energy Agency (IAEA) going to Iran to ensure implementation or people who are in business in Northern Iraq and are helping that country develop.

So, we are very concerned about that. We are working together. We are looking at those cases. DHS has been building questions as part of the Electronic System for Travel Authorization (ESTA) program that screens visa waiver travelers, and no decisions have been made—or no waivers have been granted thus far—but, we do believe that the law was written to allow for waivers.

Senator PETERS. Great. Thank you.

The other area that I think we need to focus on—as a country, we are, but I was just hoping to get some response from the panel as to how your agencies work on an interagency basis with other parts of the Federal Government. A key area is trying to stem the financing of terror networks and focus on stopping the flow of money back and forth. And, I am just curious as to how the interagency visa vetting process works—how it incorporates information about financial crimes that may have been conducted by individuals who may be part of a terror financing network. The Department of Treasury is very active with this issue. I am just curious as to how you work with the Department of Treasury to identify those individuals who may be engaged in activities that are seeking to move around the world to continue to further those activities.

Ms. SALDAÑA. Well, I will say that our agency, Homeland Security Investigations—that is exactly up our wheelhouse. We are concerned about illicit trafficking—illicit financial transactions across transnational boundaries.

So, what we do is we build databases to share information with the Department of State and USCIS, specifically, to communicate information that we may have regarding a target in an investigation or someone who has actually been convicted of a crime, which is available to them. We communicate through—obviously, the PATRIOT system is that first line of defense with respect to the visa screening process, but what I am talking about is, not only the visa screening process, but criminal investigations, in general, worldwide. That is exactly what Homeland Security Investigations does.

Mr. RODRIGUEZ. The one thing that I would add is that we have strong relationships running in both directions with our law enforcement and intelligence community partners. Beginning with our law enforcement partners within DHS, like ICE and CBP, it is critical that we receive information from them when we adjudicate immigration benefits. We get that information as we need it. At the same time, we, occasionally, in the course of our work, identify information that is either of law enforcement or intelligence value, and we have well-developed pathways to make sure that that information is shared.

One example is, during the course of refugee screening, if we learn information that is potentially of intelligence value, that information is, in fact, shared with the intelligence community.

Senator PETERS. Thank you.

Mr. DONAHUE. And, we work very closely with the Department of Treasury. When they make a designation, as part of the announcement of that designation, anyone who is designated—and quite often their family members or anyone who benefits from these actions—they pass those to us and we immediately enter them into our Lookout system, review any visas, and we can do prudential revocations of the visas of anyone who is found by the Department of Treasury to be in that class.

Senator PETERS. Great. Thank you.

Chairman JOHNSON. Senator Booker.

OPENING STATEMENT OF SENATOR BOOKER

Senator BOOKER. Thank you, Mr. Chairman.

I just want to say, first and foremost, how grateful I am for the dedication, the work, and the service that the four of you render to our Nation. We have an incredible country, the oldest constitutional democracy. We were founded in a different way than any other nation in the history of the Earth at that time. We were founded not because we all prayed the same, not because we all looked the same, and not because we all heralded from the same genealogy, but rather because we were a nation of ideals. And, every generation in this country has aspired to make more real those ideals.

One of the things that has sourced the richness and the greatness of this country has been the fact that we are a Nation that has people from all over the planet Earth who have brought such strength to our economy—growth. Our diversity has yielded diversity of thought, diversity of innovation, diversity of accomplishment, and, I think, that is one of the things that makes America great. And, you all, every day grapple in an incredibly difficult space where you are balancing our values and our ideals with the urgencies of our time. First and foremost amongst them is to keep us safe.

So, I know how difficult your work is and I just want to say thank you. I know these hearings, as, I think, the Honorable Mr. Rodriguez was hinting at, can often be difficult, but please know I am one of those Senators that just appreciates your work.

I want to just dive in where Senator Peters left off. I have a lot of concerns about the issues that face what was brought forth in the omnibus last year, when Congress passed a provision that would bar dual nationals from Iran, Iraq, Syria, and Sudan from using the Visa Waiver Program. I am very happy that, in a bipartisan way, Senators Flake, Durbin, and I introduced bipartisan legislation, the Equal Protection and Travel Act, repealing—seeking to repeal the restrictions on dual nationals while, obviously, leaving the other changes to the Visa Waiver Program intact.

I just find it very disturbing that the prohibition on dual nationals applies to individuals who were born in Visa Waiver Program countries, but who have never even traveled to Iraq, Iran, Sudan, or Syria. But, they are nationals of those countries solely because of their ancestry. It seems to violate, in my opinion, really the values of this country that we have seen throughout our history.

And so, my colleagues and I support the tightening of the Visa Waiver Program, but singling out people based solely on their ancestry or national origin does not, I believe, make us safer. And, it is inconsistent with what I love about our country and our interests—and it invites, in my opinion, retaliation or discrimination against American citizens who are also dual nationals.

So my question—and maybe I will start with you, Mr. Donahue—is just very plain: do you believe that the dual national restrictions that I just described enhance our national security?

Mr. DONAHUE. We certainly are always reviewing where we need to put more emphasis and we want to be sure that every visa interview is used effectively to protect our borders. But, we also realize that the Visa Waiver Program, by its very nature, has allowed us to move resources to those places where we need to look more closely.

Senator BOOKER. So, does it make us safer that somebody from Britain or France who has Iranian, Syrian, or Sudanese ancestry—does barring them from the Visa Waiver Program make us safer, in your opinion?

Mr. DONAHUE. I think, all things being equal, not knowing the individual—not knowing—you always try to do these on a case-by-case basis. But, I agree with you that that is not, in and of itself, an indicator——

Senator BOOKER. I appreciate that.

Mr. DONAHUE [continuing]. That this person is a higher threat.

Senator BOOKER. In the Senate, whenever I hear those words "I agree with you," I get very happy—and I appreciate that.

And so, Mr. Rodriguez or the Honorable Ms. Saldaña, do you think we gain any additional security benefits by barring individuals based on their national origin or heritage?

Ms. SALDAÑA. Well, as a general proposition, no.

Senator BOOKER. OK. Thank you, Mr. Rodriguez.

Mr. RODRIGUEZ. Let me be very clear. No, we do not. And no, we do not do that. We scrutinize people, perhaps, differently in situations where they come from conflict zones, particularly, conflict zones where there are organizations that are actively promoting violence against the United States.

Senator BOOKER. Clearly.

Mr. RODRIGUEZ. But no, we do not—and I would never operate an Agency that operated that way.

Senator BOOKER. But, the omnibus that passed last year called for us to do those things. And, I am very happy that, again, a bipartisan group of Senators is saying that we should not do those things. And, you are saying to me that we do not do them now, or—does it add to our national——

Mr. RODRIGUEZ. Certainly not in the manner in which my agency does any of its work. I do not operate the Visa Waiver Program. My agency does not operate that. We do other things where we make decisions based on——

Senator BOOKER. Right, but you do not think that what I described and what was in that omnibus enhances national security?

Mr. RODRIGUEZ. Again, not my lane, so I would not be opining on the Visa Waiver Program.

Senator BOOKER. You are a smart man to stay in your lane. [Laughter.]

But, a rule, I think, is very important. But, the Honorable Ms. Saldaña, you do not think it makes us any safer?

Ms. SALDAÑA. As I said, as a general proposition—again, in our role as investigators, we look at every aspect of the facts and circumstances pertaining to an individual's application—and there may be some reason to explore further. But, as a general proposition, of course not—not just solely based on a remote relationship with someone from a particular country.

Senator BOOKER. I am grateful for that response.

Let me shift into your lane, sir. It was very clear to me, after the horrific attacks in France, that many of the people who participated in that could have used the Visa Waiver Program to come to our country and, by the way, walk into a gun show, buy a trunk full of weapons, and commit those crimes here just as easily. And so, one of the aspects of the Visa Waiver Program that is important to me is our coordination and cooperation with our European allies, specifically, in sharing information and working against terrorism. So, my final question in my remaining few seconds is: I worry that our European allies and others might not be doing enough to help strengthen our security—to share information and to up their procedures and policies to the point where we could effectively rely on them. And so, what are we doing to help Europe strengthen its border security entry procedures, so that they are effectively documenting the refugees coming into their countries?

And, if that is a new signal for my time almost being up, it is very effective. [Laughter.]

Go ahead.

Mr. RODRIGUEZ. Yes, what I do know is that we work on those issues, primarily, through our U.S. intelligence community and law enforcement partners. I do know that they are actively engaged with their counterparts in Europe and throughout the English-speaking world. Just 2 or 3 weeks ago, I spent a lot of time with our partners from Australia, England, and Canada exchanging information and talking about our common goals in this area. We are going to continue doing that on a multilateral basis to make sure that we are supporting one another in what is really a very critical mission.

Senator BOOKER. Mr. Roth, are you satisfied that we are doing enough in partnership with our European allies to strengthen their policies and procedures to make our country safer?

Mr. ROTH. We have not looked at that specific issue of information sharing with our foreign partners. I would say, though, that anytime that you have a risk-based system, particularly in the current terrorist environment, in which you have functionally pop-up terrorists—people who are not on anybody's list and who are unknown—that the kind of individual scrutiny that is required with the Visa Waiver Program really is sort of the stop-gap for that.

Senator BOOKER. Mr. Chairman, thank you. And, thank you for holding such an important hearing.

Chairman JOHNSON. Thank you, Senator Booker.

I want to talk a little bit about the problem of overstays. I do not quite understand it. I mean, I do but I do not. We are often

cited the statistic about how 40 percent of the people in this country illegally are here on overstays. Of the best estimate—11 to 12 million people in this country illegally—that puts the number somewhere between 4.4 and 4.8 million people here that are overstaying a visa.

Let me start by asking, does anybody know which visas are primarily abused? I will start with Director Saldaña.

Ms. SALDAÑA. I would defer that to the State Department, with respect to the overall picture.

Chairman JOHNSON. Secretary Donahue, you got the football thrown to you.

Mr. DONAHUE. I am not sure I have seen a figure on any particular area. I really do not know.

Chairman JOHNSON. I mean, why would we not know that? The article I am looking at says there are still, today, about—what does it say?—523,000 visa overstays per year. Why would we not be tracking that?

Mr. DONAHUE. We do track at all of our posts and we do this through a validation study. We will check to see, for instance, if people from a certain country are coming to the United States and staying on a certain type of visa. And, different kinds of visas are harder to track. For instance, a visitor, admitted for a certain amount of time, 6 months usually—or 3 months if they are eligible for a visa waiver. A student—that is a long-term admission and it is hard to determine at what point they become——

Chairman JOHNSON. But, are we not working with the schools, and are there not requirements of the schools to keep us up to date if somebody drops out, is not paying tuition, or something like that—that we can report that and then are aware of it, so that ICE can potentially enforce?

Ms. SALDAÑA. Yes. And, of course, with respect to a category, this is an educated, I think, guess and that is, the most visas we have are B1s or B2s—travelers for business or pleasure. So, I would think there would be some correlation between that and the number of overstays.

But, absolutely, we are responsible for the Student Exchange Visitor Program (SEVP) and we have the database of information in the Student and Exchange Visitor Information System (SEVIS) database that relates to all 8,000 universities that have students placed there. And, we do have leads that are provided to the CTCEU, which I mentioned earlier, with respect to overstays. Once again, so much of what we do is risk-based, so we are looking at the large universe of overstays and trying to determine which of these folks could potentially pose a danger or a public safety threat. And, the information we have—at least I can give you this, sir: we have about half a million—489,579—leads that were provided to CTCEU, where there is a flag with respect to business and pleasure travelers—the B1 and B2 visas. That is the largest category of individuals that we are running down, so I think that correlation is supported by that number.

Chairman JOHNSON. I realize there are millions—tens of millions—of people that come and go out of the United States. In today's information technology age, I do not understand what is so

hard about keeping track of this. Everybody that comes here, legally, has a passport that has a number attached, correct?

Ms. SALDAÑA. Yes.

Chairman JOHNSON. That goes into a database. What is so hard to then have that passport attached to a particular visa? Should we not just have the information on this thing? Again, I am an accountant, so I am kind of into numbers and I am kind of into information. But, when we take a look at what we can do in other areas of our economy, whether it is tracking numbers with shipments—that type of thing—what has been so hard about us developing that database, so we know exactly who has come in, who has not gone, and can tie it to a visa—and just know, with a great deal of certainty, by pretty much a push of a button on a computer all of that information? Why is that?

Ms. SALDAÑA. Well, we do know, with some degree of certainty, what the Principal Deputy was mentioning earlier——

Chairman JOHNSON. You were not able to tell me how many—under what visa program—again, I understand the vast majority of visas are in certain categories, so you assume. But, it is not like you have ready information, in terms of, "No, this is exactly how many people were granted a visa and have not checked out on time—there is an overstay that should be, potentially, subject to enforcement."

Inspector General Roth, can you speak to this?

Mr. ROTH. What you are referring to really is a biometric system for exits, so you can understand who it is that has left the country, so you are able to compare those two sets of data.

Chairman JOHNSON. First of all, let me—it is just numbers. It is actually easier than that. Again, unless I am missing something, in terms of people coming in with a passport and a visa—that is numerical information and can be easily loaded into a database with a set time that a visa expires. We do not have a record of this person leaving. To me, that is an incredibly simple database to manage. Why do we not do it?

Mr. ROTH. Well, as my most recent report shows, the challenges, in the Federal Government, for building these kinds of information systems is very difficult. I think there has been some effort to try to get an exit system that has not been successful. So, I think, as a Federal Government, we are aware of the problem, but we have not been able to implement a solution.

Chairman JOHNSON. Would you agree with me that, in the private sector, this would almost be like falling off of a log——

Mr. ROTH. Yes.

Chairman JOHNSON [continuing]. In terms of developing a database like this?

Mr. ROTH. Yes.

Chairman JOHNSON. Which begs the question: why can we not do this after 10 years in the Federal Government? Unbelievable.

I will go to Senator Ernst.

OPENING STATEMENT OF SENATOR ERNST

Senator ERNST. Thank you, Mr. Chairman. And, for the ICE Director, please, a number of my colleagues have already spoken on this—Senator Grassley, in a floor speech and last night, and also

Senator Sasse here, in this forum, this morning asked a question and raised the case of the tragic death of Iowan Sarah Root, who was killed by a drunk driver who was, reportedly, in the country illegally and has since posted bail and absconded. If it is the case that ICE refrained from lodging a detainer on Mejia because his arrest for felony vehicular homicide "did not meet ICE's enforcement priorities," would you agree with me that ICE needs to take another look at its so-called enforcement policies?

Ms. SALDAÑA. Well, we do that every day. We train and we respond to evolving situations on the basis of things we have experienced and seen. So, that prosecutorial discretion, as I said a little earlier, is just that. It is a person's judgment in looking at all of the information in front of them as to whether or not they lodge a detainer or not. We do it on a case-by-case basis. And, as I said earlier, Senator, this is a terrible instance where we will look at it and learn from that situation. But, prosecutorial discretion could have been exercised a different way here. That is us looking back. I want to look forward, so that we do not have that situation arise again.

Senator ERNST. Well, except that the way we look forward, though, Director, is also by learning from mistakes of the past—and this is not an isolated incident by any means. And, the priority should be to ensure that people who enter our country illegally and kill American citizens are deported and never allowed to return. And, unfortunately, in this situation, we have a gentleman who has done exactly that—and I am guessing he is still here in the United States somewhere.

Ms. SALDAÑA. And, we will be looking for him, Senator. This does not end there.

Senator ERNST. I certainly hope so. There is a family that demands answers—as do we. And, just to be clear, if he is apprehended, today, would Mr. Mejia fit the President's enforcement priorities?

Ms. SALDAÑA. Absolutely.

Senator ERNST. OK. I look forward to continuing the discussion on this. This is important. But, again, it is not an isolated incident and we have to make sure that all of our agencies—local and Federal—are working together on these issues. And, I think we all can learn from this incident.

Ms. SALDAÑA. I agree.

Senator ERNST. Thank you for your time.

Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Carper.

Senator CARPER. Thank you. Thank you, Mr. Chairman.

I want to go back to visa overstays. Every State has its own Medicaid program. We are told that one of the cost drivers for Medicaid is that people have an appointment, but sometimes do not show up—oftentimes these are moms, dads, and young children—and so, they do a lot of things to try to make sure people show up.

One of the things that we do in Delaware—and in some other States as well—and I think we got this idea from Johnson & Johnson (J&J)—the other Johnson.

Chairman JOHNSON. A good name.

Senator CARPER. And, it is called "Text for Baby." And, text messages are sent to parents, who need to make sure that their child has an appointment and actually shows up. And, they do this maybe a week before or they do it like a day before. They may even do it the day of, I think. And, it seems to me that that is an idea that—and it has actually helped. It makes it more certain that people actually show up for their appointments. It saves some money for Medicaid and makes sure people get the health care they need.

I am just wondering if a similar approach might be helpful for folks that come to this country—most of the people that come to this country come here legally—overwhelmingly so—but a bunch of them overstay their visas, as you know. And, I think it might be helpful if they were just getting pinged with the countdown to the date that their visa expires, saying, "You have 2 weeks to go," "You have 1 week to go," "You have 2 days to go," or "You have 12 hours to go." It is the kind of thing that is easily automated and most people who come to this country have cell phones. And, I think I always like to look to the private sector for a solution that might work for a public purpose. Actually, the other is sort of a public purpose as well. Just react to that, please.

Ms. SALDAÑA. It is a very interesting idea, Senator. Obviously, everything that we hear here we take back and talk to our folks about.

We have a massive number of students in the system and, as the Principal Deputy said earlier, they are on different programs. I understand what you are saying—to do the ping at the end of the term of the visa, whether or not they are finished with their program. So, right now, as I said earlier, we are using a risk-based analysis with respect to these overstays—who presents a risk in those overstays. It is a matter of resources and trying to direct them to the area where the greatest risk is. But, that is certainly an interesting idea. I think it would require a tremendous number of additional resources than we have now to ping millions of people. But, that is certainly something I can study further.

Senator CARPER. I was sitting here listening to Senator Johnson. He is shaking his head and he said, "No, it would not."

Ms. SALDAÑA. No, it would not require additional resources? Is that what you are saying, sir?

Chairman JOHNSON. Not a tremendous amount.

Senator CARPER. Just think about it, OK? And, I am going to ask you to do more than just think about it.

Ms. SALDAÑA. Absolutely.

Senator CARPER. We will put you in touch with the "Text for Baby" people and your folks can figure out how they do it.

Ms. SALDAÑA. Are you saying "baby"?

Senator CARPER. B–A–B–Y.

Ms. SALDAÑA. B–A–B–Y, OK.

Senator CARPER. "Bring back my baby to me."

All right. This is a question for Director Saldaña and Mr. Donahue. You are a good couple here. As I understand it, ICE uses an automated system—we talked about it here a little bit earlier today—called PATRIOT to conduct the screening of visa applicants for all visas that are processed at overseas posts where ICE's visa security teams are present.

What is holding ICE and the State Department back from requiring this automated system to be used for all incoming visas? Is it simply a matter of resources?

Ms. SALDAÑA. I would not say "simply," but that is certainly a factor. And, actually, Senator, we are undergoing a pilot right now under PATRIOT—a PATRIOT expansion pilot—that is looking at three additional countries to try to do all—that are not necessarily among these 20 or 26 posts where we have visa screening—but looking at expanding that and what it would take and how much time would be consumed. So, we are actually undertaking an evaluation and study of that because, if it is possible, it is certainly something we would like to do. But, right now, I am not in a position to tell you, "Absolutely, that can happen." I think our study wraps up in May, so I will be able to report back to you my thoughts and ideas based on what we have learned from that expanded PATRIOT project.

Senator CARPER. Would you do that?

Ms. SALDAÑA. Absolutely.

Senator CARPER. Thank you.

Mr. Donahue, any thoughts on this one?

Mr. DONAHUE. I think we are also working with ICE in countries where the physical presence would be good, but is not possible because of resources or other reasons, to have some of the PATRIOT functions—the computerized functions—done domestically and then advising posts of the response to the PATRIOT checks. So, that will also expand their ability to expand it to more countries.

Senator CARPER. OK. This is a question for everybody—and then I am done. Since 9/11, one of the key themes of our homeland security efforts has been information sharing. The testimony today references a lot of different programs and different databases used to screen applicants before they come to the United States.

Can each of you just take a moment to reflect on how well integrated these resources are and what barriers remain? And, how much of this sharing is automated and how much requires time and initiative by an individual officer?

Mr. DONAHUE. I can begin from our side.

Senator CARPER. Please.

Mr. DONAHUE. I have seen a revolution in the realm of information sharing since 9/11—and, especially, in my 32 years of doing this kind of work. I think one of the most remarkable things is that, today, someone can be interviewing an applicant for a visa in Mali. That person's visa will be checked by my colleagues and the interagency—law enforcement and the intelligence community—response will come back to that officer—whether there is anything to be concerned about—in addition to whatever he or she has been able to find out in the interview.

Then that person is issued a visa. A person can get on a plane today, arrive in Atlanta, and, at the port of entry, the officer there will have all of the information that was used in making that decision back in Mali—just in less time than the flight. So, that kind of information sharing, where we can look into—for instance, our database—our major database—there are more DHS users than there are State Department users, so that people know why we

issued a passport or why we issued a visa. And, I think that has made us all much more effective.

Senator CARPER. OK. Anyone else? Just very briefly, Mr. Rodriguez.

Mr. RODRIGUEZ. Sure. I think, as this Committee knows, I spent most of my career in law enforcement and, very early on, I was an organized crime prosecutor. I remember, back in the late 1980s and early 1990s, where what was considered our organized crime database was actually rows and rows of filing cabinets that would fill this room.

We have certainly come a long way from that time. We now have, at USCIS, a very well automated process to ping law enforcement and intelligence community databases to determine whether an individual seeking an immigration benefit presents a threat to the United States. That will never, in my view, be a substitute for the human judgment that is required on both ends—to make an intelligence community judgment and then for us to make an immigration judgment with that information. So, that will always continue to be part of it.

But, in terms of the information moving, we really have reached a pretty good point these days.

Senator CARPER. Good. Thank you.

Ms. Saldaña, the same question, just briefly.

Ms. SALDAÑA. And, I agree, we can always improve and we can always do better—we have heard of one or two instances where the information—the sharing broke down a little bit. But, the Visa Security Program, itself, is an extraordinary example of that information sharing. We have our DHS holdings that we bounce the PATRIOT inquiry against and it has so many different contributors—FBI, obviously the State Department, and other law enforcement—and that is an example of the progress that we have made.

We are always working on this to make it better—and internationally with our allies and the countries out there that we are in.

Senator CARPER. OK. Thank you.

General Roth, the last word.

Mr. ROTH. Well, thank you, and my apologies for being the contrarian or the skeptic in the room. I will have to say that——

Senator CARPER. No, no. Be yourself. Be yourself. [Laughter.]

Mr. ROTH. It is an occupational hazard, Senator. Several of our audits note sort of the difficulty with the paper-based system. So, for example, when we compared ICE data with USCIS data, in regard to human-trafficking victims, what we found was that the perpetrators of human trafficking, who people at ICE had investigated, were, in fact, using the visa system to bring their victims into the country. And, one of the reasons that has occurred is because USCIS still has a paper-based system—and I am sympathetic to Director Rodriguez's challenges in this area. But, for example, an individual who applies for a T visa—which is the individual who is a victim of human trafficking—submits a statement as to what occurred to that person that allows them to receive a T visa. That is not digitized in any way, so there can be names and identifiers of perpetrators of human trafficking that simply get lost in the system.

So, while I agree that, in many ways, there are systems in place that allow for this kind of information sharing, there is much that can be done to improve that.

Senator CARPER. All right. Thank you. Thank you for being the contrarian in the room. And, thank you to each of you for your testimony, your efforts, and your leadership. Thank you.

Chairman JOHNSON. Thank you, Senator Carper. I think we should work together on some piece of legislation to facilitate using the private sector skills that are out there—and technologies. Go to any business involved in logistics, whether it is FedEx, UPS, or any trucking company. These programs exist for tracking. It is a similar type of process—almost off of the shelf. I would suggest, maybe, getting some of their IT experts in your agencies and let us get this program done. It should not take years and years or billions and billions of dollars. We have done it in the private sector. It is unbelievable what they can really track. And, the information, just from a desktop, that a customer can obtain, in terms of a package being transferred from this truck to another truck—we ought to be able to do the same thing, in terms of tracking visa overstays.

I do want to ask a couple more questions about resource capabilities. This is kind of going to what Senator Tester was talking about. I will go to you, Mr. Donahue. Again, I am an accountant, so I like numbers. As best I can determine, somewhere between 20 million and 32 to 33 million people go to consulates, go to embassies, and have to do an interview to get a visa to come to the United States on an annual basis. Is that kind of roughly about the right number? Does that sound about right to you?

Mr. DONAHUE. It is closer to about 13 million that come in and 13.5 million that come in for a visa. The Visa Waiver Program is additional to that.

Chairman JOHNSON. Something different, OK. You have about 1,800 foreign service officers that do those interviews, so, based on the 13 million number, it is going to be less. But, if you talk about 13 million people divided by 1,800, we are talking about just a few minutes—probably less than 15 minutes per interview. That is not a whole lot of time, is it?

Mr. DONAHUE. Well, I think if you take into account the entire package, that the person has already gone through biometric and biographic database checks and that they have completed a very long visa application form that asks a lot of information that we check against—we do have fraud units and we do have our ICE Visa Security Units (VSUs). And, like any other business—you are a businessman—you expedite the easy and you spend time on what needs to have time spent on it. So, when a person walks in and everything is clear, you do a quick interview. You believe the person because of your training and knowledge that this person—just as you see at the ports of entry—that this person is doing what they say they are doing. If the next person comes in and you have concerns, you can stop the interview and send it to your fraud unit or go to one of our colleagues in DHS. You can continue the interview as long as you need to. So, while one may take one minute, another may not be cleared for weeks.

Chairman JOHNSON. So, it is your sense from around the world, really, that the foreign service officers who are in charge of this do

not feel pressure. You feel that they feel they are adequately resourced for the task at hand?

Mr. DONAHUE. Certainly people would always like to have a few more officers, but I think we have used business practices to make this as organized as possible and to make sure that the time they spend at the window is the most effective. We would certainly like to keep all of our fees—because we are a fee-based organization—so that we could plow all of that into making our business work more efficiently for our customers and make sure that we have all of the security checks there. But, I think most officers are using good business practices and their training. They are putting the work in with those few people who come to the United States to do us harm. Really focusing on that has proved effective.

Chairman JOHNSON. By the way, you talked about a fee-based service. It is, again, that tension between security and customer service. I come from a business background.

Mr. DONAHUE. Right.

Chairman JOHNSON. You are generating revenue for your organization. You have an incentive for generating more revenue, which is somewhat at cross-purpose—trying to run more people through to generate the revenue versus ensuring the security. So, it does concern me.

Director Rodriguez, I know President Obama announced the granting of—or allowing about 10,000 additional Syrians into the country. That is about a 20-percent increase in the number of refugees. Again, I am concerned a little bit about taking any shortcuts in the process. It normally takes 18 to 24 months to review those files. Do you believe you are adequately resourced to have a 20-percent increase in the number of refugees you fully vet?

Mr. RODRIGUEZ. I would point out that that is still—even that increase is a relatively small part of our overall business. We have 8 million cases that we handle in any given year across our 19,000 employees.

Let me also be very clear that we will do our job with respect to the refugees that we screen. No corners will be cut.

Chairman JOHNSON. Good.

Mr. RODRIGUEZ. We will do what we need to do.

Chairman JOHNSON. That is really what I view our responsibility as a Committee to be: to make sure that we do not take any shortcuts. So, I appreciate your comments there.

Let me just wrap up. There are a number of points we did want to make—and I want to be respectful of people's time. I mentioned that December 3 incident at the office of USCIS in San Bernardino. Inspector General Roth, I would appreciate it if you would investigate exactly what happened there. That does show the potential breakdown of inter-agency cooperation. Again, I find it pretty disconcerting, to say the least.

The K1 visa—ICE is really responsible for verifying those marriages. If you come in on a K1 visa, you are supposed to be married within 90 days. Again, I do not think we have a system—I do not think we are really verifying those things, which is a potential vulnerability.

Inspector General Roth, you talked about the poor data collection and information sharing that resulted in human trafficking coming

across our borders. I would appreciate you keeping an eye on that and everybody being aware of that.

I have not yet received an answer for a letter I have written. We had ICE Agent Taylor Johnson in for one of our hearings involving government whistleblowers and the retaliation against them, which is really prevalent in the Federal Government. It is really jaw-dropping. So, Director Saldaña, I would really appreciate it if you would respond to that, because now, apparently, Agent Johnson has been terminated—and the process has not really gone through the Office of Special Counsel (OSC) or the Inspector General. I am really concerned about that particular case.

Ms. SALDAÑA. And, we have that letter. We are preparing a response, sir.

Chairman JOHNSON. OK. Again, the oversight of student visas—the overstays is a significant issue. I really will work with Ranking Member Carper in trying—if we have to produce some legislation to facilitate the computer systems, the IT systems, to do this—again, coming from the private sector and knowing what is available out there, this should not be that hard. And, I think it is a critical step we have to take.

So, again, I do want to thank all of you for your service to this Nation. I realize this is tough. There is no perfect system. You have a serious responsibility. I know you take those responsibilities seriously. So, thank you for your service to this Nation, for providing thoughtful testimonies, and for taking the time to answer our questions.

With that, the hearing record will remain open for 15 days, until March 30 at 5 p.m. for the submission of statements and questions for the record. This hearing is adjourned.

[Whereupon, at 11:48 a.m., the Committee was adjourned.]

APPENDIX

Chairman Johnson Opening Statement
"The Security of U.S. Visa Programs"

Tuesday, March 15, 2016

As submitted for the record:

Good morning. Thank you for joining us today.

Last December, the United States experienced the worst domestic terrorist attack since Sept. 11, 2001, when Syed Rizwan Farook and his wife, Tafsheen Malik, opened fire on an office holiday party in San Bernardino, Calif. — killing 14 and wounding 22.

Malik had immigrated to the United States legally from Saudi Arabia in 2014 on a fiancée visa, after reportedly meeting Farook on the Internet.

This horrific attack reminded us of the grave danger we face if we allow the wrong people to enter the country. It is a reminder of why the security of our visa program is so important.

In response to this attack, last year Congress and the Obama administration joined together to enact reforms to strengthen the Visa Waiver Program, through legislation that I and others sponsored.

Reforming the Visa Waiver Program represented a real improvement to our national security — requiring enhanced screening of foreign nationals who had traveled to certain countries like Iraq and Syria. But these improvements are premised on the integrity and security of the U.S. visa system and the traditional screening process.

With millions of people applying for visas to come to the United States, we face a daunting challenge: vetting the applications, screening and interviewing the foreign nationals, and, if they are granted a visa, ensuring that they follow the law and terms of their visas.

This is a challenge that dates back to 2001 and the Sept. 11 attacks. The bipartisan 9/11 Commission warned us that the al-Qaida hijackers defeated our immigration system, and that immigration security was critical for national security.

Now, 15 years later, the security of our immigration system is more critical than ever — particularly given the growth and spread of Islamic extremist terrorist organizations across the world and the rise in ISIS-inspired attacks on our own soil.

The purpose of our hearing this morning is to examine the state of visa security and to answer the following questions:

First, are we doing all that we can to screen and vet visa applicants before they enter the country?

Second, how effectively are federal agencies managing their responsibilities and working together — including sharing information — through each step of the visa and immigration process to ensure our security?

I am particularly interested to understand how the DHS components represented here today are working together — including overseeing key visa programs, sharing information, and preventing fraud and national security threats.

The American people are counting on us to keep them safe. That depends on the security and integrity of our immigration system. It requires the State Department and the Department of Homeland Security, as well as their components, to work effectively together as one team to protect us.

I am pleased that we have representatives from the State Department and the Department of Homeland Security with us today to address these serious questions.

You each have important jobs and responsibilities. I look forward to your testimony.

Statement of Ranking Member Tom Carper
"The Security of U.S. Visa Programs"

Tuesday, March 15, 2016

As prepared for delivery:

This hearing is the third in a series we have held to explore whether we are doing enough to address concerns that terrorists might try to exploit international travel to infiltrate our country.

In the aftermath of the Paris terrorist attacks, this Committee first scrutinized the process in place to screen and vet Syrian refugees escaping the carnage in the Middle East. We learned that the U.S. refugee resettlement process involves extensive security screening. Syrian refugees, we were told, undergo multiple rounds of screening over an average of 18 to 24 months, including in-person interviews by immigration analysts and counterterrorism officials trained in spotting fraud and deception.

The Committee next looked at our Visa Waiver program, which allows citizens of certain nations to travel to the United States for short visits without a visa. Once it became clear that the Paris terrorists held passports from European countries whose citizens enjoy visa waiver privileges, fears arose that this program could pose a security threat.

We learned that Visa Waiver travelers seeking to come to the United States endure nearly the same level of scrutiny and vetting as all other travelers. We also learned that when it comes to security, nothing is being 'waived', as the name of the program incorrectly suggests. And we learned that, in return for their entry into the Visa Waiver program, countries must share intelligence with the United States, they must open up their counter terrorism and aviation security systems to our inspectors, and they must abide by our standards for aviation and passport security.

As a result, the Visa Waiver program has now become a key counter terrorism tool.

Today we will continue this look at our screening systems for foreigners entering our country. We will examine the depth of security for all forms of visas, whether they are for students, tourists, people here on business, or those seeking to make America their permanent home. It is a daunting undertaking, given the volume of international travel to the United States. It also involves the coordination of multiple government entities, particularly the State Department and DHS, both of which are represented here today.

Since the 9/11 attacks against our country, there have been notable changes to strengthen our visa security, including recent adjustments made following the attacks in Paris and San Bernardino. For example, amid ISIS's growing online presence, the Department of Homeland Security is exploring ways to expand its use of social media to screen travelers seeking to enter the United States.

I look forward to hearing more about these efforts, and also about the contribution of ICE's visa security program that may help identify threats posed by potential travelers early on. We need to know if this program is adding real security and, if so, how to expand its reach.

As with all of our recent hearings, I expect that we will find elements of our visa security that we can improve upon – understanding that we can never eliminate all risk and should not turn our back on the many benefits of trade, travel and immigration. Yet as we continuously improve the security of our immigration system, we must also keep our eye on perhaps the even more pressing threat of homegrown terrorism.

For all that we do to strengthen our borders and our immigration security, groups like ISIS know all too well that they may bypass our multiple layers of homeland security by using online propaganda to recruit people already inside our borders to carry out attacks against the United States. In this respect, preventing ISIS's twisted propaganda from mobilizing our young people to carry out terrorist violence may help combat the long-term terrorist threats to the homeland in ways that aviation screening and watchlist checks can never do.

I look forward to our continued work on this committee on both combatting homegrown terrorism and strengthening the security of our immigration systems. And I hope we can use today's hearing to identify some common sense improvements to the security of visas. Thank you to the witnesses for your testimony and for your service to our country.

DEPARTMENT OF STATE

WRITTEN STATEMENT

OF

DAVID T. DONAHUE

PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR CONSULAR AFFAIRS

DEPARTMENT OF STATE

BEFORE THE

UNITED STATES SENATE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

HEARING

ON

THE SECURITY OF U.S. VISA PROGRAMS

MARCH 15, 2016

Good morning Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee. The Department of State is dedicated to the protection of our borders. We have no higher priority than the safety of our fellow citizens at home and overseas. We and our partner agencies throughout the federal government have built a layered visa and border security screening system, and continue to refine and strengthen the five pillars of visa security: technological advances, biometric innovations, personal interviews, data sharing, and training.

This layered approach enables the Department of State to track and review the visa eligibility and status of foreign visitors from their visa applications to their entry into the United States. Lessons learned through the years have led to significant improvements in procedures and capabilities. At the same time, the tragic events in Paris and San Bernardino demonstrated the changing nature of threats and our obligation to constantly analyze, test, and update our clearance procedures. We will never stop doing so.

A Layered Approach to Visa Security

In coordination with interagency partners, the Department has developed, implemented, and refined an intensive visa application and screening process. We require personal interviews in most cases, including all immigrant and fiancé(e) cases, employ analytic interviewing techniques, and incorporate multiple biographic and biometric checks in the visa process. Underpinning the process is a sophisticated global information technology network that shares data among the Department and federal law enforcement and intelligence agencies. Security is our primary mission. Every visa decision is a national security decision. The rigorous security screening regimen I describe below applies to all visa categories.

All visa applicants submit online applications – the online DS-160 nonimmigrant visa application form, or the online DS-260 immigrant visa application form. Online forms enable consular and fraud prevention officers, and our intelligence and law enforcement partners, to analyze data in advance of the visa interview, including the detection of potential non-biographic links to derogatory information. The online forms offer foreign language support, but applicants must respond in English, to facilitate information sharing among the Department and other government agencies.

Consular officers use a multitude of tools to screen visa applications. No visa can be issued unless all relevant concerns are fully resolved. The vast majority of visa applicants are interviewed by a consular officer. During the interview, consular officers pursue case-relevant issues pertaining to the applicant's identity, qualifications for the particular visa category in question, and any information pertaining to possible ineligibilities related to criminal history, prior visa applications or travel to the United States, and/or links to terrorism or security threats.

As a matter of standard procedure, all visa applicant data is reviewed through the Department's Consular Lookout and Support System (CLASS), an online database containing approximately 36 million records of persons, including those found ineligible for visas and persons who are the subjects of potentially derogatory information, drawn from records and sources throughout the U.S. government. CLASS employs sophisticated name-searching algorithms to identify accurate matches between visa applicants and any derogatory information contained in CLASS. We also run all visa applicants' names against the Consular Consolidated Database (CCD, our automated visa application record system) to detect and respond to any derogatory information regarding visa applicants and visa holders, and to check for prior visa applications, refusals, or issuances. The CCD contains more than 181 million immigrant and nonimmigrant visa records dating back to 1998. This robust searching capability, which takes into account variations in spelling and naming conventions, is central to our procedures.

We collect 10-print fingerprint scans from nearly all visa applicants, except certain foreign government officials, diplomats, international organization employees, and visa applicants over the age of 79 or under the age of 14. Those fingerprints are screened against two key databases: first, the Department of Homeland Security's (DHS) IDENT database, which contains a biometric repository of available fingerprints of known and suspected terrorists, wanted persons, and those who have committed immigration violations; and second, the Federal Bureau of Investigation's (FBI) Next Generation Identification (NGI) system, which contains more than 75.5 million criminal history records.

All visa photos are screened against a gallery of photos of known or suspected terrorists obtained from the FBI's Terrorist Screening Center (TSC), and against visa applicant photos contained in the Department's CCD.

In 2013, in coordination with multiple interagency partners, the Department launched the "Kingfisher Expansion" (KFE) counterterrorism visa vetting system through the National Counterterrorism Center (NCTC). While the precise details of KFE vetting cannot be detailed in this open setting, KFE supports a sophisticated comparison of multiple fields of information drawn from visa applications against intelligence community and law enforcement agency databases in order to identify terrorism concerns. If a "red-light" hit is communicated to the relevant consular post, the consular officer denies the visa application and submits it for a Washington-based interagency Security Advisory Opinion (SAO) review by federal law enforcement and intelligence agencies. In addition to this KFE "red-light" scenario, consular officers are required to submit SAO requests in any case with applicable CLASS name check results, and for a variety of interagency-approved policies developed to vet travelers that raise security concerns, including certain categories of travelers with a particular nationality or place of birth. In any case in which reasonable grounds exist to question visa eligibility on security related grounds, regardless of name check results, a consular officer suspends visa adjudication and requests an SAO. Consular officers receive extensive training on the SAO process, which under the aforementioned circumstances, requires them to deny the visa per INA section 221(g) and submit the case for interagency review via an SAO for any possible security-related ineligibilities. The applicant is informed of the denial and that the case is in administrative processing. An applicant subject to this review may be found eligible for a visa only if the SAO process resolves all concerns.

DHS's Pre-adjudicated Threat Recognition and Intelligence Operations Team (PATRIOT) and Visa Security Program (VSP) provide additional law enforcement review of visa applications at designated overseas posts. PATRIOT is a pre-adjudication visa screening and vetting initiative that employs resources from DHS/Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and the Department of State. It was established to identify national security, public safety, and other eligibility concerns prior to visa

issuance. A team of agents, officers, and analysts from ICE and CBP perform manual vetting of possible derogatory matches.

PATRIOT works in concert with the Visa Security Units (VSU) located in more than 20 high-threat posts and we are working with ICE to deploy VSUs to more visa issuing posts as rapidly as available resources will support. ICE special agents assigned to VSUs provide on-site vetting of visa applications and other law enforcement support to consular officers. When warranted, DHS officers assigned to VSUs conduct targeted, in-depth reviews of individual visa applications and applicants prior to issuance, and recommend refusal or revocation of applications to consular officers. The Department of State works closely with DHS to ensure that no known or suspected terrorist inadvertently receives a visa or is admitted into our country. The Department of State has not and will not issue a visa for which the VSU recommends refusal.

Training

Consular officers are trained to take all prescribed steps to protect the United States and its citizens when making visa adjudication decisions. Each consular officer completes an intensive, six-week Basic Consular Course. This course features a strong emphasis on border security and fraud prevention, with more than 40 classroom hours devoted to security, counterterrorism, fraud detection, and visa accountability programs. Adjudicators receive extensive classroom instruction on immigration law, Department policy and guidance, and consular systems, including review of background data checks and biometric clearances.

Students learn about the interagency vetting process through briefings from the Bureau of International Security and Nonproliferation; Consular Affairs' (CA) Office of Screening, Analysis and Coordination; CA's Counterfeit Deterrence Laboratory; Diplomatic Security; and the DHS/ICE Forensic Document Laboratory.

In addition, officers receive in-depth interviewing and name check technique training, spending more than 30 classroom hours critiquing real consular interviews, debriefing role plays, and other in-class activities. Basic interviewing training includes instruction in techniques for questioning an applicant to elicit information relevant to assessing visa eligibility. Officers use verbal and non-

verbal cues to judge an applicant's credibility and the veracity of the applicant's story. They examine and assess documentation, including electronic application forms, internal background check information, passports, and required supporting documents during the interview.

Officers receive continuing education in all of these disciplines throughout their careers. All consular officers have top secret clearances, and most speak the language of the country to which they are assigned and receive training in the culture of the host country.

Visas Viper Program

U.S. missions overseas report information about foreign nationals with possible terrorist connections through the Visas Viper reporting program. Following the December 25, 2009, attempted terrorist attack on Northwest Flight 253, we strengthened the procedures and content requirements for Visas Viper reporting. Chiefs of Mission are responsible for ensuring that all appropriate agencies and offices at post contribute relevant information for Viper nominations. Visas Viper cables must include complete information about all previous and current U.S. visas. On December 31, 2009, we updated instructions regarding procedures and criteria used to revoke visas. We added specific reference to cases that raise security and other concerns to the guidance regarding consular officers' use of the authority to deny visa applications under section 214(b) of the Immigration and Nationality Act (INA), if the applicant does not establish visa eligibility to the satisfaction of the consular officer. Instruction in appropriate use of this authority has been a fundamental part of officer training for several years.

Continuous Vetting and Visa Revocation

Federal agencies have been matching new threat information against existing visa records since 2002. We have long recognized this function as critical to managing our records and processes. This system of continual vetting evolved as post-9/11 reforms were instituted, and is now performed in cooperation with the TSC, NCTC, FBI, DHS/ICE, and CBP's National Targeting Center (NTC). All records added to the Terrorist Screening Database (TSDB) and Terrorist Identities Datamart Environment (TIDE) are checked against the CCD to determine if there are matching visa records. Through the KFE process, we also have additional

information checked against classified holdings. While this obviously includes biographic data taken during the visa process, biometric data taken during the visa process is likewise available to interagency partners in their counterterrorism and law enforcement efforts. Vetting partners send these matches electronically to the Department of State, where analysts review the hits and flag cases for possible visa revocation. We have visa information sharing agreements under which we widely disseminate our data to other agencies that may need to learn whether a subject of interest has, or has ever applied for, a U.S. visa.

The Department of State has broad authority to revoke visas, and we use that authority widely to protect our borders. Cases for revocation consideration are forwarded to the Department of State's Visa Office by embassies and consulates overseas, NTC, NCTC, and other entities. As soon as information is established to support a revocation (i.e., information that surfaced after visa issuance that could lead to an ineligibility determination, or otherwise indicates the visa holder poses a potential threat), a "VRVK" entry code showing the visa revocation, and lookout codes indicating specific potential visa ineligibilities, are added to CLASS, as well as to biometric identity systems, and then shared in near-real time (within approximately 15 minutes) with the DHS lookout systems used for border screening. As part of its enhanced "Pre-Departure" initiative, CBP uses VRVK records, among other lookout codes, to recommend that airlines not board certain passengers on flights bound for the United States. Every day, we receive requests to review and, if warranted, revoke visas for aliens for whom new derogatory information has been discovered since the visa was issued. The Department of State's Operations Center is staffed 24 hours a day, seven days a week, to address urgent requests, such as when a potentially dangerous person is about to board a plane. In those circumstances, the Department of State can and does use its authority to revoke the visa immediately. We continue to work with our interagency partners to refine the visa revocation and associated notification processes.

Revocations are typically based on new information that has come to light after visa issuance. Because individuals' circumstances change over time, and people who once posed no threat to the United States can become threats, continuous vetting and revocation are important tools. We use our authority to revoke a visa immediately in circumstances where we believe there is an

immediate threat, regardless of the individual's location, after which we will notify the issuing post and interagency partners as appropriate. We are mindful, however, not to act unilaterally, but to coordinate expeditiously with our national security partners in order to avoid possible disruption of important investigations. In addition to the hundreds of thousands of visa applications we refuse each year, since 2001, the Department has revoked approximately 122,000 visas, based on information that surfaced following visa issuance, for a variety of reasons. This includes approximately 10,000 visas revoked for suspected links to terrorism. Terrorism-related visa revocations account for only .009 percent of the approximately 108 million visas we have issued since January 2001.

Going Forward

We face dangerous and adaptable foes. We are dedicated to maintaining our vigilance and strengthening the measures we take to protect the American public and the lives of those traveling to the United States. We will continue to apply state-of-the-art technology to vet visa applicants. While increasing our knowledge of threats, and our ability to identify and interdict those threats, the interagency acts in accordance with the rules and regulations agreed upon in key governance documents. These documents ensure a coordinated approach to our security and facilitate mechanisms for redress and privacy protection.

We are taking several measures to confront developing threats and respond to the despicable terrorist attacks in Paris and San Bernardino.

With our interagency partners, particularly DHS, we conducted a thorough review of our K-visa process. As we constantly do, we analyzed our current K-visa processes, including security vetting, to identify areas where we could improve. We are further exploring and implementing several adjustments and recommendations, especially in regard to our adjudication of cases with applicants from countries of concern. These adjustments and recommendations include, but are not limited to, working with the Department of State's Diplomatic Security Service to explore assigning additional Regional Security Officers in direct support of consular sections and visa adjudications; working with DHS to explore expanding the use of ICE's PATRIOT screening in certain countries of concern where it is not already present; and taking another opportunity to review prior K-

visa adjudications and our internal standard operating procedures to determine what we can learn and use to inform our processes and training.

Additionally, we are working closely with DHS and the interagency to explore and analyze the use of social media screening of visa applicants. In addition to learning from our DHS colleagues, we began a pilot exploration of social media screening at 17 posts that adjudicate K-visa applications and immigrant visa applications for individuals from countries of concern. We expect to learn a great deal from this pilot and are confident we will have a much better understanding of the implications of using social media vetting for national security and immigration benefits. At the same time, we continue to explore methods and tools that potentially could assist in this type of screening and potentially provide new methods to assess the credibility of certain information from applicants. We believe these endeavors will provide us insights to continue to ensure the visa process is as secure, effective, and efficient as possible.

Information sharing with trusted foreign partners is an area that has seen significant development in recent years. For example, "to address threats before they reach our shores," as called for by President Obama and the Prime Minister of Canada in their February 4, 2011, joint declaration, *Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness*, the Departments of State and Homeland Security have implemented arrangements for systematic information sharing with Canada. The established processes provide for nearly real-time access to visa and immigration data through matching of fingerprints, as well as through biographic name checks for information that an applicant previously violated immigration laws, was denied a visa, or is a known or suspected terrorist. Canadian officers currently access the U.S. records of Syrian nationals seeking refugee resettlement in Canada, among other populations of visa and immigration applicants.

As part of our long-term strategic planning to improve efficiency and accuracy in visa adjudications, while ensuring we can meet surging visitor visa demand, we are investigating the applicability of advanced technology in data analysis, risk screening, and credibility assessment. Keeping abreast of high-tech solutions will help us reduce threats from overseas while keeping the United States open for business.

I assure you that the Department of State continues to refine its intensive visa application and screening process, including personal interviews, employing analytic interview techniques, incorporating multiple biographic and biometric checks, and interagency coordination, all supported by a sophisticated global information technology network. We look forward to working with the committee staff on issues addressing our national security in a cooperative and productive manner.

U.S. Citizenship and Immigration Services

WRITTEN TESTIMONY

OF

LEON RODRIGUEZ
DIRECTOR
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
DEPARTMENT OF HOMELAND SECURITY

FOR A HEARING ON

"The Security of U.S. Visa Programs"

BEFORE
THE U.S. SENATE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS

MARCH 15, 2016
10:00 A.M.
340 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC

Chairman Johnson, Ranking Member Carper, and distinguished members of the Committee, thank you for the opportunity to testify at today's hearing. While my colleagues from the Department of State (DOS) and the Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) will discuss security screening in the visa process, my testimony will focus specifically on U.S. Citizenship and Immigration Services' (USCIS) role in the security process for visa petitions and other USCIS adjudications. As the Director of USCIS, I work with the talented and dedicated professionals at my agency and throughout the federal government to secure America's promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, and ensuring the integrity of our immigration system. From the visa petition stage to post-entry applications for immigration benefits, USCIS works closely with DOS, the DHS partners represented on this panel, and others to ensure that those wishing to enter the United States are screened thoroughly and repeatedly in every instance and without exception. Security and integrity are central to USCIS's mission, and USCIS personnel work with steadfast resolve and vigilance to identify and deny benefits to immigration applicants who pose a threat to national security or public safety, or who attempt to gain benefits through fraud.

Visa Adjudication Overview

DHS and DOS both have roles to play in determining whether a foreign national will be issued a visa and admitted to the United States. Generally, a foreign national who seeks to enter the United States must first obtain a U.S. visa from DOS. In many instances these individuals must first have a petition filed and approved on their behalf with USCIS. However, certain international travelers may be eligible to travel to the United States without a visa if they meet the requirements for visa-free travel such as under the Visa Waiver Program (VWP). A foreign national who is issued a U.S. visa or is eligible for admission without a visa may travel to a U.S. air, sea, or land port of entry and apply for admission into the United States.

There are two broad classes of foreign nationals who are issued U.S. visas: nonimmigrants and immigrants. Nonimmigrant visas allow foreign nationals to travel to the United States on a temporary basis (for example, a vacation, temporary employment, or study and exchange). Immigrant visas allow foreign nationals, who have met the numerous eligibility requirements for lawful permanent residence, to travel to the United States for the purpose of residing in the country as lawful permanent residents (LPR). Individuals who have applied for humanitarian relief under the Immigration and Nationality Act (INA) are outside the scope of this testimony.

Most visits to the United States are made with a "B1/B2" nonimmigrant visa issued by DOS, or under the VWP or equivalent authority, for temporary stays for business or pleasure. The VWP is managed by U.S. Customs and Border Protection (CBP) and other DHS entities in consultation with DOS.

In those instances where USCIS is required under our law to adjudicate immigrant or nonimmigrant petitions, USCIS will carefully review the claimed basis for the petition (e.g., family or employment relationship). When USCIS approves such a petition for a beneficiary abroad, that information is communicated to DOS. The approval of such a petition does not give a foreign national any immigration status. It does not guarantee that DOS will issue a visa, and it is not a guarantee that CBP will admit the individual to the United States.

After USCIS has approved the petition under the appropriate visa classification, the beneficiary of the petition may then begin the visa application process with DOS. DOS is responsible for the adjudication of visa applications. As part of its adjudication process, DOS ensures that the applicant is eligible for a visa as an immigrant or nonimmigrant under the requested classification, and that the applicant is admissible to the United States. Once granted a visa, the foreign national may travel to the United States. On arrival at a U.S. port of entry, such as an airport, CBP inspects the individual and determines whether to admit the individual to the United States.

Visa Screening Responsibilities

DOS and DHS each have screening responsibilities as part of our respective roles in the visa process. USCIS screening during petition adjudication involves screening of both the petitioner and the foreign national beneficiary against law enforcement and national security lookouts and records. USCIS reviews each petition to determine if the petitioner and beneficiary meet the statutory requirements of the petition. Generally, this review is done to determine if the petitioner and beneficiary have the relationship claimed in the petition – either a family-based relationship, or employment-based. USCIS does not review petitions for admissibility to the United States. This is done initially by DOS prior to visa issuance and by CBP at time of entry. As such, any information uncovered is reviewed by USCIS and, if the petition is otherwise approvable, provided to our partners at DOS. Also, if there is an indication that a petitioner may have a conviction for a specified offense against a minor, as defined in the Adam Walsh Act, USCIS conducts a Federal Bureau of Investigation Fingerprint check of the petitioner.

My colleague from DOS will provide more detail on visa adjudication. However, DOS generally conducts an interview with the visa applicant and conducts additional biographic and biometric screening; including a battery of additional background security checks. If DOS issues the visa, the foreign national beneficiary must travel to the United States and apply for admission within the visa validity period, which varies depending upon the visa classification. At the port of entry, CBP conducts additional biographic and biometric screening and background security checks on these individuals, to determine their admissibility to the United States.

Applications for Immigration Benefits by Foreign Nationals Already in the United States

In some circumstances individuals admitted to the United States on nonimmigrant visas may be able to seek certain immigration benefits while in the United States. For example, a foreign national who was previously admitted to the United States as a nonimmigrant may seek to extend his or her stay or change his or her nonimmigrant status with USCIS if the individual meets the requirements for doing so. As a part of their request, these individuals are screened against law enforcement and national security lookouts and records. Any information uncovered is reviewed according to current agency policies. If the information uncovered indicates that the subject may have national security, criminal, or public safety concerns which make them removable from the United States, USCIS works closely with ICE and other law enforcement offices to ensure that appropriate actions are taken. Depending on the immigration classification sought, additional biographic checks may be conducted.

Moreover, certain foreign nationals in the United States, including some who were initially admitted on nonimmigrant visas, may be eligible under our immigration laws to adjust to lawful permanent resident status. Those eligible individuals must file a Form I-485 *Application to Register Permanent Residence or Adjust Status* with USCIS. The I-485 applicant must provide evidence of a USCIS-approved petition as the basis for immigration status, or concurrently file the immigrant petition with the I-485 application to establish the claimed family or employment relationship and/or classification specified under the INA, and meet all requirements for adjustment of status.

For each adjustment application, USCIS initiates a number of biographic and biometric security checks to establish eligibility for the benefit and admissibility to the United States. USCIS screens applicants against law enforcement and national security lookouts as well as FBI biographic and biometric holdings. Additionally, USCIS may interview the applicant to elicit information regarding identity, derogatory and conflicting information, involvement in terrorist or criminal activity, or other disqualifying factors.

Most individuals who become LPRs are allowed to apply for U.S. citizenship through the naturalization process after a given period of time. There is, however, a category of LPRs that must petition USCIS in order to retain their LPR status. Those who became LPRs on the basis of an Alien Entrepreneur Visa Petition and those who became LPRs on the basis of a marriage that occurred less than two years prior to the date they attained LPR status are considered conditional permanent residents. A conditional permanent resident must petition USCIS to remove the conditions on the residence within 90 days of the end of his or her second year as a conditional LPR. These individuals again undergo biographic and biometric security checks, and are screened against law enforcement and national security lookouts, records, and FBI biometric holdings. In addition, USCIS may also conduct interviews in the process of determining whether to lift conditions on permanent residence. Conditional permanent residence can be terminated due to information obtained during the interview and USCIS can share the information with ICE.

USCIS receives approximately 750,000 applications for naturalization each year. Many of these applicants were admitted into the United States as either immigrant or nonimmigrant visa holders. For each naturalization applicant, USCIS initiates a number of biographic and biometric security checks. USCIS screens applicants against law enforcement and national security lookouts and records as well as FBI biographic and biometric holdings. Additionally, all applicants for naturalization must be interviewed to establish their eligibility; this requirement may not be waived. During the interview, the officer confirms the basic biographic data and identity of the applicant, conducts an examination of the applicant's knowledge of the English language and of U.S. history and civics, with minor exceptions, and confirms that the applicant has no factors or activities that may make him or her ineligible for naturalization—such as certain types of criminal history, national security concerns, or prior false claims to U.S. citizenship. Information found in the interview can be used to deny the naturalization and can be shared with ICE for further investigation.

During the process of adjudicating any application, petition, or request filed with USCIS, if any national security concerns are raised, either based on security and background checks, personal interviews, testimony, or other sources, USCIS conducts an additional review through the internal Controlled Application Review and Resolution Program (CARRP). CARRP includes a

complete review of the case file and, in most cases, additional screening to ensure that eligibility is met. CARRP procedure includes regular supervisory review and headquarters coordination.

As part of the CARRP review process, USCIS also collaborates closely with its partners in the law enforcement and intelligence communities, including the Federal Bureau of Investigation, in order to review available information from these other U.S. Government entities and determine if it is relevant to eligibility and/or admissibility. This engagement is not one-sided, as USCIS also uses CARRP to alert relevant agencies that may wish to take action on the subject of the national security concern. It is USCIS policy to take any ongoing law enforcement activities into consideration prior to making a decision or taking action on any case with national security concerns.

Additional Coordination with Federal Partners

USCIS remains committed to ensuring that immigration benefits are not granted to individuals who pose a threat to national security or public safety, or who seek to defraud the U.S. immigration system. At its core, this system ensures that every application or petition for an immigration benefit is screened before it is adjudicated. As noted above, in support of these screening efforts, USCIS works closely with DOS, CBP, ICE, and other law enforcement partners. USCIS engages with law enforcement and Intelligence Community members for assistance with identity verification, acquisition of additional information, or deconfliction to ensure USCIS activities will not adversely affect an ongoing law enforcement investigation. USCIS also shares lead information, such as coordinating with ICE on potential human trafficking concerns associated with T and U nonimmigrant visas. USCIS continues to work with DHS's I&A, and other Intelligence Community elements, to enhance screening.

Conclusion

I appreciate the support and interest of this Committee in our efforts on these and other matters critical to the transparency, integrity, consistency, and efficiency of our immigration system and the work of USCIS.

I will be happy to answer your questions.

U.S. Immigration and Customs Enforcement

WRITTEN TESTIMONY

OF

SARAH R. SALDAÑA
DIRECTOR
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"The Security of U.S Visa Programs"

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS

Tuesday, March 15, 2016
342 Dirksen Senate Office Building

Introduction

Chairman Johnson, Ranking Member Carper, and distinguished members of the Committee:

Thank you for the opportunity to discuss the role of U.S. Immigration and Customs Enforcement (ICE) in the visa screening and vetting process. At ICE, we strive to uphold our homeland security mission by confronting dangerous challenges on a global stage, including threats emanating from beyond America's physical borders. I am proud and honored to serve alongside the dedicated men and women of ICE who work tirelessly to enforce our immigration and customs laws and keep this nation safe. Today, I welcome the opportunity to provide an overview of our international operations and highlight ICE's security programs that guard the nation against diverse and global threats.

One of ICE's three operational components – Homeland Security Investigations (HSI) – is responsible for the agency's work in vetting visa applications and working with our partners at the U.S. Department of State (DOS) and U.S. Citizenship and Immigration Services (USCIS). HSI's three operational priorities are border security, public safety, and counterterrorism/homeland security. HSI has extremely broad authorities and jurisdiction over the investigation of crimes with a nexus to U.S. borders and ports of entry. It investigates transnational crime by conducting a wide range of domestic and international criminal investigations, often in coordination with other local, state, federal, and international partners, targeting the illegal movement of people and merchandise into, within, and out of the United States. HSI investigates offenses that stem from our traditional customs and immigration authorities, including smuggling of illicit goods and people, and illicit finance associated with

global criminal organizations. These efforts provide a crucial layer of security vetting of individuals hoping to come to the United States.

The Visa Security Program and Pre-Adjudicated Threat Recognition Intelligence Operations Team

ICE strives to protect our nation's homeland security wherever threats confront us. One of our most important priorities is to detect and deter threats before they reach our nation's borders. To achieve this goal, ICE currently deploys approximately 250 Special Agents, 17 Deportation Officers, and 176 support staff to 62 offices in 46 countries. ICE's international staff works in conjunction with international law enforcement counterparts to detect, disrupt, and dismantle transnational criminal groups and individuals who seek to cause harm to the security of the United States.

The Homeland Security Act of 2002 authorizes the deployment of DHS officers to diplomatic posts to perform visa security activities and provide advice and training to DOS consular officers. This critical mission is accomplished by the Visa Security Program (VSP). VSP's primary purpose is to identify terrorists, criminals, and other individuals who are ineligible for visas prior to their travel or application for admission to the United States.

VSP is our first line of defense in the visa process against terrorists and criminal organizations by preventing foreign nationals who pose a threat to national security from entering the United States. The visa adjudication process is often the first opportunity to assess whether a potential visitor or immigrant poses a threat. Furthermore, the visa adjudication process is an ongoing and continuous vetting process that searches for derogatory information on applicants. No visa recipient is granted admittance based on a single review point.

Visa security is an important and collaborative function, shared by both DOS and DHS, including the component offices of ICE, U.S. Customs and Border Protection (CBP), and USCIS. Our components constantly seek to enhance our systems and processes to improve visa security efforts. Through the Pre-Adjudicated Threat Recognition Intelligence Operations Team (PATRIOT) initiative, we conduct automated screening of visa application information against DHS holdings, as well as holdings of other U.S. agencies, prior to the applicant's interview and visa adjudication. The process includes in-depth vetting of applicants identified as potentially having derogatory information who may be of investigative interest, or ineligible to receive U.S. visas. PATRIOT takes a risk-based approach and uses interagency resources from ICE, CBP, DOS, and the Intelligence Community to identify national security and public safety threats.

VSP differs from most other U.S. Government screening efforts in that it leverages its capabilities, such as in-person interviews, and works collaboratively with U.S. agencies at post to investigate suspect travelers, enhance existing information, and identify previously unknown threats instead of simply denying visas and any potential travel. In Fiscal Year (FY) 2015, VSP reviewed over two million visa applications, contributing input to approximately 8,600 cases in which visas were refused. Of these refusals, over 2,200 applicants had some known or suspected connection to terrorism or terrorist organizations.

In addition, VSP enhances visa vetting by increasing automated data exchange between DOS and the CBP National Targeting Center (NTC), which provides tactical targeting and analytical research to prevent terrorists from entering the United States. The flow of online visa information to DHS systems is now automated and information is sent back to DOS using an automated interface.

ICE also deploys personnel to the NTC to augment and expand current operations, and the co-location of personnel helps increase both communication and information sharing. The NTC conducts pre-departure vetting of all travelers on flights bound for the United States. This vetting identifies high-risk passengers who should be the subject of no-board recommendations to carriers, including those whose visas are later revoked.

Within VSP's international footprint, we deploy specially trained agents overseas to screen and vet visa applications at 26 high-risk locations in 20 countries, augmenting vetting mechanisms in place worldwide in order to enhance efforts at these critical posts to identify potential terrorist and criminal threats before they enter the United States. ICE accomplishes this crucial function by conducting targeted, in-depth reviews of individual visa applications and applicants prior to visa issuance, and making recommendations to consular officers to refuse or revoke visas when warranted. ICE actions complement the consular officers' screening, applicant interviews, and reviews of applications and supporting documentation. As a result of additional congressional funding in FY 2015, HSI expanded VSP operations to six new visa issuing posts.

Coordination with the U.S. Department of State

Effective border security requires broad information sharing and cooperation among U.S. government agencies. In October 2006, ICE entered into a memorandum of understanding (MOU) with the DOS Bureau of Consular Affairs in order to exchange visa and immigration data. The agreement allows ICE and DOS to exchange information contained in each agency's respective electronic databases pertaining to foreign persons seeking entry into the United States. This exchange of information allows DOS Consular Affairs personnel to query and access ICE

and CBP records. Consular Affairs personnel can then consider prior violations when adjudicating visa applications for persons who have applied to enter the United States.

Similarly, the exchange of information allows ICE personnel to query the DOS Consular Consolidated Database and to access passport and visa application information of persons under investigation by ICE. This information sharing also allows ICE to alert Consular Affairs personnel of ongoing criminal investigations for the purpose of visa adjudication.

In January 2011, ICE signed an MOU outlining roles, responsibilities, and collaboration between ICE, DOS Consular Affairs, and DOS's Diplomatic Security Service. To facilitate information sharing and reduce duplication of efforts, ICE and DOS conduct collaborative training and orientation prior to overseas deployments. At overseas posts, ICE and DOS personnel work closely together in working groups, meetings, trainings and briefings, and engage in regular and timely information sharing. Additionally, ICE and DOS personnel work side by side to identify embassies for potential future expansion of the VSP and routinely travel together and provide briefings to U.S. embassy personnel prior to commencement of operations.

Additional ICE Responsibilities in the Visa Process

ICE's role in the visa screening process does not end at the visa screening units. Rather, government screening efforts continue to examine visa holders before and during their authorized travel to the United States. For example, should a visa traveler match derogatory information within government holdings, DHS and DOS work collaboratively to determine if the information warrants DOS revocation of his/her visa regardless of whether the individual is outside or inside the United States, thereby, denying him/her any further travel access to our country. DHS also strives to ensure that only authorized visitors are entering the country, and

DHS components actively share with each other information gathered about admissibility indicators, intelligence records and additional information retrieved from travelers interviewed at secondary inspections stations at the ports of entry.

Overstay Enforcement in the United States

ICE actively identifies and initiates action against overstay violators who are enforcement priorities. ICE's primary objective is to vet system-generated leads in order to identify true overstay violators, match any criminal conviction history or other priority basis, and take appropriate enforcement actions. Within ICE, there are dedicated units, special agents, analysts, and systems in place to address nonimmigrant overstays. Through investigative efforts, ICE analyzes and determines which overstay leads may be suitable for further national security investigation.

From a DHS processing standpoint, ICE analyzes system-generated leads initially created by, or matched against, the data feed for biographical entry and exit records stored in CBP's Arrival and Departure Information System (ADIS). ADIS supports DHS's ability to identify nonimmigrants who have remained in the United States beyond their authorized periods of admission or have violated the terms and conditions of their visas. Once the leads are received, ICE conducts both batch and manual vetting against government databases, social media, and public indices. This vetting helps determine if an individual who overstayed has departed the United States, adjusted to a lawful status, or would be appropriate for an enforcement action.

As part of a tiered review, ICE prioritizes nonimmigrant overstay cases through risk-based analysis. HSI's Counterterrorism and Criminal Exploitation Unit (CTCEU) oversees the national program dedicated to the investigation of nonimmigrant visa violators who may pose a

national security risk and/or public safety concern. Each year, CTCEU analyzes records of hundreds of thousands of potential status violators after preliminary analysis of data from the various systems, including Student and Exchange Visitor Information System (SEVIS) and ADIS, along with other information. After this analysis, CTCEU establishes compliance or departure dates from the United States and/or determines potential violations that warrant field investigations.

CTCEU proactively develops cases for investigation in furtherance of the overstay mission, monitors the latest threat reports, and proactively addresses emergent issues. This practice, which is designed to detect and identify individuals exhibiting specific risk factors based on intelligence reporting, travel patterns, and in-depth criminal research and analysis, has contributed to DHS's counterterrorism mission by initiating and supporting high-priority national security initiatives based on specific intelligence.

In order to ensure that those who may pose the greatest threats to national security are given top priority, ICE uses intelligence-based criteria developed in close consultation with the intelligence and law enforcement communities. ICE chairs the Compliance Enforcement Advisory Panel (CEAP), which is comprised of subject matter experts from other law enforcement agencies and members of the Intelligence Community who assist the CTCEU in maintaining targeting methods in line with the most current threat information. The CEAP is convened on a quarterly basis to discuss recent intelligence developments and update the CTCEU's targeting framework in order to ensure that the nonimmigrant overstays and status violators who pose the greatest threats to national security are targeted.

Another source for overstay and status violation referrals is CTCEU's Visa Waiver Enforcement Program (VWEP). Visa-free travel to the United States builds upon our close

bilateral relationships and fosters commercial and individual ties among tourist and business travelers in the United States and abroad. The Visa Waiver Program (VWP) currently allows eligible nationals of 38 countries to travel to the United States without a visa and, if admitted, to remain in the country for a maximum of 90 days for tourism or business purposes. The VWEP, implemented in 2008, addresses overstays within the VWP population.

Today, CTCEU regularly scrutinizes a refined list of individuals who have been identified as potential overstays who entered the United States under the VWP. A primary goal of VWEP is to identify those subjects who attempt to circumvent the U.S. immigration system by seeking to exploit VWP travel.

Enforcement Priorities

Each year, the CTCEU receives approximately one million leads on nonimmigrants that have potentially violated the terms of their admission. Over half of these leads are closed due to the vetting conducted by analysts, which eliminates false matches and accounts for departures and pending immigration benefits. To better manage investigative resources, CTCEU relies on a prioritization framework established in consultation with interagency partners within the national intelligence and federal law enforcement communities through CEAP. On November 20, 2014, the Secretary of Homeland Security established priorities to focus enforcement and removal policies on individuals convicted of serious criminal offenses or who otherwise pose a threat to national security, border security, or public safety. To better manage its investigative resources, CTCEU has aligned its policy on sending leads to the field with the Secretary's priorities.

ICE's prioritization framework begins with a review and analysis to determine which immigration violators pose the greatest risks to our national security. CTCEU conducts an initial

review, dividing leads into 10 CTCEU priority levels. Priority Level 1, which focuses on the greatest risks, is based on special projects and initiatives to address national security concerns, public safety, and applying certain targeting rules. These projects and initiatives include: the Recurrent Student Vetting Program; DHS's Overstay Projects; Absent Without Leave (AWOL) Program; INTERPOL Leads; and individuals who have been watchlisted.

In FY 2015, CTCEU reviewed 971,305 leads regarding potential overstays. Numerous leads were able to be closed through an automated vetting process. The most common reasons for closure were subsequent departure from the United States or pending immigration benefits. A total of 9,968 leads were sent to HSI field offices for investigation – an average of 40 leads per working day. Of the 9,968 leads sent to the field, 3,083 are currently under investigation, 4,148 were closed as being in compliance (pending immigration benefit, granted asylum, approved adjustment of status application, or have departed the United States) and the remaining leads were returned to CTCEU for continuous monitoring and further investigation. In FY 2015 alone, HSI made 1,910 arrests, including 133 criminal arrests that resulted in 86 indictments and 80 convictions.

The remaining leads that cannot be closed by the automated vetting process and are not sent to HSI field offices for investigation are shared with one of ICE's other operational components – Enforcement and Removal Operations (ERO). When ERO receives this information, it forwards it to one of its three targeting centers, where the cases are once again vetted against criminal and national security databases, and additional leads may be generated. Those leads are then provided to ERO field offices for civil immigration enforcement action consistent with the priorities identified by the Secretary on November 20, 2014.

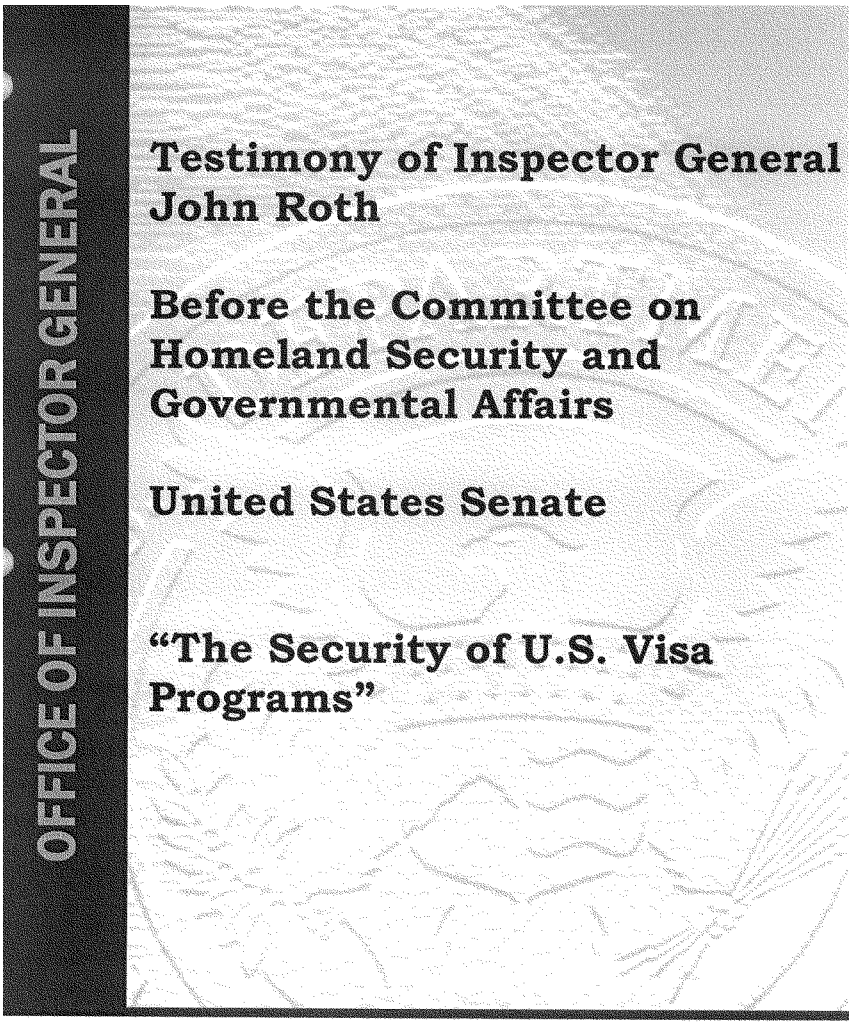
Conclusion

VSP is crucial to ICE's mission to protect the homeland. ICE is proud to work collaboratively with our DHS partners and our colleagues at DOS. Furthermore, ICE is committed to working with its U.S. Government and international partners and, especially, with the members of this Committee to forge a strong and productive relationship to help prevent and combat threats to our nation.

Finally, as ICE's operations continue to expand and evolve, we are constantly evaluating how best to accomplish our mission. Since ICE's establishment in 2003, ERO has experienced substantial growth and evolution in its mission. In addition, the ERO enforcement strategy has shifted heavily towards the investigation, identification, location, arrest, prosecution, and removal of individuals who present a danger to national security or threaten public safety, which may include some visa or Visa Waiver Program overstays.

Given these augmenting responsibilities, Secretary Johnson has directed ICE to work with the Department's Chief Human Capital Officer to review and determine whether changes need to be made to the agency's overtime compensation system for ICE officers. I am committed to working with the Department, the Office of Management and Budget, our employees, and Congress on any necessary next steps.

Thank you for the opportunity to testify about these important issues. I would be pleased to answer any questions you may have.


OFFICE OF INSPECTOR GENERAL
Testimony of Inspector General John Roth
Before the Committee on Homeland Security and Governmental Affairs
United States Senate
"The Security of U.S. Visa Programs"
Homeland Security
March 15, 2016
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DHS OIG HIGHLIGHTS

The Security of U.S. Visa Programs

March 15, 2016

Why We Did This

The audits and inspections discussed in this testimony are part of our ongoing efforts to ensure the efficiency and integrity of DHS' immigration programs and operations. Our criminal investigators also regularly investigate fraud within the benefits approval process, often involving a corrupt USCIS employee.

What We Recommend

We made numerous recommendations to DHS and its components—primarily USCIS and ICE—in these reports. Our recommendations were aimed at improving the effectiveness and implementation of visa programs.

For Further Information:
Contact our Office of Legislative Affairs at (202) 254-4100, or email us at DHS-OIG.OfficeLegislativeAffairs@oig.dhs.gov

What We Found

This testimony highlights a number of our recent reviews related to U.S. visa programs. Our findings include:

- After 11 years, USCIS has made little progress in transforming its paper-based processes into an automated immigration benefits processing environment. USCIS now estimates that it will take three more years and an additional $1 billion to automate benefit processing. This delay will prevent USCIS from achieving its workload processing, national security, and customer service goals.

- Known human traffickers used work and fiancé visas to bring victims to the U.S. using legal means. USCIS and ICE can improve data sharing and coordination regarding suspected human traffickers to better identify potential trafficking cases.

- ICE did not have sufficient data to determine the effectiveness of its Visa Security Program, which requires the screening and vetting of overseas visa applicants.

- The laws and regulations governing the EB-5 immigrant investor program do not give USCIS the authority to deny or terminate a regional center's participation in the program due to fraud or national security concerns.

DHS Response

With few exceptions, DHS and its components concurred with recommendations in these reports.

Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you for inviting me to discuss my office's oversight of the Department of Homeland Security's visa programs and components responsible for administering and enforcing visas. Our recent work has involved a number of audits and investigations. I will discuss each of the audits, as well as a representative sample of some of our investigations.

Information Technology Transformation

This week, we published our sixth report since 2005 on U.S. Citizenship and Immigration Services' (USCIS) efforts to transform its paper-based processes into an integrated and automated immigration benefits processing environment.[1] This program is a massive undertaking to modernize processing of approximately 90 immigration benefits types. The main component of the Transformation Program is the USCIS Electronic Immigration System (ELIS), intended to provide integrated online case management to support end-to-end automated adjudication of immigration benefits. Once implemented, individuals seeking an immigration benefit should be able to establish online ELIS accounts to file and track their applications, petitions, or requests as they move through the immigration process.

We undertook this audit to answer a relatively simple question: after 11 years and considerable expense, what has been the outcome of USCIS' efforts to automate benefits processing? We focused on benefits processing automation progress and performance outcomes. We interviewed dozens of individuals, including over 60 end-users in the field who are using ELIS, and reviewed voluminous source documents.

The answer, unfortunately, is that at the time of our field work, which ended in July 2015, little progress had been made. Specifically, we found that:

- Although USCIS deployed ELIS in May 2012, to date only two of approximately 90 types of immigration benefits are available for online customer filing, accounting for less than 10 percent of the agency's total workload. These are the USCIS Immigrant Fee, which allows customers to submit electronic payment of the $165 processing fee for an immigrant visa packet, and the Application to Replace Permanent Resident Card (Form I-90).

[1] *USCIS Automation of Immigration Benefits Processing Remains Ineffective*, (OIG 16-48, March 2016).

- Among the limited number of USCIS employees using ELIS, personnel reported that the system was not user friendly, was missing critical functionality, and had significant performance problems processing benefits cases. Some of those issues are set forth in this chart:[2]

USCIS ELIS User Feedback on I-90 Processing	
• Need to manually refresh website often to see the most recent information. • Difficulty navigating among multiple screens and web browsers. • Inability to move browser windows to view case data. • Cases getting stuck throughout the process and inability to move to the next step without intervention. • Inability to undo a function or correct a data entry error. • Inability to enter comments on actions taken after a case has been adjudicated.	• Card errors received when "NMN" is entered for applicants with no middle name.* • Failure to produce cards for approved cases. • Inability to process benefits for military or homebound applicants. • Errors in displaying customer date of birth.* • Scheduling applicants to submit biometrics (photo, signature, prints) that are not needed.* • Inability to create a case referral electronically once adjudication is complete.

- The limited ELIS deployment and current system performance problems may be attributed to some of the same deficiencies we reported regarding previous USCIS IT transformation attempts. To date, the USCIS has not ensured sufficient stakeholder involvement in ELIS implementation activities and decisions for meeting field operational needs. Testing has not been conducted adequately to ensure end-to-end functionality prior to each ELIS release. Further, USCIS still has not provided adequate post-implementation technical support for end-users, an issue that has been ongoing since the first ELIS release in 2012.

- As it struggles to address these system issues, USCIS now estimates that it will take three more years—over four years longer than estimated—and an additional $1 billion to automate all benefit types as expected. Until USCIS fully implements ELIS with all the needed improvements, the agency will remain unable to achieve its workload processing, customer service, and national security goals. Specifically, in 2011, USCIS

[2] USCIS has indicated that the issues marked with an asterisk were addressed during the time of our audit. Because of the nature of the audit process, we are unable to validate that this has occurred.

established a plan to implement ELIS agency-wide by 2014. However, USCIS was not able to carry out this plan and the schedule was delayed by four years, causing a program breach. An updated baseline schedule for the Transformation Program was approved in April 2015; however, USCIS also shifted and delayed these release dates.

- Certain program goals have also not been met. According to agency-wide performance metrics, benefits processing in ELIS was to take less than 65 days. However, we found that as of May 2015, processing was taking an average of 112 days, almost twice that amount of time. Previous results reported for this metric also were high: 104 days in November 2014, 95 days in February 2015, and 112 days in May 2015. By slowing down the work of adjudicators, ELIS was resulting in less efficiency and productivity in processing benefits.

Similarly, in 2014, we reported that although ELIS capabilities had been implemented, the anticipated efficiencies still had not been achieved. In fact, we reported in 2014 that adjudicating benefits on paper was faster than adjudicating them in ELIS. This remains unchanged to date. Ensuring progress in operational efficiency was hampered by the fact that USCIS lacked an adequate methodology for assessing ELIS' impact on time and accuracy in benefits processing. Beyond obtaining feedback from personnel and customers using the system, the Transformation Program Office could not effectively gauge whether cases were being adjudicated more efficiently or accurately in ELIS.

We acknowledge that DHS has taken significant steps to improve the process by which it introduces new information technology, including moving from a traditional waterfall methodology to a new, incremental methodology, called Agile. We also acknowledge that implementation of automation is very much a moving target, and that USCIS may have since made progress on the problem in the time since the fieldwork of our audit ended in July 2015.

Human Trafficking and the Visa Process

In January of this year, we issued a report on human trafficking and the visa process.[3] Our audit objectives were to determine how individuals charged or convicted of human trafficking used legal means to bring victims to the United States, and to identify data quality and exchange issues that may hinder efforts to combat human trafficking. We conducted this audit as part of our "Big Data"

[3] *ICE and USCIS Could Improve Data Quality and Exchange to Help Identify Potential Human Trafficking Cases*, (OIG 16-17, January 2016).

initiative, in which we compare datasets from different DHS components (or other government databases outside of DHS) to attempt to gain insights into potential issues in DHS programs and operations.

In this audit, we compared databases from two components—Immigration and Customs Enforcement (ICE) and USCIS. ICE's Case Management System, which is housed in the larger Customs and Border Protection TECS system, contains information on human trafficking investigations conducted by Homeland Security Investigations. USCIS uses two databases: (1) the Humanitarian Adjudication for Victims Enterprise Nationwide (HAVEN) system to maintain information on visas granted to victims of human trafficking (U visas and T visas), and (2) the Computer Linked Application Information Management System (CLAIMS3) to process immigrant and nonimmigrant applications and petitions—such as work and family reunification visa requests.

As a result of comparing the data in these databases, our auditors came to the following conclusions:

- Work and fiancé visas were the predominant means that human traffickers used to bring victims into the United States legally. We made this determination based on matching ICE's human trafficking data against USCIS' data on visa petitions. Specifically, 17 of 32 known human trafficking cases we identified involved the use of nonimmigrant work visas and fiancé visas; the remaining 15 victims entered the United States illegally or overstayed their visitor visas. In one example, fiancé visas were used to lure human trafficking victims to the United States as part of marriage fraud schemes. The traffickers confiscated the victims' passports and subjected them to involuntary servitude, forced labor, and/or forced sex.

- Family reunification visas also were possibly used to bring victims into the country. From 2005 through 2014, 274 of over 10,500 (3 percent) of the subjects of ICE human trafficking investigations successfully petitioned USCIS to bring family members and fiancés to the United States. Because ICE data included investigations that were still ongoing and did not reflect whether the final conviction resulted in a human trafficking or lesser charge, ICE could not tell us exactly how many of the 274 individual visa petitioners were human traffickers. However, ICE data showed that 18 of the 274 had been arrested for human trafficking-related crimes.

- ICE and USCIS could improve data quality to facilitate data matching and identification of possible instances of human trafficking. For example, ICE had to extensively manipulate its system to provide us with reasonably reliable data for our data matching and analysis. USCIS did not always collect names and other identifiers of human traffickers that victims had provided in their T visa applications. Due to incomplete data, we were limited in our ability to match, analyze, and draw conclusions from the components' databases.
- We found that ICE and USCIS cooperated on a limited basis to exchange human trafficking data, but concluded that opportunities existed for improved data exchange between ICE and USCIS.

We made three recommendations to improve the effectiveness of the programs to identify human traffickers and their victims. ICE and USCIS have concurred with the recommendations. The three recommendations are still open, and both ICE and USCIS are taking actions to resolve them. We are satisfied with the progress thus far.

DHS Visa Security Program

In September of 2014, we published a report about the DHS Visa Security Program.[4] The program, which was established by Congress, requires DHS personnel stationed overseas, specifically ICE Special Agents, to perform visa security activities in order to prevent terrorists, criminals, and other ineligible applicants from receiving U.S. visas. Specifically, they are required to screen and vet visa applicants to determine their eligibility for U.S. visas. This is largely done through a screening process which compares visa application data held by the Department of State with a DHS law enforcement database – TECS – to determine whether there are any matches. In Fiscal Year (FY) 2012, ICE agents screened over 1.3 million visa applicants. Those applicants with a match are then vetted, which involves researching and investigating the visa applicant, examining documents submitted with the visa application, interviewing the applicant, and consulting with consular, law enforcement, or other officials. ICE special agents vetted more than 171,000 visa applicants in FY 2012.

Additionally, ICE agents are required to provide advice and training to consular officers about security threats relating to adjudicating visa applications.

As a result of our inspection, we found:

[4] *The DHS Visa Security Program*, (OIG-14-137, September 2014).

- The effectiveness of the Visa Security Program cannot be determined. Notwithstanding that ICE was required to develop measures to assess performance, it has not taken appropriate actions to ensure that (1) data needed to assess program performance is collected and reported, (2) appropriate advice and training is provided to consular officers, and (3) the amount of time needed for visa security related activities at each post is tracked and used in determining staffing and funding needs. As a result, ICE is unable to ensure that the Visa Security Program is operating as intended.

  At the time of our inspection, ICE senior management officials expressed a lack of confidence in the value of the current performance measures. As a result, these performance measures were not included in the DHS and ICE annual reporting of performance.

- ICE has not consistently or effectively provided training or expert advice to consular officers as required. In interviewing consular officers we learned that much of the training provided did not cover critical subjects needed to enhance their skills. Additionally, during our site visits we found a number of embassies where the consular officers have not been provided with any training, or training on a sporadic basis.

- It is unknown how much time ICE agents assigned to the program actually spend on visa security issues. Agents do not record the amount of time they spend on this activity, notwithstanding that ICE had received special funding to institute the program. Anecdotally, we found some agents spent very little time on visa security activities, while agents in other posts spent a high percentage of their time on it.

- The Visa Security Program expansion has been slow. At the time of our report, only 20 of the 225 visa-issuing posts had visa security units. According to program officials, Visa Security Program expansion has been constrained by budget limitations, difficulties obtaining visas for certain countries, State's mandate to reduce personnel overseas, and objections from State Department officials at some posts due to security concerns or space limitations.

We made 10 recommendations to improve the effectiveness of the program. ICE concurred with each of them. Currently, ICE has accomplished five of those recommendations, and is working to accomplish the remaining five. While

progress has been slow, we are currently satisfied with ICE's activities in this regard.

Investor Visa Program

In December of 2013, we published an audit report on challenges facing the EB-5 program, which administers visas for immigrant investors.[5] Through the EB-5 Program, foreign investors have the opportunity to obtain lawful, permanent residency in the U.S. for themselves, their spouses, and their minor unmarried children by making a certain level of capital investment and associated job creation or preservation. The EB-5 program requires that the foreign investor make a capital investment of either $500,000 or $1 million, depending on whether or not the investment is in a high unemployment area. The foreign investors must invest the proper amount of capital in a business, called a new commercial enterprise, which will create or preserve at least 10 full-time jobs, for qualifying U.S. workers, within 2 years of receiving conditional permanent residency.

The purpose of our audit was to determine whether USCIS administered and managed the EB-5 Regional Center Program (regional center program) effectively. We found:

- The laws and regulations governing the program do not give USCIS the authority to deny or terminate a regional center's participation in the EB-5 program based on fraud or national security concerns. At the time of the audit, USCIS had not developed regulations that apply to the regional centers in respect to denying participation in the program when regional center principals are connected with questionable activities that may harm national security.

- Additionally, USCIS has difficulty ensuring the integrity of the EB-5 regional center program. Specifically, USCIS does not always ensure that regional centers meet all program eligibility requirements, and USCIS officials interpret and apply the Code of Federal Regulations (CFR) and policies differently. USCIS did not always document decisions and responses to external parties who inquired about program activities causing the EB-5 regional center program to appear vulnerable to perceptions of internal and external influences.

[5] *United States Citizenship and Immigration Services' Employment-Based Fifth Preference (EB-5) Regional Center Program*, (OIG-14-19, December 2013).

- USCIS is unable to demonstrate the benefits of foreign investment into the U.S. economy. Although USCIS requires documentation that the foreign funds were invested in the investment pool by the foreign investor, the implementing regulation does not provide USCIS the authority to verify that the foreign funds were invested in companies creating U.S. jobs. Additionally, the regulation allows foreign investors to take credit for jobs created by U.S. investors.

As a result, USCIS has limited oversight of regional centers' business structures and financial activities. For example, we identified 12 of 15 regional center files in which USCIS allowed the creation of new commercial enterprises that collected EB-5 capital to make loans to other job-creating entities. USCIS adjudicators confirmed that because the CFR does not give them the authority to oversee these additional job creating entities, they are unable to inquire or obtain detail that would verify foreign funds are invested in the U.S. economy via a job-creating entity.

Additionally, one regulation allows foreign investors to take credit for jobs created with U.S. funds, making it impossible for USCIS to determine whether the foreign funds actually created U.S. jobs. Consequently, the foreign investors are able to gain eligibility for permanent resident status without proof of U.S. job creation. In one case we reviewed, an EB-5 project received 82 percent of its funding from U.S. investors through a regional center. The regional center was able to claim 100 percent of the projected job growth from the project to apply toward its foreign investors even though the foreign investment was limited to 18 percent of the total investment in the project.

We made four recommendations to improve the effectiveness of the program. Two of those recommendations have been closed. The other two are pending: one is for a study to be done to assess the effectiveness of the EB-5 program, which is being completed by the Department of the Commerce and is scheduled to be completed shortly; the second is update regulations to provide greater clarity regarding USCIS' authority to deny or terminate EB-5 regional center participants at any phase of the process because of national security and/or fraud risks. They would also make it explicit that fraud and national security concerns can constitute cause for revocation of regional center status; give USCIS authority to verify that foreign funds were invested in companies creating U.S. jobs; and ensure requirements for the EB-5 regional center program are applied consistently to all participants. This recommendation is overdue, and we are in discussions with USCIS as to when this action will be completed.

Our 2013 findings were reinforced and confirmed by an audit released by the Government Accountability Office (GAO) in August of last year.[6] In that audit, GAO found that the EB-5 program has both fraud and national security risks that USCIS needs to correct. For example, GAO found:

- Limitations in electronic data USCIS collects on regional centers and immigrant investors limits their usefulness in conducting fraud-mitigating activities. Certain basic information, such as name, date of birth and address are either not entered into electronic databases or are not standardized, so basic fraud-related searches cannot be conducted.

- USCIS anti-fraud personnel conduct only limited site visits, and GAO recommends increasing the number of site visits to regional centers and program sites to look for indicia of fraud.

- USCIS does not conduct interviews of immigrant investors to who they award permanent residency, which the GAO believes would assist in establishing whether the investor is a victim of or complicit in fraud.

- USCIS has significant limitations on being able to verify the source of the money invested and, other than by self-certification, does not have a reliable basis to determine whether the money is from an improper source.

The GAO also found (as had the previous OIG audit) that USCIS' practice of allowing immigrant investors to claim jobs generated by investments from other sources overstates the economic benefit of the EB-5 program. The GAO found that, in the one project they looked at, many immigrant investors would not have qualified for lawful permanent residency without the practice of allowing them to claim jobs created by all investments in the commercial enterprise, regardless if they were EB-5 investors.

Other Audits Involving the Visa Process

We have published a number of different audits. Some of those audits may be less relevant either because of the passage of time or a change in circumstances. However, we will briefly describe them here.

[6] *Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits,* (GAO-15-696, August 2015).



In August of 2013, we published an audit report regarding USCIS' handling of the L-1 visa program.[7] The L-1 visa program facilitates the temporary transfer of foreign nationals with management, professional, and specialist skills to the United States. We found that USCIS adjudicators were inconsistently deciding L-1 petitions because of inadequate guidance from USCIS headquarters, particularly as it relates to the requirement that the petitioner have "specialized knowledge." Additionally, we found one regulation, which permits a foreign company to receive an L-1 visa for an employee to start a "new office" in the United States. We found that this provision is "inherently susceptible to abuse."

In June of 2013, we published an audit report regarding USCIS' tracking of potentially fraudulent applications for family-based immigration benefits.[8] U.S. immigration law grants permanent resident status to aliens who legally marry a U.S. citizen or lawful permanent resident and to certain aliens who are family members of U.S. citizens or lawful permanent residents. We performed an audit to determine whether USCIS recorded information about adjudicated family-based petitions and applications suspected of being fraudulent according to agency policy requirements and in a manner that deterred immigration fraud.

We found that USCIS has procedures to track and monitor documentation related to petitions and applications for family-based immigration benefits suspected of being fraudulent. However, once family-based immigration petitions and applications were investigated and adjudicated, fraud-related data were not always recorded and updated in appropriate electronic databases to ensure their accuracy, completeness, and reliability. Specifically, USCIS personnel did not record in appropriate electronic databases all petitions and applications denied, revoked, or rescinded because of fraud. Supervisors also did not review the data entered into the databases to monitor case resolution. Without accurate data and adequate supervisory review, USCIS may have limited its ability to track, monitor, and identify inadmissible aliens, and to detect and deter immigration benefit fraud.

Finally, in November 2012, we published a report about the visa waiver program, which allows nationals from designated countries to enter the United States and stay for up to 90 days without obtaining a visa from a U.S. embassy or consulate.[9] The purpose of our review was to determine the adequacy of processes used to determine (1) a country's initial designation as a Visa Waiver

[7] *Implementation of L-1 Visa Regulations*, (OIG 13-107, August 2013).
[8] *U.S. Citizenship and Immigration Services' Tracking and Monitoring of Potentially Fraudulent Petitions and Applications for Family-Based Immigration Benefits*, (OIG-13-97, June 2013).
[9] *The Visa Waiver Program*, (OIG-13-07, November 2012).

Program participant, and the continuing designation of current Visa Waiver Program countries; and (2) how effectively the Visa Waiver Program Office collaborates with key stakeholders. We determined that the Visa Waiver Program Office had established standard operating procedures and review criteria that satisfy the goals for conducting country reviews. Although Visa Waiver Program officials maintained effective collaboration with stakeholders during the review process, additional efforts are needed to communicate with appropriate officials the standards needed to achieve compliance with Visa Waiver Program requirements and the criteria used to assess compliance. In addition, challenges that may reduce the effectiveness of the Visa Waiver review process include untimely reporting of results, current staffing levels within the Visa Waiver Program Office, and its location in the DHS organizational structure.

Criminal Investigations

Our criminal investigators regularly investigate fraud within the benefits approval process, often involving a corrupt USCIS employee. We investigate a fairly steady stream of such conduct. The following are recent examples of the results of our investigations:

- Martin Trejo, a DHS contractor, was convicted for theft of government property, among other crimes, after a DHS OIG investigation determined that he stole approximately 1,000 blank, genuine USCIS I-797 Notice of Action forms over a five-year period for which he was paid approximately $5,000. Trejo delivered the forms to a civilian who then provided them to a fraudulent document broker.

- Efron DeLeon, a USCIS Immigration Services Assistant in Orlando, Florida, was convicted of obstruction of justice and false statements after a DHS OIG investigation found he illegally assisted immigration petitioners and beneficiaries at the Orlando USCIS Field Office. DeLeon destroyed records in alien files and provided information on how to circumvent questions in a USCIS marriage fraud interview. He also improperly accessed and viewed records in the Central Index System, a DHS database, and made false statements to DHS OIG investigators.

- Cassandra Gonzalez, non-DHS employee, was sentenced for her role in an immigration fraud scheme. Gonzalez and her conspirators, one of which was a former USCIS employee, facilitated false marriages, complete with fake documentation, to illegally obtain immigration benefits.

- Fernando Jacobs, a Supervisory Immigration Services Officer, and his co-conspirator, an Immigration Services Officer, were convicted of conspiracy, bribery, and other related crimes after a DHS OIG investigation revealed he accepted bribes to issue Lawful Permanent Resident cards to illegal aliens and accessed government databases to obtain information regarding USCIS applicant status.

- Richard Quidilla, a USCIS contractor, was convicted of unlawful procurement of citizenship and other related crimes after an OIG investigation determined that he unlawfully accessed USCIS databases in excess of authority and deleted names and biographical information of 28 bona fide naturalized US citizens, and inserted names and biographical information of individuals who either violated terms of their visas (over-stays) and/or were undocumented aliens. Once altered, the USCIS database falsely depicted the identities of the individuals inserted by the contractor as actual United States citizens.

Other matters

Additionally, as we have in the past, we receive information from DHS employees, which may uncover deficiencies in programs and operations in the visa program, or constitute a violation of law, regulation, and policy. The specifics of some of those complaints are protected from disclosure by the *Inspector General Act* and the *Whistleblower Protection Act*, particularly during the pendency of our investigation of those claims. However, I want the Committee to know that we take each of these claims seriously and will investigate them to the fullest extent possible. We will also take steps to protect whistleblowers from retaliation wherever we find it.

Conclusion

Deciding and administering immigration benefits, including visas, is a massive enterprise. USCIS alone uses about 19,000 people to process millions of applications for immigration benefits. They are required to enforce what are sometimes highly complex laws, regulations, and internal policies. They are rightly expected to process decisions within a reasonable time frame. USCIS and the rest of DHS accomplish their mission while working with an antiquated system of paper-based files more suited to an office environment from 1950 rather than 2016. This system creates inefficiencies and risks to the program. To give you an idea of the scope of the problem, USCIS spends more

that $300 million per year shipping, storing, and handling over 20 million immigrant files.

The size and complexity of the mission, coupled with an archaic method of processing applications, brings with it significant risk. There is risk to operations – in that it makes it more difficult for USCIS accomplish their mission. We found, for example, that the time to process immigration benefits was twice that of the metrics that USCIS established. Our earlier report on USCIS IT systems, published in July of 2014, reported that using the electronic files in use at the time took twice as long as using paper files.

Additionally, the present system presents risks to our national security – in that we may be admitting individuals who wish to do us harm, or who do not meet the requirements for a visa. Basic information on visa applicants was not captured in electronic format and thus cannot be used to perform basic investigative steps. Also, because of the poor quality of the electronic data kept by both USCIS and ICE, it was difficult to engage in data matching, which we believe is an effective tool in rooting out fraud and national security risks.

Mr. Chairman, this concludes my prepared statement. I am happy to answer any questions you or other Members of the Committee may have.

WASHINGTON
LEGISLATIVE OFFICE



March 15, 2016

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
U.S. Senate
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member
Committee on Homeland Security and Governmental Affairs
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TREASURER

Re: **Senate Committee on Homeland Security and Governmental Affairs Hearing on "The Security of U.S. Visa Programs"**

Dear Chairman Johnson and Ranking Member Carper:

On behalf of the American Civil Liberties Union (ACLU), we submit this letter to the U.S. Senate's Committee on Homeland Security and Governmental Affairs Hearing on "The Security of U.S. Visa Programs." Congress must fix recent changes to the Visa Waiver Program ("VWP") that enshrine discrimination based on national origin, ancestry, and parentage, and fan the flames of discriminatory exclusion, both here and abroad. The ACLU urges Congress to repeal the discriminatory travel restriction by swiftly passing S. 2449, the "Equal Protection in Travel Act of 2016."

I. The Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 arbitrarily discriminates against dual nationals of Iran, Iraq, Sudan, or Syria who are citizens of visa waiver program ("VWP") countries – based on their national, origin, ancestry, and parentage.

On December 18, 2015, Congress passed the fiscal year 2016 Consolidated Appropriations Act, which included H.R. 158, the "Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015," a bill that never received a hearing or markup by the Senate Homeland Security and Governmental Affairs Committee ("Committee").

Hastily negotiated and cobbled together on December 3, 2015, the Visa Waiver Program Improvement and Terrorist Travel Prevention Act was intended to be Congress's response to the November 2015 terrorist attacks in Paris. What emerged, however, from the negotiations was a bill that singled out dual nationals

of Iran, Iraq, Sudan, or Syria to the exclusion of all other citizens of VWP countries. There was no justification to strip visa-free travel privileges from these dual nationals, and the ACLU criticized and continues to oppose this provision as discriminatory and un-American.

Significantly, 4 senators wrote to congressional leadership urging them, to no avail, not to include the discriminatory provision targeting dual nationals in the fiscal year 2016 Consolidated Appropriations Act.[1]

Now the law of the land and in operation, the 2015 Visa Waiver Program Improvement and Terrorist Travel Prevention Act has categorically terminated visa-free travel privileges for all citizens of VWP countries who are dual nationals[2] of Iran, Iraq, Sudan, or Syria. This revocation of VWP privileges applies to all dual nationals of Iran, Iraq, Sudan, or Syria, even if they have never resided in or traveled to these four countries.[3] By singling out these four nationalities to the exclusion of other dual nationals in VWP countries, this law amounts to blanket discrimination based on nationality, ancestry, and parentage.

Not only is this law discriminatory, it is arbitrary. Unlike the U.S. which grants citizenship to all children born on U.S. soil, birth within Syria,[4] Iran,[5] or Sudan[6] does not automatically confer citizenship. Rather citizenship is conferred by naturalization, marriage, or descent. With respect to descent, a child born to an Iranian father is an Iranian citizen, regardless of the child's country of birth. The same citizenship by descent law applies to a child born to a Syrian father, regardless of the child's country of birth. A similar citizenship by descent law applies to a child born to native-born Sudanese father, regardless of the child's country of birth. The 2015 Visa Waiver Program Improvement and Terrorist Travel Prevention Act has now folded such gender-based distinctions into U.S. law.

The 2015 Visa Waiver law has caused immediate and direct harm to otherwise qualified visitors seeking to travel to the U.S. In January 2016 alone the following individuals were denied boarding on U.S.-bound flights, solely on the basis of their dual nationality:

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[1] Letter from Senators Jeff Flake, Dick Durbin, Dean Heller, and Patrick Leahy to Senate Majority Leader Mitch McConnell and House Speaker Paul Ryan (Dec. 13, 2015), *available at* http://www.flake.senate.gov/public/_cache/files/abc3d0f8-a50e-4d8b-984c-9235a8bc5a2a/12.13.15-senate-vwp-dual-nationality-omni-letter.pdf.

[2] For a list of countries that support or reject dual nationality as of 2001, *see* U.S. OFF. OF PERSONNEL MGMT. ("OPM"), CITIZENSHIP LAWS OF THE WORLD (2001), *available at* http://www.multiplecitizenship.com/documents/IS-01.pdf. *See also* Transatlantic Council on Migration (MPI), "Dual Citizenship in an Age of Mobility" (2008), www.migrationpolicy.org/transatlantic/docs/Faist-FINAL.pdf.

[3] 8 U.S.C. 1187(a)(12)(A)(ii), which Title II, Sec. 203 of H.R. 2029 amends, specifically names the countries of Iraq and Syria (Subsection I) and covers Iran and Sudan by incorporating reference to existing government lists that name Iran and Sudan (Subsection II).

[4] *See* OPM, *supra* note 2 at 192; *and* U.K. HOME OFF., SYRIAN ARAB REPUBLIC – COUNTRY OF ORIGIN INFORMATION (COI) REPORT (2013), 164-165, *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/312738/Syrian_Arab_Republic_report_2013.pdf.

[5] Iranian Civil Code states that "[t]hose whose fathers are Iranians, regardless of whether they have been born in Iran or outside of Iran" are "considered to be Iranian subjects" (The Civil Code of the Islamic Republic of Iran, Book 2, Article 976 (2006), *available at* https://www.princeton.edu/irandataportal/laws/institutionsgovernance/nationality-law/).

[6] *See* OPM, *supra* note 2 at 186, which states that, for a person born after January 1, 1957, "birth in the territory of Sudan does not automatically confer citizenship."

- **Rana Rahimpour**, a British-Iranian *BBC* journalist, and her young British citizen child were denied boarding on a flight from London Heathrow airport to Newark airport. They had planned to attend a surprise party for a relative in the U.S.[7]
- **Marjan Vahdat**, a European citizen and Iranian dual national, was scheduled to perform on January 30, 2016, in San Jose, California. A world-renowned vocalist trained in classical Persian music, Ms. Vahdat was denied boarding on her Frankfurt to U.S. flight. Central Stage and Hamyar Art Foundation made multiple calls to the U.S. embassy, Department of Homeland Security, and airlines with no success. The concert organizers ended up posting a notice on their website to all ticket purchasers explaining the circumstances surrounding Ms. Vahdat's absence.[8]
- **Newsha Tavakolian**, a European citizen and Iranian dual national, is a photographer whose work has been published in *Time Magazine*, *The New York Times*, and *National Geographic*. She can no longer travel to the U.S. on the VWP because of the new discriminatory travel restriction targeting dual nationals.[9]

II. By singling out dual nationals of Iran, Iraq, Sudan, or Syria, the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 creates a wedge of distrust between those minority American communities and U.S. law enforcement.

There is no sufficient security reason to justify the differential treatment of VWP citizens who are dual nationals of Iran, Iraq, Sudan, or Syria. By singling out these dual nationals, the new visa waiver law stigmatizes them as inherently suspect and sends a message of prejudice and intolerance against Iranian, Iraqi, Sudanese, or Syrian communities in the U.S. The discriminatory treatment of dual nationals creates a wedge of distrust between those minority American communities and domestic U.S. law enforcement.

Already, many prominent Americans have spoken out against the discriminatory dual nationality provision, expressing how it stigmatizes them and makes them feel like second-class American citizens:

- **Kourosh Kolahi**, an Iranian-American orthopedic surgeon in California: "Because of the little-noticed visa reform language included in the federal omnibus spending bill, I am now treated differently than my wife, daughter and other fellow Americans. I was born in this country and have spent my entire life here....Yet, based on our ancestry, this law discriminates against me and other Americans."[10]

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[7] Saeed Kamali Dehghan, *BBC journalist stopped from flying to US over UK-Iranian nationality*, THE GUARDIAN (Jan. 19, 2016), http://www.theguardian.com/uk-news/2016/jan/19/bbc-journalist-stopped-from-flying-to-us-over-uk-iranian-nationality.

[8] *See*, Email from Central Stage and Hamyar Art Foundation to customers, who had purchased tickets to Mahsa & Marjan Vahdat concert (Jan. 29, 2016), *available at* http://www.niacaction.org/wp-content/uploads/2016/01/Screen-Shot-2016-01-30-at-8.38.14-AM.png; *and* Events, *Marjan (Absent) and Mahsa Vahdat Concert in San Jose*, KODOOM (Jan. 30, 2016), http://events.kodoom.com/en/san-jose-ca/marjan-and-mahsa-vahdat-in-concert/76950/e/ (stating that "UPDATE, Jan. 29, 2016: Marjan Vahdat not [a]ble to[a] ttend due to visa issues.").

[9] Hadas Gold and Nahal Toosi, *New York Times Iran reporter on new visa requirements: 'America, it was fun while it lasted,'* POLITICO (Jan. 26, 2016), http://www.politico.com/blogs/on-media/2016/01/new-york-times-iran-reporter-visas-218240.

[10] Kourosh Kolahi, *Visa waiver law deprives me, an Iranian American, of my rights*, S.F. CHRON. (Jan. 4, 2016), http://www.sfchronicle.com/opinion/openforum/article/Visa-waiver-law-deprives-me-an-Iranian-American-6736417.php.

- **Marjan Ehsassi**, an Iranian-American woman who previously worked at the National Democratic Institute in Washington, D.C.: "What this proposed language would do is create two tiers of citizens....I don't know this country. I feel like I don't belong."[11]
- **Roozbeh Shirazi**, an Iranian-American assistant professor at the University of Minnesota: "Our sense of belonging as Americans, a topic that I have devoted much of my research toward, is at stake. Three generations of my family's lives, memories and relationships are inextricably tied to this land. For many Iraqi- and Syrian-Americans, this history is much longer....How are we expected to feel a connection to a country that formalizes a lower tier of citizenship for us? How are my wife and I supposed to raise our 2-year-old son to exercise his rights as a citizen of this country when those rights are marked with an asterisk?"[12]
- **Farshad Farahat**, an Iranian-American actor: "Unfortunately, instead of combating the roots of terrorism, this bill scapegoats Iranian Americans, millions of US professionals who have helped build America. Professionals that strive in education and economy in the US and in the Mid-East, the real weapons that can end terrorism."[13]
- **Maziar Nourian**, an Iranian-American student at the University of Utah: "The more important thing here is it's not really talking about travel privileges, you're creating two classes of citizens, one being every other American, including yourself, and me, who was born and raised in Salt Lake City but who happens to be of dual national citizenship."[14]
- **Mitra Jouhari**, an Iranian-American comedian in Brooklyn, New York: "Iranian-Americans are being targeted in a way that is alarming....It's all knee jerk, it's reactive, and it's racist."[15]

III. The Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 could result in the loss of visa-free travel privileges for U.S. citizens who are dual nationals of Iran, Iraq, Sudan, Syria.

Under the VWP, Americans of all nationalities have long been accustomed to traveling to many parts of Europe and Asia without visitor visas. This allows for speedy, flexible, and convenient international travel, which in turn promotes tourism, trade, study abroad, and business, both in the U.S. and abroad.

However, because the VWP operates on the basis of reciprocity, the new visa waiver travel restrictions could result in the 38 VWP countries applying the same travel restrictions to U.S. citizens who are dual nationals of Iran, Iraq, Sudan, or Syria. If any of the VWP countries

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[11] Dana Milbank, *Middle Eastern by birth, American by choice and terrified of Trump*, WASH. POST (Dec. 14, 2015), https://www.washingtonpost.com/opinions/middle-eastern-by-birth-american-by-choice-and-terrified-of-trump/2015/12/14/6cc565ca-a2aa-11e5-b53d-972c27511433_story.html.

[12] Roozbeh Shirazi, *Moving toward second-class citizenship with Congress' visa-waiver legislation*, MINN. POST (Dec. 16, 2015), https://www.minnpost.com/community-voices/2015/12/moving-toward-second-class-citizenship-congress-visa-waiver-legislation.

[13] Farshad Farahat, *Iranian Americans Are Not Second Class Citizens*, HUFF. POST (Dec. 14, 2015), http://www.huffingtonpost.com/farshad-farahat/iranian-americans-are-not_b_8799192.html.

[14] Jeremy Harris, *Dual-citizen Utahns call new visa-requirement 'discriminatory,'* CBS KUTV (Feb. 5, 2016), http://kutv.com/news/local/dual-citizen-utahns-call-new-visa-requirement-discriminatory (quoting Maziar Nourian, student, University of Utah).

[15] Julie Bort, *A Brooklyn comedian has launched a Facebook campaign to stop a 'racist' bill from passing Congress*, BUSINESS INSIDER (Dec. 15, 2015), http://www.businessinsider.com/brooklyn-comedian-mitra-jouhari-tries-to-stop-hr-158-2015-12.

chooses to apply the same discriminatory rule, that reciprocal action will result in the loss of visa-free travel privileges for U.S. citizens who are dual nationals of Iran, Iraq, Sudan, or Syria. According to a letter from 34 executives and entrepreneurs from the high-tech industry, including Mark Cuban and Twitter CEO Jack Dorsey, such reciprocal measures would have the effect of "potentially weakening the power of the U.S. passport for millions of U.S. citizens" and would "also harm U.S. business interests."[16]

- **Ali Partovi**, an Iranian-American entrepreneur and investor: "the idea that some of us would lose this privilege because of our Middle Eastern or African heritage compromises the very essence of America: that 'all men are created equal.'"[17]
- **Samira Damavandi**, an Iranian-American student currently pursuing a master degree at the University of Oxford: "I have temporarily left my home state to attend graduate school abroad. I thought to myself, "While I'm here, I can't wait to travel throughout Europe to see my cousins during my term breaks" and began planning the trips to Switzerland and Germany to see them. But because my Iranian-born parents automatically passed down their nationality on to me through *jus sanguinis* laws and I am an Iranian-American dual national, now I'm uncertain if freely traveling to see my family will be a possibility due to the recent passage of a discriminatory House bill sponsored by Rep. Candice Miller (R-MI-10)."[18]
- **Azita Ranjbar**, an Iranian-American Ph.D. candidate at Pennsylvania State University: "If Visa Waiver countries retaliate, Iranian Americans and other dual nationals will become 'less than' American citizens. We will be forced to go through long, expensive, and invasive security processes to secure visas for international travel …This differential treatment of Americans solely based on national origin is unacceptable and a grave violation of the basic rights of U.S. citizens."[19]

IV. Congress must swiftly pass the Equal Protection in Travel Act (S. 2449), to remove the discriminatory travel provision and ensure that American citizens are not further harmed by the new visa waiver law.

Introduced shortly after the new year, S. 2449 is bipartisan legislation that would correct the shameful discriminatory travel provision now enshrined into U.S. law. [A companion bill, H.R. 4380, has been introduced in the House with bipartisan support.] S. 2449 would revoke the provision included in the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 that strips visa-free travel privileges from dual nationals of Iran, Iraq, Sudan, or Syria. Under S. 2449, dual nationals of these four countries would be restored to the VWP and enjoy the travel privileges they had long enjoyed prior to December 18, 2015. To ensure that no U.S. citizens who are dual nationals are harmed by the discriminatory provision, Congress should move swiftly to pass S. 2449.

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[16] Biz Carson, *Silicon Valley leaders slam 'discriminatory' travel laws in letter to Congress*, BUSINESS INSIDER (Feb. 23, 2016), http://www.businessinsider.com/silicon-valley-leaders-come-out-against-visa-travel-discrimination-2016-2.
[17] Ali Partovi, *A Call To Arms Against McCarthy 2.0*, TECHCRUNCH (Dec. 16, 2015), http://techcrunch.com/2015/12/16/a-call-to-arms-against-mccarthy-2-0/.
[18] Samira Damavandi, *Am I Not American Enough?*, HUFF. POST (Dec. 14, 2015), http://www.huffingtonpost.com/Samira-Damavandi/visa-waiver-program_b_8790096.html.
[19] Azita Ranjbar, *When Rhetoric Becomes Reality: Changes to Visa Waiver Program Create Second-Class Citizens*, HUFF. POST (Jan. 8, 2016), http://www.huffingtonpost.com/azita-ranjbar/when-rhetoric-becomes-rea_b_8934832.html.

V. Conclusion

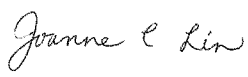
The ACLU urges Congress to fix the discriminatory dual nationality provision in the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 that scapegoats four groups based on national origin, ancestry, and parentage. We urge Congress to swiftly pass S. 2449, the Equal Protection in Travel Act, which will remove the provision that enshrines discrimination against dual nationals of Iran, Iraq, Sudan, and Syria.

For more information, please contact ACLU Legislative Counsel Joanne Lin (202-675-2317; jlin@aclu.org).

Sincerely,



Karin Johanson
Director
Washington Legislative Office



Joanne Lin
Legislative Counsel

Questions for the Record Submitted to
Principal Deputy Assistant Secretary David T. Donahue by

Senator Ron Johnson (#1A-C)

Senate Committee on Homeland Security and Governmental Affairs

March 15, 2016

Please describe any reports that you are aware of relating to the issuance, sale, or theft of Syrian passports, including potentially fraudulent passports.

Question 1A:

Are there reports of fraudulent passports being issued by Syria? If so, please describe the scale of the problem. Are there reports of more than 10, 100, 1000, or 10,000 sold, stolen, or fraudulent passports.

Answer:

We are aware of 3,800 Syrian passports reported lost or stolen by the Government of Syria.

Question 1B:

Please describe any actions the State Department has taken to address the problem of stolen or fraudulent passports.

Answer:

Upon notification, the Department of State (Department) followed its standard operating procedures and entered timely Lost/Stolen Passport lookouts into the Consular Lookout and Support System (CLASS) and ran

the records against Interpol's Lost/Stolen Passport Database (SLTD) to confirm their inclusion therein.

The Department continues to work with embassies and consulates to ensure proper vetting and adjudication of potential visa ineligibilities should they encounter any of these documents. Additionally, the Department has implemented measures in our consular sections worldwide to enhance our ability to detect falsified or fraudulent Syrian and Iraqi passports. Consular officers have refused some visa applications associated with lost or stolen Syrian passports. The Department is in contact with its interagency partners regarding data entry and watchlisting should more reports of lost, stolen, or fraudulent Syrian passports surface.

Question 1-C:

Please provide the Committee with any State Department intelligence assessments related to the issuance of fraudulent or stolen Syrian passports.

Answer:

According to the Bureau of Intelligence and Research, the Department has not produced any independent intelligence assessments focusing on the issuance of fraudulent or stolen Syrian passports.

Questions for the Record Submitted to
Principal Deputy Assistant Secretary David T. Donahue by

Senator Ron Johnson (#2A-F)

Senate Committee on Homeland Security and Governmental Affairs

March 15, 2016

Please provide the following information and answer the following questions related to visas awarded for attendees of the U.N. General Assembly.

Question 2-A:

The number of visas awarded overall and by country in FY2015.

Answer:

In FY 2015, the Department of State issued 16,313 G-2 visas to representatives of a government that is a member of a designated international organization, and to members of their immediate families, who were traveling to the United States temporarily to attend meetings of a designated international organization. The Department issued an additional 393 G-3 visas to representatives of non-recognized or non-member governments and to their immediate families. Travel to the U.N. General Assembly is included in these numbers. Additional individuals who attended U.N. meetings also may have potentially entered the United States using an A, B, C-2, G-2, or G-4 visa.

Question 2-B:

The number of waivers given in order to permit foreign diplomats to attend that would otherwise be ineligible for a US visa if they were not coming to the US specifically for UNGA in FY2014 and FY2015?

Answer:

In FY 2015, the Department of State waived and overcame 1,964 ineligibilities for G-2 visa applicants who were traveling as representatives of a recognized government, and to members of their immediate families, who were traveling to the United States temporarily to attend meetings of a designated international organization. The Department waived and overcame an additional 85 ineligibilities for G-3 visa applicants who were traveling for such purposes as representatives of non-recognized or non-member governments and to their immediate families. In FY 2014, the Department of State waived and overcame 1,570 ineligibilities for G-2 visa applicants and 59 ineligibilities for G-3 visa applicants. Travel to the U.N. General Assembly is included in these numbers. Additional individuals who attended U.N. meetings also may have potentially entered the United States using an A, B, C-2, G-1, or G-4 visa, depending on their purpose of travel, and these individuals may or may not have needed or received waivers applicable to the visa class.

Question 2-C:

Please describe the process by which visa applications for attendance at the U.N. General Assembly are reviewed and processed. How does this process compare to other visas? For example, is each attendee interviewed by a consular officer?

Answer:

Most travelers attending the U.N. General Assembly on behalf of a foreign government apply for and are admitted to the United States on a G-2 visa. Attendees who have not traveled to attend short-term U.N. meetings on behalf of a member state may have entered the United States on an A, C-2, G-1, G-3, G-4, or B visa, depending on the purpose of travel for which they sought to enter the United States. A, C-2, and G visa applicants are subject to limited ineligibilities, are exempt from fingerprinting requirements, and may have the personal appearance (interview) waived. However, as with all other visa applications, all names and associated biodata are run through the CLASS lookout system, interagency counterterrorism checks, and facial recognition software. Derogatory information that requires a Security Advisory Opinion is referred to Consular Affairs in Washington, DC, for appropriate checks with the interagency

community before the visa is authorized to be issued. While a consular officer interview is not required, an interview may be requested in order to determine the applicant's qualification for the visa class requested.

Question 2-D:

How many visa applications for attendance at the General Assembly were denied in FY2015?

Answer:

The Department does not collect information with regard to refusals of visa applications submitted by individuals who specifically seek to attend UNGA meetings; however, the United States has issued visas in a manner consistent with its obligations under United Nations Headquarters Agreement.

Question 2-E:

Is section 306 of the enhanced border security and visa reform act of 2002 applied to UN diplomats?

Answer:

Yes, all nonimmigrant visa applicants from state sponsors of terrorism are covered by section 306 and may be denied a visa if the Secretary determines that the applicant poses a threat to the safety and security of the United States.

Question 2-F:

Since the public reports in the 2000s of Iranian diplomats videotaping U.S. landmarks and critical infrastructure, have there been security concerns related to the Iranian delegations since that time?

Answer:

All visa applicants attending the U.N. General Assembly, including Iranian diplomats traveling on behalf of the foreign government, are subject to security screening and vetting. Most travelers who attend the U.N. General Assembly, including Iranian diplomats, apply for and are admitted to the United States on a G-2 visa. A-1, A-2, C-2, C-3, and G-1 through G-4 visa applicants are subject to limited ineligibilities, are exempt from fingerprinting requirements, and may have the personal appearance (interview) waived. However, as with all other visa applications, all names and associated biodata are run through the CLASS lookout system, interagency counterterrorism checks, and facial recognition software.

Should the Department receive information about possible national security threats, we would act accordingly through our security vetting processes. Derogatory information that requires a Security Advisory Opinion is referred to Consular Affairs in Washington, DC, for appropriate checks with the interagency community before the visa is authorized to be issued. While a consular officer interview is not required, an interview may be requested in order to determine the applicant's qualification for the visa class requested.

Questions for the Record Submitted to
Principal Deputy Assistant Secretary David T. Donahue by

Senator Ron Johnson (#3A-E)

Senate Committee on Homeland Security and Governmental Affairs

March 15, 2016

Provide the following information to clarify the workload of consular officers to process visa applications abroad.

Question 3-A:

The number of consular officers that have responsibilities for screening and adjudicating visas in FY2015.

Answer:

At the end of FY 2015, CA had 1,925 commissioned consular staff overseas with screening and adjudicating responsibilities. This figure includes managers who are responsible for training, oversight, and accountability reviews, in addition to handling special cases and supervising the entry-level staff members who have visa adjudication included among their core responsibilities.

Question 3-B:

The number of visa applications received in FY2015.

Answer:

13,250,059

Question 3-C:

The number of visas awarded in FY2015.

Answer:

10,891,529

Question 3-D:

An estimate for the average number of visa interviews conducted by an average consular officer, including an estimate for an officer stationed to a post with a high volume of applications and one stationed at a post with a low volume of applications.

Answer:

An officer at a low-volume post adjudicates on average 60 nonimmigrant visa applications per day. The average number of adjudications at the majority of our posts is 80 per day, and 100 per day at our large-volume operations. At most posts, some portion of these applicants qualify for Interview Waiver, generally submitted by courier; thus, the number of interviews actually conducted per officer is often lower than the number of adjudications. In addition, some visa interviews consist of families (parents with minor children), and so a single interview can include the adjudication of multiple applications. For immigrant visas, the average numbers of adjudications per day are 21, 28, and 35 for small, average, and large posts respectively.

Question 3-E:

A description of the other official responsibilities of consular officers beyond interviewing and screening visa applicants.

Answer:

Consular sections at our embassies and consulates receive more applications for nonimmigrant visas than for any other type of service. A substantial majority of adjudicator time therefore is occupied by interviewing and screening visa applicants. In addition, consular officers: 1) provide services to U.S. citizens, including passport services, notarial services, welfare and whereabouts checks, federal benefits services, making visits to incarcerated U.S. citizens, and responding to crises; 2) conduct outreach to U.S. citizens and potential visa applicants such as students and tour operators; 3) review and respond to inquiries from the public as well as Congress; 4) provide and receive training on new or revised requirements and procedures; and 5) prepare reports, both mandatory and ad hoc, for the Department on various matters of interest.

Questions for the Record Submitted to
Principal Deputy Assistant Secretary David T. Donahue by

Senator Ron Johnson (#4A-B)

Senate Committee on Homeland Security and Governmental Affairs

March 15, 2016

Press reports have indicated that some countries, such as several countries in the Caribbean including St. Kitts, Nevis and Dominica, have programs to provide citizenship and passports to foreign nationals who make investments in the country. Please describe the State Department's view about these programs, and if there are any security concerns associated with them.

Question 4-A:

What unique challenges are presented in vetting visa applicants who hold multiple passports for national security and fraud risks? How does the State Department identify whether a petitioner holds passports in nations other than the passport being presented to the State Department?

Answer:

We ask visa applicants to report any nationalities they hold, apart from that represented in their passports, on the State Department's electronic visa application. In the case of "economic" citizenship, even if an applicant fails to disclose his/her birth nationality, his/her adopted passport must have a place of birth listed to be accepted as valid. Therefore, economic citizenship is not an effective way to evade fraud prevention screening in the visa process. The State Department will not place a visa in a passport that does not list the applicant's place of birth or does not accurately reflect the nationality of the applicant.

Question 4-B:

For example, would a foreign national from a conflict area like Iraq or Syria face the same screening if they presented a passport from a Caribbean country than if they had presented a passport from their home countries?

Answer:

Applicant screening is based on many factors, including but not limited to which country issued a passport. If an application required additional or special processing, it would undergo that processing no matter what passport the applicant held.

Questions for the Record Submitted to
Principal Deputy Assistant Secretary David T. Donahue by

Senator Ron Johnson (#5A-B)

Senate Committee on Homeland Security and Governmental Affairs

March 15, 2016

No nonimmigrant visa under Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) shall be issued to any alien from a country that is a state sponsor of international terrorism unless the Secretary of State determines, in consultation with the Attorney General and the heads of other appropriate United States agencies, that such alien does not pose a threat to the safety or national security of the United States.

Question 5-A:

Is there any reason why this law should not be amended to apply to immigrant visas as well?

Answer:

We would consider the impact of any such legislation when it was introduced in coordination with other relevant agencies. Since we apply section 306 of the Enhanced Border Security and Visa Entry Reform Act of 2002 in the context of a specific purpose of travel, it may be difficult to administer for immigrant visa applicants, or for applicants with both nonimmigrant and immigrant visa applications.

Question 5-B:

In the case of an individual who was denied under these circumstances, who later applies for an immigrant visa, what is the process for adjudicating that visa, assuming that the only change in circumstance is the visa classification?

Answer:

While section 306 of the Enhanced Border Security and Visa Entry Reform Act of 2002 does not apply to the issuance of an immigrant visa, all visa applications are adjudicated in accordance with U.S. laws. If an individual whose nonimmigrant visa application is refused under section 306 later applies for an immigrant visa, the consular officer considers all facts and adjudicates that immigrant visa application in accordance with all pertinent U.S. laws.

Questions for the Record Submitted to
Principal Deputy Assistant Secretary David T. Donahue by

Senator Ron Johnson (#6)

Senate Committee on Homeland Security and Governmental Affairs

March 15, 2016

Question:

Fiancée visas are adjudicated as nonimmigrants (K-1). After San Bernardino, we understand that the U.S. is reexamining that process. Should diversity lottery winners (DV) also be adjudicated as nonimmigrants? If not, why?

Answer:

K visas are issued as nonimmigrant visas because at the time of the recipient's entry to the United States he or she is not yet married to a U.S. citizen, which is the legal basis for a family-based immigrant visa. Once married, the K visa recipient can then adjust status to become a lawful permanent resident (LPR), just as the spouse of a U.S. citizen or LPR who is issued an immigrant visa would obtain LPR status upon entry to the United States. Because a K visa permits the holder to marry a U.S. citizen and adjust to permanent resident status shortly after his or her arrival in the United States, the K visa applicant must meet most of the requirements of an immigrant visa, and a K-1 visa application generally follows the same processing as an immigrant visa application.

The Diversity Visa program is an immigrant visa program and the applicants have immigrant intent upon application, so a nonimmigrant visa would not be appropriate for these applicants. Additionally, there is no action to be taken once the applicant receives the visa and enters the United States to trigger a subsequent adjustment to LPR status. Whereas with the K visa, the marriage to the U.S. citizen is the act that then initiates the adjustment of status; there is no similar act or requirement for Diversity Visa recipients. Qualifying for the Diversity Visa and

meeting the requirements is sufficient to obtain LPR status upon entry to the United States in the same manner as other immigrant visa categories.

Section 101(a)(15) of the INA lists the classes of nonimmigrants and defines immigrants as all aliens except those listed in section 101(a)(15). Fiancée visas (K-1) are set out at section 101(a)(15)(K) of the INA and therefore are within the statutory definition of nonimmigrant visas. Diversity Visas (DV) are set out at section 203(c) of the INA, and therefore they are outside the list of nonimmigrants at section 101(a)(15) of the INA and by statutory definition immigrant visas.

Post-Hearing Questions for the Record Submitted by
Senator Rob Portman (#1)
Principal Deputy Assistant Secretary David Donahue
Homeland Security and Governmental Affairs Committee
March 15, 2016

Question:

According to your submitted testimony, the Department of State initiated a pilot purposed to evaluate the viability of screening visa applicants' social media accounts. You also indicated that you followed the lead of components in the Department of Homeland Security.

a. Who inside the Department of State authorized the pilot program?
b. When was this pilot authorized? How long will the pilot last?
c. How long will it take to assess the results from the pilot to permanently implement the screening of visa applicants' social media accounts?

Answer:

On January 8, 2016, Assistant Secretary of State for Consular Affairs, Michele Thoren Bond, authorized a pilot program requiring consular officers at certain locations to review the social media pages of specific categories of visa applicants. The pilot began on January 19. After 90 business days have elapsed, the Bureau of Consular Affairs will evaluate the program to measure its benefits and determine whether these efforts yielded derogatory information that a consular officer would not have otherwise detected during a traditional adjudication. Depending on the results of the pilot, we plan to continue to work with interagency partners and the National Security Council to identify a whole-of-government solution regarding reviews of visa applicant social media pages.

Post-Hearing Questions for the Record Submitted by
Senator Rob Portman (#2)
Principal Deputy Assistant Secretary David Donahue
Homeland Security and Governmental Affairs Committee
March 15, 2016

Question:

Your submitted testimony states that a consular officer "suspends visa adjudication and requests an SAO" upon finding that "reasonable grounds exist[s] to question visa eligibility on security related grounds."

a. What discretion does the consular officer have in deciding to suspend a visa adjudication to request a SAO?
    i. May he or she suspend upon finding reasonable grounds?
    ii. Must he or she suspend upon finding reasonable grounds?

Answer:

In cases in which an interagency counterterrorism check returns a security-related "red light" response, and/or applicable CLASS name check results exist, and/or a variety of interagency-approved policies developed to vet travelers that raise security concerns apply, consular officers are required to submit an SAO request. Beyond these mandatory SAO requirements, in any case in which reasonable grounds exist to question visa eligibility based on security-related grounds – regardless of the results of the processes described above – a consular officer must suspend visa processing and request an SAO. Consular officers receive extensive training on the SAO process. The process requires a consular officer to refuse the case under INA section 221(g) and to submit the case for interagency SAO review of any possible security-related ineligibilities.

Post-Hearing Questions for the Record Submitted by
Senator Rob Portman (#3a)
Principal Deputy Assistant Secretary David Donahue
Homeland Security and Governmental Affairs Committee
March 15, 2016

Question:

According to the DHS Inspector General's submitted testimony, consular officers have expressed their frustration with not learning essential information to "enhance their skills" from their ICE partners embedded at embassy or consular facilities.[1] Has this information sharing and collaborative partnership improved the effectiveness of the Department of State's role in maintaining the security of U.S. Visa Programs?

Answer:

Yes. ICE-staffed Visa Security Units (VSUs) have been present for some years at a number of embassies and consulates. The Visa Security Program (VSP) enhances national security and public safety by adding a layer of review to minimize the possibility that terrorists, criminals, and other ineligible applicants receive U.S. visas. It also maximizes the effectiveness of information gathered in the visa application process in efforts to combat terrorism, criminality, and other threats to national security.

At posts with a VSU, State Department consular officers and our ICE colleagues participate in daily exchanges of information regarding individual visa cases, regional and post-specific trends and analysis, and other operational

[1] *The Security of U.S. Visa Programs Before the S. Comm. on Homeland Sec. and Governmental Affairs*, 114th Cong. (2016) (Submitted Testimony of Hon. John Roth, Inspector Gen. of the Dep't. of Homeland Sec., p. 7).

coordination. ICE officers are able to use their law enforcement authorities and connections to further enhance the already robust information sharing that exists between our two agencies. When necessary, ICE agents conduct targeted, in-depth reviews of individual visa applications and applicants prior to issuance, and recommend refusal of applications to consular officers when warranted.

Post-Hearing Questions for the Record Submitted by
Senator Rob Portman (#3b)
Principal Deputy Assistant Secretary David Donahue
Homeland Security and Governmental Affairs Committee
March 15, 2016

Question:

What are ways that this partnership can be improved?

Answer:

The Department and DHS work collaboratively on the operation and expansion of the VSP. State Department officers are assigned to work with ICE on site selection, the establishment of VSUs overseas, and to help ICE navigate the interagency process to establish new positions overseas. Over the years, the Department has gone to extraordinary lengths to support VSP expansion, including sending senior consular and Diplomatic Security officers on visits to posts to help ICE explain the program's goals to Chiefs of Mission.

Post-Hearing Questions for the Record Submitted by
Senator Rob Portman (#3c)
Principal Deputy Assistant Secretary David Donahue
Homeland Security and Governmental Affairs Committee
March 15, 2016

Question:

Does Congress need to do anything to greater facilitate the effectiveness of this partnership and information-sharing relationship?

Answer:

The Department and DHS coordinate to facilitate the partnership and overcome some of the challenging limitations on resources and administrative capacity that limited VSU expansion in the past. This has increased the pace of VSU expansion. Effective relationships at each VSU post are formed as Department and ICE colleagues collaborate to carry out their mission.

Question for the Record submitted to
Principal Deputy Assistant Secretary David Donahue by
Senator Kelly Ayotte (#1)
Senate Homeland Security and Governmental Affairs Committee
March 15, 2016

The Visa Waiver Program allows citizens from 38 countries to travel to the U.S. for business or tourism purposes for up to 90 days without first obtaining a visa. In December, Congress passed and the President signed into law additional restrictions for traveling under the program. Pursuant to that law, a citizen of a Visa Waiver Program country who has traveled to Iraq, Syria, Sudan, or Iran in the last five years cannot travel visa-free to the United States. That law also provided the Secretary of Homeland Security with the authority to designate additional countries to that list. Secretary Johnson recently announced that Somalia, Yemen, and Libya have been added to this list.

Question:

Can you please explain your role in this program generally, and more specifically, your role, if any in implementing these additional restrictions.

Answer:

While the Secretary of Homeland Security determines which countries will trigger the Visa Waiver Program travel restrictions cited above, he makes this determination in consultation with the Secretary of State and the Director of National Intelligence. In this case, DHS in early February consulted with the State Department about its plans to designate Libya, Somalia, and Yemen; subsequently, State concurred with DHS'

determination. In late February, State notified the 38 VWP partner governments about how the VWP travel and dual nationality restrictions would affect their citizens who either had traveled on or after March 1, 2011 to Iraq, Syria, Sudan, or Iran, or are also nationals of one of these countries; State also advised partner governments, as appropriate, that DHS would shortly introduce similar VWP restrictions for individuals who had traveled to Libya, Somalia, or Yemen on or after March 1, 2011. The State Department continues to respond to partner governments' inquiries and concerns about the impact on their citizens.

Question for the Record submitted to
Principal Deputy Assistant Secretary David Donahue by
Senator Kelly Ayotte (#2)
Senate Homeland Security and Governmental Affairs Committee
March 15, 2016

The Visa Waiver Program allows citizens from 38 countries to travel to the U.S. for business or tourism purposes for up to 90 days without first obtaining a visa. In December, Congress passed and the President signed into law additional restrictions for traveling under the program. Pursuant to that law, a citizen of a Visa Waiver Program country who has traveled to Iraq, Syria, Sudan, or Iran in the last five years cannot travel visa-free to the United States. That law also provided the Secretary of Homeland Security with the authority to designate additional countries to that list. Secretary Johnson recently announced that Somalia, Yemen, and Libya have been added to this list.

Question:

What was your role, if any, in the decision to add Libya, Somalia, and Yemen to the list?

Answer:

Under the legislation, the Secretary of Homeland Security determines which countries will trigger the Visa Waiver Program travel restrictions cited above. This determination is done in consultation with the Secretary of State and the Director of National Intelligence. The State Department's role in adding Libya, Somalia and Yemen to the list of VWP travel-restricted countries was consultative and focused on assessing the full range of

foreign policy and national security implications. State concurred with DHS' determination.

Question for the Record submitted to
Principal Deputy Assistant Secretary David Donahue by
Senator Kelly Ayotte (#3)
Senate Homeland Security and Governmental Affairs Committee
March 15, 2016

The Visa Waiver Program allows citizens from 38 countries to travel to the U.S. for business or tourism purposes for up to 90 days without first obtaining a visa. In December, Congress passed and the President signed into law additional restrictions for traveling under the program. Pursuant to that law, a citizen of a Visa Waiver Program country who has traveled to Iraq, Syria, Sudan, or Iran in the last five years cannot travel visa-free to the United States. That law also provided the Secretary of Homeland Security with the authority to designate additional countries to that list. Secretary Johnson recently announced that Somalia, Yemen, and Libya have been added to this list.

Question:

To what extent was the Department of Defense consulted in these decisions?

Answer:

The State Department respectfully refers you to DHS regarding any consultations with the Defense Department.

Question for the Record Submitted to
Principal Deputy Assistant Secretary David Donahue by
Senator Kelly Ayotte (#4)
Senate Homeland Security and Governmental Affairs Committee
March 15, 2016

The Visa Waiver Program allows citizens from 38 countries to travel to the U.S. for business or tourism purposes for up to 90 days without first obtaining a visa. In December, Congress passed and the President signed into law additional restrictions for traveling under the program. Pursuant to that law, a citizen of a Visa Waiver Program country who has traveled to Iraq, Syria, Sudan, or Iran in the last five years cannot travel visa-free to the United States. That law also provided the Secretary of Homeland Security with the authority to designate additional countries to that list. Secretary Johnson recently announced that Somalia, Yemen, and Libya have been added to this list.

Question:

Was AFRICOM consulted?

Answer:

The State Department respectfully refers you to DHS regarding any consultations with AFRICOM.

Question for the Record Submitted to
Principal Deputy Assistant Secretary David Donahue by
Senator Kelly Ayotte (#5)
Senate Homeland Security and Governmental Affairs Committee
March 15, 2016

The Visa Waiver Program allows citizens from 38 countries to travel to the U.S. for business or tourism purposes for up to 90 days without first obtaining a visa. In December, Congress passed and the President signed into law additional restrictions for traveling under the program. Pursuant to that law, a citizen of a Visa Waiver Program country who has traveled to Iraq, Syria, Sudan, or Iran in the last five years cannot travel visa-free to the United States. That law also provided the Secretary of Homeland Security with the authority to designate additional countries to that list. Secretary Johnson recently announced that Somalia, Yemen, and Libya have been added to this list.

Question:

How about CENTCOM?

Answer:

The State Department respectfully refers you to DHS regarding any consultations with CENTCOM.

Question for the Record Submitted to
Principal Deputy Assistant Secretary David Donahue by
Senator Kelly Ayotte (#6)
Senate Homeland Security and Governmental Affairs Committee
March 15, 2016

The Visa Waiver Program allows citizens from 38 countries to travel to the U.S. for business or tourism purposes for up to 90 days without first obtaining a visa. In December, Congress passed and the President signed into law additional restrictions for traveling under the program. Pursuant to that law, a citizen of a Visa Waiver Program country who has traveled to Iraq, Syria, Sudan, or Iran in the last five years cannot travel visa-free to the United States. That law also provided the Secretary of Homeland Security with the authority to designate additional countries to that list. Secretary Johnson recently announced that Somalia, Yemen, and Libya have been added to this list.

Question:

We know that Al Qaeda continues to operate in large parts of Algeria, Mali, Tunisia, and Niger. Why weren't these countries also designated as a "country of concern" under this law?

Answer:

While the State Department understands and supports the criteria DHS used to determine which countries should be on its VWP "country of concern" list, wherein travel by a VWP passport holder within the last five years is determined to present a risk to U.S. national security, we

respectfully refer you to DHS for the specifics of its evaluation of Algeria, Mali, Tunisia and Niger.

Questions for the Record Submitted to
Principal Deputy Assistant Secretary David T. Donahue from
Senator Tammy Baldwin (#1a)
Senate Committee on Homeland Security and Governmental Affairs
March 15, 2016

Question:

What typically happens during the "Administrative processing" phase and why might this process take a considerable amount of time to complete?

Answer:

Administrative processing broadly describes any additional review initiated by the consular officer to examine the facts of an individual case and ensure that the visa application is approved or refused appropriately based on U.S. laws. While administrative processing is not necessarily a reference to the security clearance process, all visa applicants undergo an interagency counterterrorism check, and in cases in which that check identifies a need for additional processing, the appropriate interagency review is conducted. In nearly all cases, administrative processing is resolved within 60 days of the visa interview, and in many cases, much sooner.

Questions for the Record Submitted to
Principal Deputy Assistant Secretary David T. Donahue from
Senator Tammy Baldwin (#1b)
Senate Committee on Homeland Security and Governmental Affairs
March 15, 2016

Question:

Why is the Department of State unable to provide me or the applicant status updates at this stage of the application process?

Answer:

Section 222(f) of the Immigration and Nationality Act (INA), which makes visa records confidential, prohibits us from discussing individual visa applications except in specific circumstances as directed by the INA. An applicant or designated representative may inquire about his or her case status utilizing any of the methods listed on the "Contact Us" page at travel.state.gov. Additionally, the websites of individual U.S. embassies and consulates include information about the visa application process and wait times, and many of the sites provide ways for applicants to inquire about the status of their cases. If the case is delayed for reasons unrelated to security,

fraud, or law enforcement review, the applicant may be given a detailed explanation.

When a case is undergoing administrative processing for security reasons, however, all details of the review are confidential, often classified, and may be known only to the agency conducting the review. Usually, no information is available to consular officers prior to completion of the review. At that time the applicant is informed whether the visa will be issued or denied.

Questions for the Record Submitted to
Principal Deputy Assistant Secretary David T. Donahue from
Senator Tammy Baldwin (#1c)
Senate Committee on Homeland Security and Governmental Affairs
March 15, 2016

Question:

Has the Department considered policy changes that can accelerate the visa process and increase transparency for customers while maintaining security? If so, please discuss.

Answer:

The Department constantly explores options to gain efficiencies in the visa adjudication process while meeting our legal and national security mandates. For example, refinements to our security clearance procedures have reduced the impact of this necessary measure on the traveling public by reducing processing times and the number of false matches, without compromising security. Under INA section 212(b), consular officers generally are required to provide certain details when denying a visa, thereby creating an exception to the visa confidentiality rule; however, section 212(b) explicitly does not apply to denials based on criminal, security, or related grounds from that disclosure provision. Consequently, applicants in these situations generally are told only the relevant provision of immigration law.

The Department's travel information website, travel.state.gov, provides potential visa applicants with average appointment wait times at U.S. embassies and consulates, a walk-through of the entire visa application process, and a list of all necessary forms.

Questions for the Record Submitted to
Principal Deputy Assistant Secretary David T. Donahue from
Senator Tammy Baldwin (#1d)
Senate Committee on Homeland Security and Governmental Affairs
March 15, 2016

Question:

Will you commit to considering policy changes to increase transparency for applicants when inquiring about their visa application status?

Answer:

The Department provides multiple methods to inquire about case status. An applicant may inquire about his or her case status by utilizing any of the methods listed on the "Contact Us" page at travel.state.gov. Additionally, the websites of individual U.S. embassies and consulates include information about the visa application process and wait times, and many of the sites provide ways for applicants to inquire about the status of their cases. Many embassies and consulates also participate in outreach efforts to ensure that up-to-date information about the visa application process is shared with a wide audience. However, since the details of visa denials may be based on classified information and, regardless, are confidential under section 222(f) in these cases, we generally can only cite the provision of law used in making a denial decision.

Post-Hearing Questions for the Record
Submitted to the Honorable Leon Rodriguez
From Senator Ron Johnson

"The Security of U.S. Visa Programs"

March 15, 2016

Question#:	1
Topic:	San Bernardino USCIS Events
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe your understanding of the events that offered on December 3rd at the San Bernardino U.S. Citizenship and Immigration Services (USCIS) office, including by answering the following questions.

When was USCIS made aware of the orders and intentions of the Homeland Security Investigations (HSI) agents that went to the USCIS office that afternoon?

Response: USCIS was made aware of the orders and intentions of U.S. Immigration and Customs Enforcement/HSI shortly after the HSI agents' arrival at the USCIS San Bernardino field office on December 3, 2015.

Question: What happened when they arrived at the USCIS office?

Response: HSI agents were admitted to the building and met with the Field Office Director upon arrival. Because this request was not a regular or routine request received by USCIS and since the person being sought by HSI had not arrived for his appointment, the Field Office Director requested supervisory guidance and confirmation.

Question: How long were HSI agents at the USCIS office?

Response: Approximately one hour.

Question: At what level was the decision to deny HSI agents entry to the building made?

Response: HSI agents were at no point denied entry to the building. HSI's request was accommodated in a timely manner.

Question: Was the decision communicated to headquarters?

Question#:	1
Topic:	San Bernardino USCIS Events
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Response: Please see the previous responses.

Question#:	2
Topic:	Communications between USCIS and ICE
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Are you aware of any communications that occurred between USCIS and ICE managers in California, at headquarters, or elsewhere to address the incident at the USCIS offices?

Response: Yes. Communication between USCIS and ICE personnel took place at all appropriate levels regarding this incident.

Question#:	3
Topic:	USCIS assisting with ICE Counterterrorism Investigations
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe USCIS's policy for assisting ICE with counterterrorism investigations.

Response: USCIS regularly assists ICE on criminal and terrorism investigations. USCIS proactively provides information relating to criminals and individuals who are determined to be a national security concern pursuant to a 2008 Memorandum of Agreement. USCIS also provides information in response to ICE requests for information relating to preliminary and ongoing investigations. USCIS Fraud Detection and National Security Directorate staff regularly communicate with ICE agents on fraud, criminal, and terrorism cases.

USCIS has a Records Policy Manual that defines the protocols for sharing immigration files and providing assistance and cooperation to other Federal agencies. This policy states that in a national security event HSI should request files through USCIS's Fraud Detection and National Security Directorate (FDNS) and that USCIS will create a hard copy and electronic copy of the file within 2 hours of receiving a request and provide those copies to the requester within 30 minutes of completing the copies.

Question: Was what occurred on December 3rd consistent with those policies?

Response: While there is a records policy for the sharing of immigration file information, USCIS and ICE did not have a policy on December 3, 2015, by which ICE would request to interview a United States citizen at a USCIS office.

Question: Have policies and procedures changed since this incident?

Response: USCIS and ICE have further strengthened their partnership by developing and enacting a Memorandum of Agreement on May 31, 2016, which outlines the coordination of ICE visits to USCIS facilities.

Question#:	4
Topic:	Mariya Chernykh's USCIS File
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: The Committee understands that on December 3, 2015, HSI agents requested copies of Mariya Chernykh's A-file from USCIS.

Did USCIS respond to HSI's request for copies of the A-file?

Response: Yes, HSI was provided full access to the A-file on December 3rd and USCIS personnel reviewed the file page-by-page with the agents. Several days later, HSI requested a full copy of the file, which was provided within one day.

Question: If so, when did USCIS provide the requested copies of the A-file to HSI?

Response: HSI agents were provided full access to the A-file on December 3, 2015. A copy of the A-file was provided to HSI on December 8, 2015.

Question: Please describe USCIS's policies and procedures for providing copies of A-files to ICE.

Response: Normally, ICE would obtain the original A-file by making a routine request using the same systems and processes afforded USCIS employees. The governing policy for making such requests is found in Chapter II-09 of the USCIS Records Policy Manual (RPM). In the event of simultaneous needs by both agencies, the hierarchy established in Part I of RPM Chapter II-25 would be used to determine which agency process is granted use of the original A-file.

If needed, the production of an A-file copy (and an associated time line) is typically negotiated between the involved offices.

Question: How long does it take for USCIS to provide requested copies of an A-file to ICE?

Response: There is no established time standard for providing A-file copies except in a declared National Security Event as provided in RPM Chapter IV-01. In such cases, a 2.5-hour standard is provided.

The production of certified A-file copies in the normal course of business can range from producing whole files to the more common request for parts of files, such as fingerprint cards. The time line for producing such copies of an A-file can depend upon the

Question#:	4
Topic:	Mariya Chernykh's USCIS File
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

availability and location of the file, and workload of the office to produce the copy. Priority requests would be processed as such, as stated immediately above; the delivery timeline for the information would be negotiated between the parties.

Question#:	5
Topic:	IT Transformation Project
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Inspector General Roth testified about USCIS's information technology transformation project, including that the project's initial cost projection has increased by more than 400 percent, and that the project which began in 2005 is now anticipated to be completed by 2019. The Inspector General also reported that the cost of maintaining a paper-based processing system is over $300 million annually. Importantly, the IG also reported that the current system results in green cards to be potentially sent to the wrong people, creating a risk of fraud and security. Please answer the following questions related to his audit.

How much has been spent on the IT transformation project since FY2005?

Response: As reported on the DHS FY 2015 Comprehensive Acquisition Status Report (CASR) submitted to Congress on April 14, 2016, USCIS obligated $1.2 billion on the Transformation investment from FY 2006 through FY 2015. The USCIS Transformation investment began in FY 2006. Therefore, there were no obligations in FY 2005. It should be noted that the increased cost estimate is partly due to comparing a 22 year estimate to a 33 year estimate. The additional 11 years of operations and maintenance contributed an estimated $725 million towards the program's total anticipated costs.

Question: How much is projected to be spent on the IT transformation from FY2016 through FY2019?

Response: USCIS estimates $587 million will be spent from FY 2016 through FY 2019. The cost for development activities is estimated to be $354.7 million and $232.2 million will be spent towards operations and support.

Question: Since projected completion deadlines have been missed in the past, please describe what gives you confidence that the project will be completed by 2019.

Response:

- USCIS recognized the limitations of the original system architecture and launched an enhanced system with a new architecture in November 2014. The new system is built on the latest cloud-based technology that is currently used in the private sector, using a modern technology stack that is founded on open source software and an open architecture.
- USCIS also has adopted the latest commercial industry best practices and approaches for system development that employ lean software development practices to

Question#:	5
Topic:	IT Transformation Project
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
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iteratively deliver capabilities to end users over compressed timeframes. These best practices incorporate user feedback, extensive stakeholder involvement, and robust end user testing of system functionality.

- The program follows a model of continuous integration, testing, and frequent delivery of smaller increments of capabilities to end users to shorten the feedback loop and give the design and development team opportunities to adjust based on user feedback.
- The Program can make more accurate estimations since initial onboarding of the new development contractors in September 2014.
- The Program delivered capability associated with four product lines during 2015.

Question#:	6
Topic:	Green Cards to Wrong People
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Do you know how many green cards were sent to the wrong people in FY2015? If so, how many?

Response: USCIS sends the Green Card using the Secure Mail Initiative (SMI) to the last address on record provided by the benefit recipient, whether it be at the time of: filing the benefit request; requesting a replacement/renewal card; an immigrant visa interview; admission to the United States by a CBP officer; or through the Alien's Change of Address Card (AR-11) process. The SMI process does confirm and track the delivery of the package to the correct address. However, if the US Postal Service cannot deliver the package to the address on record, it is returned to USCIS as "undelivered." All undelivered packages are tracked. Once received, USCIS takes additional steps to determine if the beneficiary has provided an updated address through the AR-11 process, through the Service Request Management Tool (SRMT), or through the Electronic Immigration System (ELIS) (after the beneficiary has been identity-proofed). If available, the package is again sent to the applicant at the updated address via SMI. In FY 2015, more than 2 million green cards were produced and mailed to the addresses last provided by benefit recipients. Of the more than 2 million green cards issued, approximately 49,000 cards—or 2 percent—were undelivered, and 76 percent of those were re-mailed to the applicant upon the applicant subsequently providing an updated address.

It is the applicant's responsibility to provide an accurate mailing address at the time of filing, immigrant visa interview, or admission as an immigrant at a U.S. port of entry, and to inform USCIS of any subsequent address changes. Unless a beneficiary affirmatively notifies USCIS of an address change, USCIS has no way of knowing if the beneficiary has moved from the last known address on record. We only become aware of those situations when: 1) the Green Card is returned as undeliverable and the U.S. Post office notes a change of address submitted by the applicant, 2) the applicant contacts us indicating that he or she did not receive the card and we ask whether the applicant has a new address, or 3) if the individual that currently resides at the address where the card was initially mailed returns it to us. USCIS does not maintain statistics on the number of instances associated with these situations.

Despite improvements under SMI, USCIS does very occasionally field calls regarding undelivered documents even where proper addresses changes have been made. USCIS is developing processes to address this issue. For example, USCIS is developing a pilot wherein an applicant can opt to have their documents held at a Post Office for pick up.

Question#:	7
Topic:	Addressing Technical Challenges
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe what actions USCIS is taking to address the technical challenges with the existing information technology system described in the IG's report.

Response:

- The Inspector General wrote about the technical challenges experienced by users of the original system and the new system. We had recognized the limitations of the original system and architecture and have decommissioned this system. The product line discussed in the Inspector General's report has since been migrated to the new system. The migration occurred after the audit team completed their review.

- The Inspector General's report also provided feedback from users of the new system. After the November 2014 deployment, the program office and those using the system held ongoing sessions to address issues. As user issues were identified, the Office of Transformation implemented solutions such as developing additional functionality to address usability issues; identifying improvements with interfaces that drew in data from other USCIS systems; and working on issues that impacted supporting systems such as notice and card printing.

Question#:	8
Topic:	Electronic System Advantages
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe the advantages that using an electronic system for processing benefits will provide for enhancing USCIS's ability to identify fraud and other integrity problems in the immigration and naturalization system.

Response: Full capture of data in an electronic environment allows the agency to conduct searches and run analytics against combinations of data that the agency previously could not do without a very labor- and logistically-intensive process or possibly never do since so much of our data is only in the paper files. The electronic system also allows for security checks to be automatically generated at any time throughout the process, ensuring updated information is always available to USCIS personnel. Finally all information is in one location available immediately to those who need it.

Question#:	9
Topic:	Information Requests
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe the policies and procedures that USCIS follows when law enforcement agencies, such as Immigration and Customs Enforcement, requests information from USCIS files.

Under what circumstances would USCIS deny an ICE or other federal law enforcement officials' requests for information for an investigation related to fraud or national security concerns?

Response: USCIS would not deny a request for information from ICE or other law enforcement entities for an investigation related to fraud or national security concerns. While information sharing restrictions do exist, including asylum confidentiality in 8 C.F.R. § 208.6 and certain victim confidentiality in 8 U.S.C. § 1367, exceptions exist to allow sharing of information to support law enforcement investigations.

Question: Are you aware of instances when ICE agents have requested information from USCIS files for national security investigations where USCIS denied the request?

Response: USCIS is not aware of any instance where an ICE agent requested information from USCIS to support a national security investigation and was denied access to that information. ICE agents have access to USCIS files and to most USCIS systems.

Question: If so, please provide a number or estimate of the number of times that this has occurred.

Response: See response to previous question.

Question#:	10
Topic:	Immigration and Naturalization Petitions Processing
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe the annual workload of immigration and naturalization petitions processing for USCIS's employees each year.

How many employees are responsible for processing petitions?

Response: As of February 20, 2016, USCIS has a total of 5,911 on-board adjudicative staff under the following positions:

Entity	Adjudication Officer	Economists	Asylum Officer	Refugee Officer	ISO 1	ISO 2	ISO 3	Total
Field Offices					485	1,648	198	2,331
NBC					297	184	30	511
IPD	52	24						76
SCOPS					1,013	1,242	209	2,464
Asylum Offices			426					426
Refugee Affairs				103				103
Total	52	24	426	103	1,795	3,074	437	5,911

Note: This total assumes all on-board adjudicative staff contribute to the processing of applications and petitions.

Question: How many petitions does USCIS receive each year?

Response: The total volume for all benefit types with the exception of the processing of 1) claims of reasonable fear; 2) a small volume of cases received at our overseas offices; and 3) immigrant visa packets for issuance of a "green card" where the individual obtains an immigrant visa from Department of State and enters the United States as a lawful permanent resident is:
FY14 receipts (petitions & applications) were approximately 6 million.
FY15 receipts (petitions & applications) were approximately 7.7 million.
FY16 receipts (petitions & applications) are projected to be 7.4 million.

Question#:	11
Topic:	Proper Clearances
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: On average, how many petitions will the typical USCIS employee process each year?

Response: USCIS adjudicates about 100 types of applications and petitions, and each one has its own completion rate. The number of completions can vary significantly depending on complexity so it may be misleading to report a daily average given the varying complexity and changes in workload throughout the day or day-to-day. For example, the following key forms show how many completions an adjudicator completes in an hour:

Form	FY 2015 Completions per Hour (CpH)
I-90	4.33
I-129	1.02
I-140	0.71
I-485 Family	0.71
I-765 (General)	4.40
N-400 Regular	0.70

Source: PRT

Please note, this rate reflects solely the decision-making portion of processing the application or petition. It does not include any clerical work necessary, work by our fraud detection and national security team, records checks, or any other activity that supports the decision-making process.

Question: What challenges do USCIS employees face in processing petitions, and how can these challenges be addressed?

Response: Certain challenges USCIS employees may face in processing petitions can include incomplete or incorrect documentation in support of the petition or application, failure of the applicant or petitioner to respond within the designated timeframes to requests for evidence, or willful misrepresentation of material facts, any of which may present challenges during adjudication. USCIS, through our website and stakeholder engagements, provides numerous tools to inform applicants and petitioners of the eligibility requirements for the various benefit types, and we are always looking for additional ways to enhance our public outreach.

Question#:	11
Topic:	Proper Clearances
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Do all USCIS employees adjudicating immigration petitions have the proper clearances for the levels of access needed to vet immigration petitioners and beneficiaries for national security concerns?

Response: Officers are given the clearance, access, and training to support the petitions and applications they adjudicate.

Question: If not, how does USCIS ensure that all immigration petitions are properly vetted for national security concerns?

Response: USCIS remains committed to ensuring that immigration benefits are not granted to individuals who pose a threat to national security or public safety, or who seek to defraud the U.S. immigration system. In keeping with this commitment, USCIS has instituted a robust system of programs, procedures, and security checks, led by the Fraud Detection and National Security Directorate (FDNS). FDNS Immigration Officers work with adjudicators in every USCIS Center, District, Field, and Asylum Office to identify and investigate cases with potential national security concerns. Adjudicators are trained to identify indicators of national security concern and to refer cases to FDNS for further investigation. Officers investigating national security concerns have security clearances to allow them to access relevant derogatory information and conduct their investigation.

Question#:	12
Topic:	Fraud Detection and National Security Directorate
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe the work of USCIS's Fraud Detection and National Security (FDNS) Directorate, including answering the following.

Response: FDNS Immigration Officers (IOs) work diligently to fulfill the USCIS mission of enhancing both national security and the integrity of the legal immigration system by: (1) identifying threats to national security and public safety posed by those seeking immigration benefits; (2) detecting, pursuing, and deterring immigration benefit fraud; (3) identifying and removing systemic vulnerabilities in the process of the legal immigration system; and (4) acting as USCIS's primary conduit for information sharing and collaboration with other governmental agencies. FDNS also oversees a strategy to promote a balanced operation that distinguishes USCIS's administrative authority, responsibility, and jurisdiction from ICE's criminal investigative authority.

Question: How many employees work at FDNS?

Response: 907 as of March 28, 2016.

Question: How many petitions are they responsible for receiving each year, including, for example, in FY2015?

Response: FDNS's work is not tracked based on individual applications and petitions. Rather, work is person- and entity-focused. FDNS's case management system tracks cases by Case Management Entities (CMEs). CMEs include referrals for fraud, public safety and national security concerns, verifications of documentation by overseas personnel, and requests for assistance from law enforcement or other government partners. Generally, each CME is connected to at least one application, petition, or other form. During FY2015, FDNS worked on 97,123 CMEs.

Question: Please provide the following statistics about FDNS's employees and their security clearance levels:
How many FDNS employees have SECRET clearances?

Response: 441 FDNS employees have SECRET clearances.

Question: How many have TS//SCI clearances?

Question#:	12
Topic:	Fraud Detection and National Security Directorate
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Response: 340 FDNS employees have TOP SECRET clearances and of those 157 have TS/SCI clearances.

Question#:	13
Topic:	Screening Petitions
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe how petitions are screened to detect potential national security, fraud, or criminal issues by addressing the following.

Specifically, describe the steps that a FDNS employee would make to screen petitions, including what databases would be checked and what other agencies' would be contacted for information to understand and investigate a petitioners' background.

Response: USCIS screens applicants against available law enforcement and national security lookouts and records as well as FBI biographic and biometric holdings. Much of this screening is automatically triggered when USCIS receives a new application or petition. In support of these screening efforts, USCIS works closely with the Department of State, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and partners in the law enforcement and Intelligence Community. USCIS engages with law enforcement and Intelligence Community members for assistance with identity verification, acquisition of additional information, or deconfliction to ensure USCIS activities will not adversely affect an ongoing law enforcement investigation.

Question: Please describe how USCIS communicates issues identified in background checks to the State Department for immigrant and nonimmigrant visa applications that are awarded overseas. For example, if a petitioner's application is determined to be fraudulent or potentially vulnerable to criminal or national security threats, how would that be communicated to the State Department?

Response: Prior to issuing a visa overseas, the State Department conducts its own background checks. If USCIS discovers fraud in an application for an overseas beneficiary, it does not forward the case to DOS. These cases are denied. Also, USCIS will document the fraud in TECS for each case. Criminal concerns are documented in TECS, which are communicated to DOS via CLASS. National Security Concerns are communicated to DOS both via TECS to CLASS, and USCIS includes a memorandum outlining the national security concerns that were identified.

Question: Please describe the manners in which a USCIS employee can identify adverse information in an immigration petition. Please describe the types of adverse information that would allow USCIS and/or FDNS employees to deny each type of immigration and naturalization petition based on national security or fraud.

Question#:	13
Topic:	Screening Petitions
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Response: To ensure national security and public safety threats are recognized and addressed, USCIS conducts a combination of automated and manual biographic and biometric background checks. Adjudicators are trained to review applications and supporting information to identify indicators of fraud, national security, or public safety concerns. During the routine process of adjudicating any USCIS benefit, if any fraud, national security, or public safety concerns are raised, either based on security and background checks, or through personal interviews or testimony, FDNS will conduct additional research and coordinate with partners in the law enforcement and Intelligence Community through established processes. USCIS reviews all available information related to immigration applications and petitions, evaluates whether the information is relevant and, if so, determines whether the information would have an impact on the applicant's eligibility for the benefit, and/or otherwise affect the applicant's admissibility to the United States under U.S. law. USCIS considers INA 212(a)(3)(A) (espionage or overthrow of the U.S. government, among other things), (B)(terrorist activities), and (F)(association with terrorist organizations), and INA 237(a)(4)(A)(espionage or overthrow of the U.S. government, among other things) and (B)(terrorist activities) to be national security concerns and treats them appropriately.

Question#:	14
Topic:	USCIS Referrals to the Department of Justice
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please address the following issues regarding USCIS referrals to the Department of Justice.

Describe how USCIS refers cases of immigration fraud to the Department of Justice for prosecution.

Response: USCIS does not directly refer cases of immigration fraud to the Department of Justice. This is a result of the Delegation of Authorities 0150.1 which provided for concurrent authority to USCIS and ICE to investigate immigration benefit fraud in both the civil and criminal context. However, the Delegation of Authorities also mandated that USCIS and ICE work out an agreement regarding the division of such responsibilities. This resulted in the Memorandum of Agreement between USCIS and ICE which provided for the referral of immigration benefit fraud cases to ICE for criminal investigation and prosecution. ICE is responsible for referring the case for prosecution to Federal, State, local and/or tribal authorities. USCIS FDNS is responsible for managing procedures and policies governing USCIS's fraud detection and prevention efforts. FDNS performs administrative investigations designed to ensure consistent detection, documentation, and prevention of immigration benefit fraud. Once FDNS completes its administrative fraud investigation, the case is referred to U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) for processing based on existing agreements with ICE. For DHS, HSI serves as the enforcement arm for all immigration fraud matters. HSI reviews the case and makes a final determination as to whether the case will be presented to the Department of Justice for prosecution. The prosecution of immigration benefit fraud cases continues to be a multi-agency law enforcement effort. Over the past several years, these collaborative relationships have resulted in successful prosecutions. FDNS regularly utilizes what officers have learned from these relationships. For example, USCIS coordinates with the Department of Justice and the Federal Trade Commission on initiatives such as the Unauthorized Practice of Immigration Law (UPIL). Many USCIS offices across the nation work closely with our local ICE and DOJ counterparts to assist in prosecution of these cases.

USCIS, Office of Security and Integrity is responsible for conducting investigations of allegations of misconduct, corruption, fraud, and violations of the immigration laws involving any USCIS employee not subject to investigation by the DHS Office of Inspector General. Responsibility for this mission rests with OSI's Investigations Division (INV). INV does not investigate immigration fraud conducted by applicants. Criminal cases investigated by INV are routinely referred to DOJ for prosecution.

Question#:	14
Topic:	USCIS Referrals to the Department of Justice
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: How many immigration fraud cases did USCIS refer to the DOJ in FY2015?

Response: As stated above, USCIS does not refer any applicant-related immigration fraud cases directly to DOJ. Once FDNS completes its administrative fraud investigation, the case is referred to Homeland Security Investigations (HSI) for processing based on existing agreements with ICE. For DHS, HSI serves as the enforcement arm for all immigration fraud matters.

Question: How many of these referrals resulted in a declination to prosecute?

Response: Not applicable, see response to previous question.

Question: Please describe how USCIS refers civil enforcement actions (i.e. monetary fines) authorized under the Immigration and Nationality Act to the DOJ?

Response: Pursuant to a Memorandum of Agreement between DHS/USCIS and the Department of Justice, Civil Rights Division, the USCIS Verification Division refers to the DOJ Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) all matters identified as potentially involving an individual act or a pattern or practice of employment discrimination on the basis of national origin or citizenship status; document abuse; or retaliation. The USCIS Verification Division also refers to OSC all matters identified as potentially involving the misuse, abuse, or fraudulent use of E-Verify that can result in adverse treatment of employees. Referrals are made directly between the agencies on a regular basis.

Question: How many times did USCIS make such referrals in FY 2015?

Response: USCIS made 596 referrals to OSC.

Question: How many of these referrals resulted in civil enforcement actions?

Response: We respectively refer you to the Department of Justice as we believe it maintains more complete information regarding OSC's initiation of enforcement actions related to USCIS referrals.

Question#:	15
Topic:	Tools Available to USCIS
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe the tools available to USCIS to deny petitions or to recommend enforcement actions against legal representatives who file petitions or represent petitioners that are found to pose a national security risk or be fraudulent.

Response: USCIS's process for combating fraud involving attorneys and preparers includes close collaboration with our partners at ICE and other law enforcement agencies. USCIS and ICE have identified attorney and preparer fraud as one of the priority case types that is referred to ICE for criminal investigations, and USCIS and ICE work together to successfully manage such cases. Fraud Detection and National Security (FDNS) uses several fraud detection tools for administrative investigations including resources such as USCIS and other U.S. government systems, commercially available data sources, non-adversarial applicant interviews and site visits, as well as any tangible documentation provided to USCIS in support of an application or petition. Further, pursuant to the Immigration and Nationality Act, USCIS has the authority to deny an immigration petition or application due to lack of credibility or fraud.

Adjudicators are trained to review applications and supporting information to identify indicators of fraud, national security, or public safety concerns. During the process of adjudicating any USCIS benefit, if any fraud, national security, or public safety concerns are raised, either based on security and background checks, or through personal interviews or testimony, FDNS will conduct additional research and coordinate with partners in the law enforcement and Intelligence Community through established processes. USCIS reviews all available information related to immigration applications and petitions, evaluates whether the information is relevant and, if so, determines whether the information would have an impact on the applicant's eligibility for the benefit, and/or would otherwise affect the applicant's admissibility to the United States under U.S. law. USCIS considers INA 212(a)(3)(A) (espionage or overthrow of the U.S. government, among other things), (B) (terrorist activities), and (F) (association with terrorist organizations), and INA 237(a)(4)(A) (espionage or overthrow of the U.S. government, among other things) and (B) (terrorist activities) to be national security concerns and treats them appropriately.

Question#:	16
Topic:	Human Trafficking
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: In January, the Inspector General released a report, ICE and USCIS Could Improve Data Quality and Exchange to Help Identify Potential Human Trafficking Cases (OIG-16-17), that indicated that work and fiancée visas were used by known trafficker to bring victims or potential victims into the country. The Inspector General found that problems with data management and information sharing hindered ICE and USCIS's ability to recognize, investigate, and prevent instances of human trafficking.

Please describe what actions USCIS has taken to address the Inspector General's findings and recommendations, including how USCIS will appropriately collect and share information about potential human traffickers to ICE.

Response: The OIG report contained two recommendations for USCIS.

Recommendation #1 was to develop and implement procedures to capture names and other identifying information on human traffickers found in victims' statements, which are submitted with T and U visa applications and petitions, in USCIS information systems. USCIS concurred with this recommendation, and the actions to implement it will include the necessary strict protections on information on individuals with pending or approved T and U visa applications or petitions, as enacted by Congress. USCIS officers have examined sample T and U cases to assess what kind of trafficker information can be captured, which will further inform ongoing discussions about the best methods for systematically identifying the information. USCIS expects to complete the work related to implementing this recommendation by September 30, 2017.

Recommendation #2 was for USCIS to collaborate with ICE to institute a mutually acceptable procedure for transferring USCIS data on alleged human traffickers to ICE. USCIS concurred with this recommendation and will work within the strict limitations on the ability of DHS to share information related to these applicants or petitioners. As processes for the identification and management of trafficker information are being developed, USCIS is working with key ICE personnel directing the Human Smuggling and Trafficking Center (HSTC) to draft an information sharing agreement to support the routine and systematic sharing of such information. Since the initial coordination meeting of the Joint Coordination Working Group (USCIS-ICE), USCIS continues to engage with ICE through the HSTC in this effort. The estimated completion date for the agreement is on or before September 30, 2017.

Question: Are you confident there is appropriate data management and information

Question#:	16
Topic:	Human Trafficking
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

sharing between ICE and USCIS to prevent human trafficking suspects from using visas to bring potential victims into the country?

Response: USCIS continues to strengthen appropriate data management and information sharing between ICE and USCIS, in an effort to prevent human trafficking suspects from acquiring visas for themselves or trafficking victims. USCIS relies on ICE and other law enforcement partners to identify human traffickers and notify USCIS using information sharing tools, such as TECS Lookouts, with appropriate biographical information. USCIS uses these information sharing tools to identify alleged or known human traffickers, when applications are processed through USCIS's vigorous security vetting.

Question#:	17
Topic:	Whistleblower Protections
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe what actions USCIS has taken or is taking to inform its employees and managers of federal employees' rights under federal law and whistleblower protections to speak with Congress, the Inspector General, and other watchdogs, and address the following:

Response: The Office of Equal Opportunity and Inclusion (OEOI) in conjunction with the Office of Human Capital and Training (HCT), provides an online training course for all USCIS employees regarding their rights and remedies under the federal antidiscrimination, whistleblower, and retaliation law listed in the No FEAR Act. All USCIS employees are required to complete the No FEAR Act training no less than every two years. All new employees are required to complete the training within 90 days of entering on duty.

Question: Describe the number of incidents of retaliation that have been reported to you during the current fiscal year.

Response: During FY16, the USCIS Investigations Division of the Office of Security and Integrity has received 4 complaints of possible retaliation.

Question: In a statement to Fox News, a DHS spokesperson said "DHS does not tolerate retaliation against employees who bring possible misconduct to light and complies with all whistleblower protection laws." Please describe how a USCIS employee's communication to Congress, the Inspector General, or the Office of Special Counsel could violate federal whistleblower protection laws.

Response: We respectfully submit that the question misconstrues the DHS statement. The statement said that "DHS . . . complies with all whistleblower protection laws." The compliance referenced is that of DHS, not of employees who communicate concerns.

Question#:	18
Topic:	EB-5 Regional Center Program
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Inspector General Roth discussed weaknesses in the EB-5 visa program in his testimony, including that the laws and regulations related to the Regional Center program do not allow USCIS to terminate a center based on national security or fraud concerns. This finding dates back to a December 2013 Inspector General audit of the EB-5 Regional Center program, which identified a number of weaknesses and included the recommendation that USCIS update federal regulations to provide greater authority to mitigate fraud and national security risks within the program. Please answer the following:

Explain what actions USCIS has taken to respond to the DHS OIG's 2013 recommendations. For example, has USCIS taken action to update the regulations of the EB-5 Regional Center program?

Response: USCIS has worked diligently to address the recommendations made by the DHS OIG and as a result of our efforts, DHS OIG closed Recommendation #2, regarding collaboration with other agencies, and Recommendation #4, regarding quality assurance steps, in October 2015. Both Recommendation #1 to update and clarify the EB-5 regulations and Recommendation #3 to complete a valuation study of the EB-5 program remain open, but we are working satisfying the recommendations.

In response to Recommendation #1, USCIS has made significant efforts to update the EB-5 regulations. USCIS established an internal working group in FY 2014 to consider potential regulatory changes. In FY 2015, however, these potential regulatory changes were set aside in anticipation of reform legislation. As reform legislation has not been passed, USCIS is renewing its efforts to draft the EB-5 regulations. In response to Recommendation #3, USCIS has entered into an interagency agreement with the Department of Commerce to conduct a valuation study of the EB-5 program. The Department of Commerce anticipates it will complete this study by June 2016.

Question: Is USCIS aware of any Regional Centers that are known or suspected to be fraud or national security risks but are still eligible for EB-5 visa applications and investments?

Response: USCIS designation of a regional center authorizes the regional center to participate in the Immigrant Investor Program. When a regional center is no longer eligible to participate in the Immigrant Investor Program, USCIS terminates such participation. USCIS designation of a regional center does not confer EB-5 classification

Question#:	18
Topic:	EB-5 Regional Center Program
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

on individual investors. Each investor's eligibility for EB-5 classification is evaluated through the adjudication of Form I-526, Immigrant Petition by Alien Entrepreneur, and the investor is admitted to the United States only after he or she has been evaluated with respect to fraud, national security, criminal history, and all other grounds of inadmissibility.

When USCIS learns of derogatory information, it considers whether such information impacts any EB-5 eligibility requirements, and strives to ensure that all relevant information obtainable is considered prior to issuing a decision. USCIS also uses its regulatory authority to withhold adjudication in appropriate cases. See 8 C.F.R. § 103.2(b)(18). The USCIS Fraud Detection and National Security EB-5 Division (FDNS EB-5) works closely with law enforcement and regulatory partners to remain aware of any ongoing investigations relating to regional centers, associated parties, as well as related petitioners or applicants.

Question: If so, please identify the number of these regional centers. Also, please identify these specific regional centers.

Response: The integrity of the program is paramount to USCIS and officers adjudicating applications and petitions related to the EB-5 program work closely with their colleagues in the Fraud Detection and National Security EB-5 Division. USCIS does not maintain public data on the information requested, but would be happy to provide details of these cases to Congressional members in a secure briefing.

Question: Please describe how EB-5 petitioners' applications are vetted to ensure the source of funds for the EB-5 Regional Center program were legitimately and lawfully obtained and transferred to the United States.

Response: Trained USCIS Adjudications Officers review the files of all EB-5 petitioners, including petitioners associated with a regional center, to ensure that there is relevant evidence and will consider such evidence in determining whether the petitioner has demonstrated, by a preponderance of the evidence, a lawful source of funds.

Pursuant to 8 C.F.R. § 204.6(j)(3), to show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the I-526 Immigrant Petition by Alien Entrepreneur must be accompanied, as applicable, by:

(i) Foreign business registration records;

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Topic:	EB-5 Regional Center Program
Hearing:	The Security of U.S. Visa Programs
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(ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

(iii) Evidence identifying any other source(s) of capital; or

(iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

As appropriate, if the source of the petitioner's investment is a gift, USCIS will request evidence from the petitioner as to the source of the gift (such as the earnings or assets belonging to the gift-giver). If the source of the petitioner's investment is a loan, USCIS will, as appropriate, request evidence to determine whether the loan was obtained by unlawful means (such as fraud on a loan application) and whether the loan proceeds are themselves lawfully derived. Additionally, the presence of a restriction on the use of proceeds may weaken the credibility of the evidence in the record submitted to establish that the loan in question was the actual source for the petitioner's capital investment.

Upon review of each case, if the evidence is insufficient to demonstrate eligibility, adjudicators may issue a request for more evidence, issue a notice of intent to deny, refer the case to USCIS's Fraud Detection and National Security EB-5 team (FDNS EB-5), and/or deny the petition, as appropriate. FDNS EB-5 has access to a wide array of government and commercial data sources to further review the case and associated evidence. The FDNS EB-5 staff is equipped to conduct searches in the native or official languages of over 90% of EB-5 petitioners. As needed, FDNS EB-5 will request an overseas verification be conducted by USCIS staff stationed abroad, or by Consular employees in locations where USCIS has no personnel. USCIS also refers cases involving integrity concerns, including suspected fraudulent activity related to an EB-5 matter, to U.S. Immigration and Customs Enforcement's Homeland Security Investigations and other law enforcement and regulatory partners, as appropriate.

Question: What adverse information is sufficient to deny an EB-5 petition based on insufficient evidence that the source of funds were lawfully obtained?

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Response: Denial of an EB-5 petition based on adverse information regarding the source of funds depends on the facts of the individual case, and whether the petitioner has established by a preponderance of the evidence that the capital was obtained through lawful means. See, e.g., 8 C.F.R. § 204.6(j)(3) (listing evidence to be submitted with Form I-526, Immigrant Petition by Alien Entrepreneur, to show the investment capital was obtained through lawful means), § 216.6(c)(2) (discussing investment funds obtained through other than legal means in the context of Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status); see also *Matter of Soffici*, 22 I&N Dec. 158, 164-65 (Assoc. Comm'r 1998).

Post-Hearing Questions for the Record
Submitted to the Honorable Leon Rodriguez
From Senator Rob Portman

"The Security of U.S. Visa Programs"

March 15, 2016

Topic:	Social Media Screening
Hearing:	The Security of U.S. Visa Programs
Primary:	Senator Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: Syed Farook filed an immigrant petition with USCIS for Tashfeen Malik as a part of her application for a K-1 fiancé visa. Your submitted testimony indicates that USCIS screens both applicants and petition beneficiaries against law enforcement and national security lookouts and records. Has social media been permanently added as a source to screen against?

Response: USCIS recognizes the potential value of using social media as an additional vetting tool in the background check process. USCIS has been piloting the use of social media to better understand social media as a vetting resource, and this has led to USCIS instituting routine social media queries for certain populations. The piloting has and will continue to allow USCIS to identify any operational constraints and hone ways that the agency may most effectively leverage social media as a vetting resource. As methodologies, tools, and resources all improve, expansions of limited social media vetting to further risk-based populations are planned.

Question: If yes, when was this policy instituted?

Response: USCIS has been exploring the legal and policy implications related to the use of social media for vetting purposes. At the beginning of FY 2015, USCIS began testing the utility of incorporating social media vetting into the adjudication of select immigration classes through various pilots, and now has limited operational capability for certain populations.

Question: If yes, have any immigrant petitions since been rejected based on derogatory information found from a search of social media accounts of both petition applicants and beneficiaries?

Response: As of June 7, 2016, no immigration benefits have been denied **solely or primarily** because of information uncovered through social media vetting. In a small

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number of cases, information discovered through social media vetting had limited impact on the processing of those cases. In cases of benefit denial, the denial was based on information found outside of social media, such as through routine security and background checks, or uncovered during an interview.

Question#:	20
Topic:	Accuracy Fraud-Related Data
Hearing:	The Security of U.S. Visa Programs
Primary:	Senator Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: According to the DHS Inspector General's submitted testimony, the Office of Inspector General "published an audit report [in July 2013] regarding USCIS' tracking of potentially fraudulent applications for family-based immigration benefits." What is USCIS doing to improve the accuracy, completeness, and reliability of its holdings of fraud-related data?

Response: USCIS has established several procedures to track and monitor information related to petitions and applications for family-based immigration benefits suspected of being fraudulent. The Office of Inspector General Report 13-97 found that, once petitions and applications for immigration benefits were investigated and adjudicated, fraud-related data were not always recorded and updated in appropriate electronic databases to ensure their accuracy, completeness, and reliability. OIG Report 13-97 recommended clarifying and enforcing policies and procedures to ensure that TECS records are created and updated for all identified cases of immigration benefit fraud.

On June 13, 2013, USCIS issued enhanced TECS Guidance satisfying the recommendation. While the OIG report 13-97 focuses specifically on TECS entries as an important piece of USCIS anti-fraud program that will help disrupt fraud schemes, USCIS employs many additional tools to detect, deter, and prevent fraud.

Question#:	21
Topic:	Fraud Detection and National Security Directorate Budget
Hearing:	The Security of U.S. Visa Programs
Primary:	Senator Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: The FY 2017 Budget Request states that the funding of the Fraud Detection and National Security Directorate (FDNS) was reduced in the FY 2016 Budget by $21 million. Has this cut in financial resources impacted USCIS' ability to accurately and timely screen referrals made to FDNS?

Response: No. The overall FDNS Budget from FY2016 to FY2017 has not been reduced, only the contribution of funding provided from the Fraud Prevention and Detection Account and the Immigration Examinations Fee Account (IEFA) has changed. Because the overall FDNS budget has not changed, we do not believe our ability to accurately and timely screen referrals made to FDNS has diminished. FDNS receives the majority of its annual funding from the IEFA, but also receives funding from the Fraud Prevention and Detection Fee Account. USCIS uses both fee accounts to fund FDNS, and depending on the unspent balance carried forward from the previous year within the two fee accounts, the contribution each provides in any given year may change to ensure effective use of all available resources.

Question#:	22
Topic:	Paper-Based System
Hearing:	The Security of U.S. Visa Programs
Primary:	Senator Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: Inspector General concluded his submitted testimony by identifying the national security consequences of USCIS using paper files. When can we expect USCIS to conduct all of its business electronically in order to solve this self-inflicted vulnerability to threats?

Response: The current plan is to complete development of capability to support processing all of USCIS' workload electronically by mid-FY 2019. By the end of FY 2016, over 30 percent of USCIS' workload coming in will be handled in the new cases management system. Capturing basic information on applicants for immigration benefits and others actions in an electronic format will enhance USCIS's and partner agencies' ability to perform basic investigative steps. Additionally, enhancing the quality of the electronic data kept by both USCIS and ICE will facilitate data matching, which we believe is an effective tool to root out fraud and national security risks.

Post-Hearing Questions for the Record
Submitted to the Honorable Leon Rodriguez
From Senator Claire McCaskill

"The Security of U.S. Visa Programs"

March 15, 2016

Question#:	23
Topic:	Visa Waiver Program Information
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: There are a number of similarities and some differences between the information DHS receives and analyzes for foreign nationals wishing to enter the U.S. using the Visa Waiver Program (VWP) and those who must obtain a tourist visa. For example, it is my understanding that DHS reviews the same databases for VWP applicants and tourist visa applicants. But VWP applicants do not receive an in-person interview, whereas tourist visa applicants are interviewed by a trained consular official. On the other hand, DHS receives a lot of additional intelligence information about potential U.S. visitors from VWP-participating countries than DHS receives from non-VWP countries.

These differences necessarily result in some trade-offs, some costs and benefits, to the visa waiver program over requiring a tourist visa.

What specifically are the differences in information that DHS receives and reviews between the VWP and tourist visas?

What are the costs to U.S. security and the benefits to U.S. security with respect to these differences?

Response: All prospective VWP travelers must first obtain pre-travel authorization via U.S. Customs and Border Protection's (CBP) Electronic System for Travel Authorization (ESTA) prior to boarding a plane or vessel bound for the United States. The ESTA application collects nearly identical information as the State Department's DS-160 visa application form. A side-by-side comparison is provided in the table below. ESTA also collects data needed to implement security enhancements announced by Secretary Johnson in August 2015 and those enhancements required by the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, such as emergency contact number(s)/address(es), citizenship, travel, and passports. VWP travelers must apply for

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an ESTA at least every two years[1] while certain tourist visa holders can have a validity of up to 10 years.[2]

The vetting processes for an ESTA authorization and a visa use essentially the same biographic databases, including DHS TECS[3] records, the Federal Bureau of Investigation's Terrorist Screening Database, and the State Department's Consular Lookout and Support System, as well as international databases, such as INTERPOL's Stolen and Lost Travel Document database. All ESTA applications are also vetted by the National Counterterrorism Center.

One difference between an ESTA authorization and a visa is the point at which certain information is collected during the vetting process. Tourist visa applicants have their biometrics collected and are interviewed by a consular officer before being issued a visa, whereas the ESTA applicant is subject to these additional layers of screening upon arrival at U.S. ports of entry. At that time, CBP officers collect and vet biometric information from and conduct a short interview with all VWP travelers.

There are also important differences between VWP member countries and countries whose citizens are required to obtain visas for travel to the United States. VWP member countries are required as a condition of their designation in the program to sign and implement agreements to share information about known and suspected terrorists, serious criminals, and lost and stolen passports. This information significantly strengthens DHS's ability to identify and disrupt the travel of individuals who pose a threat to the United States. Countries that are not in the VWP generally do not share information as willingly or often as our VWP partners.

Under the Immigration and Nationality Act, DHS, in consultation with the State Department, must conduct reviews of the effects of each VWP member country's continued designation in the program on U.S. national security, law enforcement, and immigration enforcement interests at least once every two years. *See* 8 U.S.C. § 1187(c)(5). During these six- to nine-month-long reviews, DHS assesses each VWP member country's counterterrorism, law enforcement, immigration enforcement, passport security, and border management capabilities. Many reviews include rigorous and thorough DHS inspections of airports, seaports, land borders, and passport production

[1] As of April 1, 2016 all new and renewal Greek ESTA applicants will have a one-year ESTA validity period based on the findings of the most recent continuing designation review.
[2] VWP travelers also will need to reapply for an ESTA when they receive a new passport even if their current ESTA is still valid.
[3] TECS is an automated enforcement and inspections system that provides a large database of information for law enforcement and border inspection purposes.

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and issuance facilities in VWP member countries. No other program enables the U.S. Government to conduct such broad and consequential assessments of foreign partners' security standards and operations.

Table 1: Comparison of Data Collected under Visa and ESTA Application

Data Element	DS-160 visa application	ESTA
Name	Mandatory	Mandatory
Date of birth	Mandatory	Mandatory
Other names or aliases	Mandatory	Mandatory
Gender	Mandatory	Mandatory
Travel document type	Mandatory	Must be a passport
Passport number	Mandatory	Mandatory
Passport country/ citizenship	Mandatory (asks for country/ region of origin) later asks for passport country/issuing authority	Mandatory
Passport issuance date	Mandatory	Mandatory
Passport expiration date	Mandatory	Mandatory
National ID number	Mandatory	Mandatory
City of birth	Mandatory	Mandatory
Country of birth	Mandatory	Mandatory
Country of residence	Mandatory (asks for home address but not explicitly if that is the applicant's residence)	Mandatory
Father/mother's name	Mandatory	Mandatory
Other citizenship (yes/no)	Mandatory	Mandatory
(Conditional) if "yes" for other citizenship, enter country	Mandatory	Mandatory if "yes" to other citizenship
(Conditional) if "yes" for other citizenship, enter passport number	Mandatory	Optional if "yes" to other citizenship
Foreign street address	Mandatory	Mandatory (home address)
Foreign mailing address	Mandatory	Mandatory (home address)
Foreign/home telephone	Mandatory (asked as primary	Home, work, mobile,

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	phone number)	or "other" phone number is mandatory
Foreign/ home cell phone	Asked as secondary phone number ("Does not apply" option is available)	
Work telephone	("Does not apply" option is available)	
Primary email	("Does not apply" option is available)	Primary or secondary email is mandatory
Secondary email	Not Collected	
Employer name	Mandatory	Mandatory
Job title	Mandatory	Mandatory
Employer address	Mandatory	Mandatory
Employer telephone	Mandatory	Mandatory
Purpose of visit	Mandatory	Not Collected (Limited to business or tourism)
Airline/flight/vessel name	Not Collected (asks for arrival and departure flight number if specific travel plans have been made)	Not Collected (Available through APIS and PNR data)
Port of origin	Ask for departure city	Not Collected (Available through APIS and PNR data)
Final destination port	Asks for arrival city	Not Collected (Available through APIS and PNR data)
Countries other than U.S. on trip	Not Collected	Not Collected (asks if travel to U.S. occurring in transit to another country)
U.S. lodging POC name	Not Collected	One U.S. POC name is mandatory
U.S. lodging POC address	Mandatory (asks for address where you will stay in the U.S.)	Address while in the United States is mandatory
U.S. POC name	Mandatory	Mandatory
U.S. POC address	Mandatory	One U.S. POC address mandatory
U.S. POC phone number	Mandatory	One U.S. POC phone

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		number is mandatory
Emergency POC name	Not Collected	Mandatory
Emergency POC cell phone	Not Collected	One emergency POC phone number is mandatory
Emergency POC home phone	Not Collected	
Emergency POC email address	Not Collected	Mandatory
Dates of intended travel	Mandatory	Not Collected (Available through PNR data)
Contact info for originator of reservation	Not Collected (asks for data on person who paid for trip)	Not Collected

** The DS-160 also asks for other information not listed on this comparison chart, including job history and education, previous U.S. travel, prior visas, questions related to visa ineligibilities, information on family including current and former spouse and children, languages spoken, military service, security and background information, and more extensive information on parents as appropriate to the visa classification the individual is applying for.*

*** The ESTA application also has questions relating to eligibility for travel and admission to the United States under the VWP, including communicable diseases of public health significance; drug abuse; criminal record; terrorist activity; espionage; sabotage; genocide; visa/entry/overstay violations; travel to Iraq, Syria, Iran, or Sudan on or after March 1, 2011; and dual nationality.*

**** First-time tourist visa applicants have their biometrics collected and are interviewed by a consular officer before being issued a visa, whereas the ESTA applicant is subject to these additional layers of screening upon arrival at U.S. ports of entry.*

Question#:	24
Topic:	Cost Analysis
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: Right now, as you know, our immigration system is mostly still paper-based. In this day and age, with a need so share information across agencies and to process applications quickly and reliably, this is unacceptable.

ELIS, and the U.S. Citizenship and Immigration Service's (U.S.C.I.S.) Transformation Program more broadly, are supposed to solve these problems and create an interoperable system that tracks immigration applications and immigration benefits, and enables sharing of this information across agencies more quickly and easily.

The DHS Cost Analysis Division is supposed to conduct independent cost analyses of major DHS acquisition programs. My understanding is that it is so short-staffed, though, that it ends up approving the vast majority of cost analyses given to them by the DHS components and conducting its own independent analysis of only 2 or 3 acquisition programs per year.

Did the DHS Cost Analysis Division conduct its own independent analysis of the Transformation Program or did it just review and approve what USCIS gave them?

Did USCIS conduct its own independent cost analysis or did it rely on the contractors' cost estimates?

I was under the impression that no more DHS acquisition projects would move forward without approved basic acquisition documents like a program baseline.

Who approved USCIS to start awarding contracts without a revised baseline cost estimate last year?

Response: On May 4, 2015, the Acting Under Secretary for Management made an Acquisition Decision to approve the re-baseline of the Transformation Program and remove the program from breach status, effectively authorizing the program to move forward. Prior to that decision on April 1, 2015, the Acting Under Secretary for Management approved a revised Acquisition Program Baseline (APB) for the USCIS Transformation Program. The USCIS Office of Transformation Coordination developed a Life Cycle Cost Estimate (LCCE) and submitted this estimate to DHS Chief Financial Officer for approval. The Transformation LCCE was comprehensive of the program's requirement and addressed scope beyond their contractor cost estimates. The DHS Cost Analysis Division (CAD) of the Office of the Chief Financial Officer conducted a

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thorough review of the Transformation LCCE and the DHS Chief Financial Officer approved the cost estimate on April 1, 2015. Prior to the approval of the Transformation LCCE, DHS CAD conducted a review and assessment using a set of criteria derived from the Government Accountability Office Cost Estimating and Assessment Guide. The object of CAD's review is to assess if the cost estimate has met all the attributes that GAO examines when they review government cost estimates. Specifically the review determines if the LCCE is reliable, accurate, credible, and well-documented. CAD found that the USCIS Transformation LCCE met or partially met all criteria of our independent review. At this time, CAD has not independently quantified the estimated cost of the Transformation Program requirements. At this time, CAD conducts a limited and focused amount of these independent analyses for major acquisition programs at DHS, but has a planned effort to grow this capacity.

Question#:	25
Topic:	Acquisition Oversight
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: The Office of Program Accountability and Risk Management (PARM) is responsible for DHS's overall acquisition governance process. The Office of the Chief Information Officer (OCIO) is responsible for, among other things, ensuring that IT acquisitions comply with DHS IT management processes.

Who is in charge of oversight of this project, PARM or the OCIO?

Has anyone been held accountable for this program's delays and cost overruns?

Response: DHS Acquisition Oversight is a Department wide effort with complimentary roles and responsibilities that support the Department's Chief Acquisition Officer (CAO) for the management, administration, and oversight of the Department's acquisitions. The Office of Program Accountability and Risk Management (PARM) is responsible for overseeing the Department's acquisition program portfolio to monitor each investment's cost, schedule, and performance against established baselines. The Office of the Chief Information Officer (OCIO) is responsible for developing and providing an IT assessment and approval of IT programs in support of the CAO roles and responsibilities. The USCIS Transformation Program Manager is accountable for the program delays and cost overruns. The USCIS Transformation Program Manager and her staff were required to address the Program's Acquisition Program Baseline (APB) breach and take the necessary steps to produce a re-baseline for the Program. The USCIS Transformation Program was re-baselined on April 1, 2015 and authorized to proceed on May 4, 2015.

Post-Hearing Questions for the Record
Submitted to the Honorable Leon Rodriguez
From Senator Tammy Baldwin

"The Security of U.S. Visa Programs"

March 15, 2016

Question#:	26
Topic:	Visa Application Process
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Tammy Baldwin
Committee:	HOMELAND SECURITY (SENATE)

Question: I hear frequently from my constituents in Wisconsin who are deeply frustrated by the visa application process at USCIS. In particular, constituents are frustrated that USCIS cannot provide updates on the status of their background check even after their application has exceeded the expected processing times listed on the USCIS website. Specifically, I have heard from constituents whose background checks have taken months and even years. This is a significant problem, particularly for constituents with an urgent, time sensitive need for a visa, as in the case of a sick relative or a work obligation.

Why might a background check for a visa applicant take months or years to complete?

Response: USCIS is committed to adjudicating immigration benefits[4] in a timely manner while also ensuring public safety and national security. A small percentage of applications and petitions have unresolved background check issues that temporarily delay adjudication. Although USCIS makes every effort to resolve such cases promptly, USCIS is unable to speculate when the background checks will be completed. If a background check reveals an issue that may impact an applicant's eligibility for the requested immigration benefit, further inquiry is needed. The inquiry may include an additional interview and/or contact with another agency for updates or more comprehensive information. Upon gathering and assessing all available information, USCIS will adjudicate the application as quickly as possible. USCIS realizes that applicants may be frustrated by the progress of their case. However, the agency must balance individual inconvenience against issues of public safety and national security.

[4] DHS does not adjudicate visa applications: The Department of State maintains sole responsibility for the issuance of all visas, including the K-1 fiancé(e) visa. DHS adjudicates all related petitions and has authority for visa policy under section 428 of the Homeland Security Act.

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Topic:	Visa Application Process
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Tammy Baldwin
Committee:	HOMELAND SECURITY (SENATE)

Question: Why is USCIS unable to provide me or the applicant status updates at this stage of the application process?

Response: USCIS cannot divulge specific information pertaining to individual background checks; in certain cases, the information may be confidential or contain information related to fraud or national security concerns that requires further vetting. However, we can say that the case is pending "the background check."

Question: Has USCIS considered policy changes that can accelerate the visa process and increase transparency for customers while maintaining security?

Response: Yes, USCIS has considered policy changes related to background checks to reduce processing times and increase transparency.

Question: If so, please discuss.

Response: USCIS is responsible for ensuring that our immigration system is not used as a vehicle to harm our nation or its citizens by screening out people who seek immigration benefits improperly or fraudulently. In order to fulfill this mission, USCIS conducts background checks for all cases involving a petition, application, or request for an immigration service or benefit. However, USCIS recognizes that sometimes background checks are slower for some customers than they would like. To enhance customer service and reduce unnecessary delays, USCIS works closely with interagency partners throughout the clearance process.

Additionally, we are moving toward electronic application filings which allow customers to submit and view certain benefit requests, receive electronic notification of decisions, and receive real-time case status updates. We continue to expand the use of electronic filing, which will allow USCIS to use innovative tools to enhance national security and ensure the integrity of the immigration process, and also increase the agency's efficiency and decrease processing times.

Furthermore, USCIS is consolidating policy guidance and presenting the information to our customers in a way that is easy to access and understand through the creation of the USCIS Policy Manual. In the USCIS Policy Manual, customers can find a centralized online repository of the agency's immigration policies, including information on background and security checks related to naturalization processing. USCIS is aware this subject matter is of interest to customers and will be including more information on background checks related to other topics in forthcoming publications.

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It is important to note that, while USCIS remains committed to providing excellent customer service and exploring ways to improve the visa process, the agency will not grant an immigration benefit before the required security checks are completed.

Question: Will you commit to considering policy changes to increase transparency for applicants when inquiring about their visa application status?

Response: USCIS is careful to balance the need to strengthen national security and maintain the integrity of our immigration system with the need to ensure that our customers are not subject to undue delays. To this end, while USCIS must conduct background checks to thoroughly screen applicants, each USCIS office has experienced officers dedicated to resolving background checks as expeditiously as possible, and we continue to assess our policies and procedures to ensure that they are not only warranted, but also that checks are conducted in the most efficient way possible.

USCIS is, and will continue to remain, committed to providing excellent customer service. In furtherance of our dedication to explore ways to increase transparency, we will also continue to hold public engagement events where we share information and seek input from our customers on USCIS programs and policies.

Post-Hearing Questions for the Record
Submitted to the Honorable Leon Rodriguez
From Senator Kelly Ayotte

"The Security of U.S. Visa Programs"

March 15, 2016

Question#:	27
Topic:	Visa Waiver Program Changes
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Kelly Ayotte
Committee:	HOMELAND SECURITY (SENATE)

Question: The Visa Waiver Program allows citizens from 38 countries to travel to the U.S. for business or tourism purposes for up to 90 days without first obtaining a visa. In December, Congress passed and the president signed into law additional restrictions for traveling under the program. Pursuant to that law, a citizen of a Visa Waiver Program country who has traveled to Iraq, Syria, Sudan, or Iran in the last five years cannot travel visa-free to the United States. That law also provided the Secretary of Homeland Security with the authority to designate additional countries to that list. Secretary Johnson recently announced that Somalia, Yemen, and Libya have been added to this list.

Can you please explain your role in this program, generally, and more specifically, your role, if any, in implementing these additional restrictions.

What was your role, if any, in the decision to add Libya, Somalia, and Yemen to the list?

To what extent was the Department of Defense consulted in these decisions?

Was AFRICOM consulted?

How about CENTCOM?

We know that Al Qaeda continues to operate in large parts of Algeria, Mali, Tunisia, and Niger.

Why weren't these countries also designated as a "country of concern" under this law?

Response: The Secretary considered the three criteria in the statute, specifically 217(a)(12)(D)(ii):

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"(I) whether the presence of an alien in the country or area increases the likelihood that the alien is a credible threat to the national security of the United States;
"(II) whether a foreign terrorist organization has a significant presence in the country or area; and
"(III) whether the country or area is a safe haven for terrorists."

The statute does not preclude the Secretary considering other relevant criteria as well, so the Department of Homeland Security also considered (a) available intelligence on the nature of the terrorist threat to the Homeland from the Islamic State of Iraq and the Levant (ISIL), al-Qa'ida, and other terrorist groups; (b) available intelligence on the nature of the terrorist threat from ISIL, al-Qa'ida and other terrorist groups to our allies and to U.S. interests overseas; (c) the extent of counterterrorism cooperation, and cooperation on aviation, border and maritime security, between the United States and the countries under consideration, and those countries counterterrorism capabilities; and (d) the extent and nature of legitimate trade, travel, commerce and familial connections between the United States and the countries under consideration.

As required in 217(a)(12)(D)(i), the Secretary consulted with the Secretary of State and the Director of National Intelligence in making the determination to designate Libya, Somalia and Yemen. The Department of Homeland Security consults continually on both intelligence and policy matters with the interagency and specifically with the intelligence and counterterrorism communities, including the Department of Defense (both the Office of the Under Secretary of Defense for Policy and the Joint Staff), as well as with regional commands and the Defense Intelligence Agency. These consultations routinely discuss the presence of terrorists in countries that may pose a credible threat to the national security of the United States, whether terrorist organizations have a significant presence in those countries, or whether those countries are considered safe havens for terrorists.

Weighing all the criteria listed above and input received during interagency consultations, Libya, Somalia and Yemen were designated by the Secretary as Countries of Concern in February 2016. The Secretary will continue to review whether changes on the ground, or in the security practices of other nations, make it prudent to add additional countries such as Algeria, Mali, Tunisia, and Niger, to the list or to remove countries already designated. The presence of ISIL, al-Qa'ida, or other foreign terrorist organizations will be an important factor in making these decisions. DHS will continue to work with our interagency partners and monitor the threat environment to inform the Secretary's decisions on this matter.

Post-Hearing Questions for the Record
Submitted to the Honorable Sarah R. Saldaña
From Senator Ron Johnson

"The Security of U.S. Visa Programs"

March 15, 2016

Question#:	1
Topic:	San Bernardino ICE Events
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe your understanding of the events that occurred on December 3rd at the San Bernardino U.S. Citizenship and Immigration Services (USCIS) office. In your response, please include answers to the following questions.

What were the orders and intentions of the Homeland Security Investigations (HSI) agents that went to the USCIS office that afternoon?

What happened when they arrived at the USCIS office? How long were HSI agents at the USCIS office?

Response: On December 3, 2015, Homeland Security Investigations Special Agents went to the U.S. Citizenship and Immigration Services (USCIS) San Bernardino office to inform USCIS of developing information regarding the San Bernardino incident. The Special Agents went to the USCIS San Bernardino office to investigate subjects linked to the San Bernardino incident.

The Special Agents met with the USCIS Field Office Director to discuss the matter. During the meeting, the Special Agents explained the urgency and need to locate two individuals with a direct link to the San Bernardino incident who allegedly had a scheduled appointment with USCIS that day. USCIS looked up the subjects' appointment and informed the Special Agents that the subjects were a "no show" and had not called to reschedule.

The Special Agents asked for pictures of the subjects so they could be disseminated for a "Be on the Lookout" alert. USCIS provided photographs of the subjects retrieved from the alien file. The Special Agents were in the USCIS office for approximately one hour.

Question#:	2
Topic:	Communications between ICE and USCIS
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Are you aware of any communications that occurred between USCIS and ICE managers in California, at headquarters, or elsewhere to address the incident at the USCIS offices?

Please provide all documents and communications regarding the December 3rd incident at the San Bernardino USCIS office.

Response: On the day following the San Bernardino terrorist attack, Special Agents with U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI) informed Federal Protective Service (FPS) contract guards and U.S. Citizenship and Immigration Services (USCIS) local field office personnel that they wanted to question a person of interest who had a previously scheduled appointment at the USCIS field office. After receiving supervisory concurrence, the USCIS field office director provided the special agents access to the USCIS office to facilitate the questioning of the person of interest. However, the individual did not appear for the appointment. USCIS then provided the Special Agents access to the information contained in the file related to that person of interest.

As described in the Inspector General's report (which can be found here: https://www.oig.dhs.gov/assets/Mga/OIG-mga-060116.pdf), although the Special Agents were granted access to the USCIS field office and to the requested information, there was a delay in doing so while supervisory concurrence was being obtained. ICE and USCIS have since improved their protocols for facility access and information sharing in circumstances with potential national security or public safety implications, in order to avoid any such delays in the future. FPS is also clarifying with its employees, Facility Security Committees, and protective security officers the agency's policy of allowing law enforcement partners access to federal facilities during emergency situations.

On May 31, 2016, USCIS and ICE signed a Memorandum of Agreement designed to memorialize the joint commitment to work together when ICE Special Agents or officers need to visit USCIS facilities to question, apprehend, or arrest persons of interest as well as to share and safeguard information when addressing emergent matters of national security and public safety.

Question#:	3
Topic:	ICE's Investigation Information Policy
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe ICE's policy for informing USCIS of investigative actions that involve USCIS and your understanding of USCIS's policy for assisting ICE with investigations. Was what occurred on December 3rd consistent with those policies?

Response: On the day following the San Bernardino terrorist attack, Special Agents with U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI) informed Federal Protective Service (FPS) contract guards and U.S. Citizenship and Immigration Services (USCIS) local field office personnel that they wanted to question a person of interest who had a previously scheduled appointment at the USCIS field office. After receiving supervisory concurrence, the USCIS field office director provided HSI Special Agents access to the USCIS office to facilitate the questioning of the person of interest. However, the individual did not appear for the appointment. USCIS then provided HSI access to the information contained in the file related to that person of interest.

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Question#:	4
Topic:	Mariya Chernykh's USCIS File Request
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: The Committee understands that on December 3, 2015, HSI agents requested copies of Mariya Chernykh's A-file from USCIS.

Did USCIS respond to HSI's request for copies of the A-file? If so, when did HSI receive the requested copies of the A-file?

Please describe HSI's policies and procedures for requesting copies of A-files from USCIS. How long does it take for HSI to receive requested copies of an A-file from USCIS?

Response: On December 3, 2015, U.S. Citizenship and Immigration Services (USCIS) provided U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Special Agents access to the A-file in order for the agents to obtain necessary information to address immediate investigative needs. HSI Los Angeles later submitted a formal request to USCIS for the A-file on December 7, 2015. HSI Los Angeles received the A-file from USCIS on December 8, 2015.

On February 5, 2014, USCIS approved a memorandum updating the Record Operations Handbook titled, "Immigration File Sharing and Sequestration Procedures During a National Security Event." This memorandum updated procedures for ICE and USCIS during such an event. Further guidance was provided to all domestic HSI field offices as a reminder of the standard operating procedures regarding the handling of A-files within ICE during a national security event. Please note that the timeline for obtaining A-file copies varies depending on the urgency of the request and the location of the file.

Question#:	5
Topic:	ICE Whistleblower Protection
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe what actions ICE has taken or is taking to inform its employees and managers of federal employees' rights under federal law and whistleblower protections to speak with Congress, the Inspector General, and other watchdogs.

My office learned that, following the March 15th hearing, ICE supervisors were seeking to find individuals who provided information to the Committee. Are you aware of those actions? Do you believe that they are appropriate? If not, what have you done to inform ICE managers that it is inappropriate to seek to find or threaten retaliation against employees who speak with Congress or other watchdogs?

Please describe the number of incidents of retaliation that have been reported to you during the current fiscal year.

In a statement to Fox News, a DHS spokesperson said "DHS does not tolerate retaliation against employees who bring possible misconduct to light and complies with all whistleblower protection laws." Please describe how an ICE employee's communication to Congress, the Inspector General, or the Office of Special Counsel could violate federal whistleblower protection laws

Response: The Department of Homeland Security (DHS), which includes U.S. Immigration and Customs Enforcement (ICE), does not tolerate retaliation against employees who bring potential wrongdoing to light. I respectfully submit that your question indicates that you may have misconstrued the referenced DHS statement. The statement said that "DHS . . . complies with all whistleblower protection laws." The compliance referenced was intended to refer to DHS, not that of employees who communicate concerns.

ICE is committed to abiding by merit systems principles, providing protection from prohibited personnel practices, and promoting accountability in accordance with the Whistleblower Protection Act and the Whistleblower Protection Enhancement Act of 2012. As public servants, our employees are held to the highest standard of professional and ethical conduct. Employees who believe they have been mistreated or retaliated against are encouraged to report such incidents to DHS's Office of the Inspector General or the Office of Special Counsel. Enclosed please find a copy of a DHS broadcast message dated February 12, 2016, reminding DHS employees to complete compulsory "DHS No Fear Act Training" and connecting them to the DHS Whistleblower Protection website. In addition, all DHS employees receive mandatory whistleblower protection

Question#:	5
Topic:	ICE Whistleblower Protection
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

training every two years, and all ICE managers receive instruction on whistleblower protection laws within one year of initial appointment to a supervisory position.

Recognizing our obligation to protect the rights afforded to employees in making protected disclosures, including disclosures to Congress, ICE is committed to ensuring that leadership and management adhere to all whistleblower protection laws, including 5 U.S.C. § 2302(b)(8), and to ensuring that employees do not suffer retaliation for making protected disclosures. I am unaware of any ICE effort to identify the employee(s) who made any disclosures to the Homeland Security & Governmental Affairs Committee, and would not countenance any such effort.

Question#:	6
Topic:	Human Trafficking
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: In January, the Inspector General released a report, ICE and USCIS Could Improve Data Quality and Exchange to Help Identify Potential Human Trafficking Cases (OIG-16-17), that indicated work and fiancée visas were used by known traffickers to bring victims or potential victims into the country. The Inspector General found that problems with data management and information sharing hindered ICE and USCIS's ability to recognize, investigate, and prevent instances of human trafficking. For example, the Inspector General wrote, "ICE had to extensively manipulate its case management system to provide reasonably reliable data for matching purposes."

Please describe what actions ICE has taken to address the Inspector General's findings and recommendations.

Has the problem been fixed? Does appropriate data collection and information sharing now exist between USCIS and ICE to prevent human traffickers from exploiting the visa system?

Response: U.S. Immigration and Customs Enforcement (ICE) has responded to the Department of Homeland Security Office of Inspector General (OIG) concerning report OIG-16-17, ICE and United States Citizenship and Immigration Services (USCIS) Could Improve Data Quality and Exchange to Help Identify Potential Human Trafficking Cases. In the response, ICE Homeland Security Investigations (HSI) stated that as new alleged human traffickers are identified, ICE will check USCIS systems, particularly the Computer Linked Application Information Management System (CLAIMS 3), to identify whether they filed immigration benefit applications or petitions with USCIS and inform USCIS when there is a match. ICE HSI will issue a broadcast message to the field informing them of the USCIS systems check and reporting requirement.

In the response, ICE also stated that ICE and USCIS share trafficking information, including T nonimmigrant status applications and U nonimmigrant status petitions, at the local level in accordance with ICE HSI policy and consistent with confidentiality protections. ICE HSI offices regularly contact other agencies, including USCIS and local human trafficking task forces, to exchange leads or other information related to human trafficking violations.

Finally, ICE noted that USCIS and ICE worked together to establish a Joint Coordination Working Group to identify and implement additional mechanisms to share information on traffickers and victims.

Question#:	7
Topic:	Allocating Resources
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe ICE's process for allocating resources for domestic investigations, including illicit trade, illicit travel, illicit finance, and investigative support, and answer the following:

How does ICE decide to prioritize which categories of investigation receive what level of resources? Please describe the current strategy for allocating resources by investigative area.

Within the category of investigations related to illicit travel, please describe how investigative resources are allocated by the different types of illicit travel investigations.

Response: ICE prioritizes its investigative work based on threat analysis and operational prioritization. This analysis takes into consideration any imminent threat to national security and/or public safety; any imminent threat within a specific geographic area; or any operational priority set by the Secretary of Homeland Security and the ICE Director. ICE subsequently prioritizes and allocates its investigative resources strategically, in both domestic and foreign offices, to ensure that efforts to disrupt and dismantle the transnational criminal organizations posing the greatest threat to the United States are appropriately resourced.

ICE uses a stringent planning process to determine what investigative areas may need new focus or enhancements related to investigations in illicit trade, travel, and finance. The process includes the Strategic Risk Assessment (SRA) and Significant Case Review (SCR) process. The SRA is a risk-based decision-making tool that assists ICE with the process of prioritizing mission areas. The SRA compares risk levels to investigative level of effort to support ICE's ability to make risk-informed resource allocation decisions. The SCR process enables ICE to identify and measure progress on significant investigations, thereby enhancing ICE's ability to prioritize and define its substantive investigative efforts. ICE can provide a briefing on the process, if requested.

Question#:	8
Topic:	K-1 Visa Verification
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Regarding K-1 visas for fiancées, in December 2015, DHS told committee staff that USCIS does not verify whether K-1 visa holders are married within 90 days as required by the terms of their visa. Does ICE investigate or verify whether K-1 visa holders marry within 90 days? If the information is known, what percentage of K-1 visa holders marry within 90 days and what percentage does not?

Response: U.S. Immigration and Customs Enforcement (ICE) does not investigate or verify whether K-1 nonimmigrant visa holders marry within 90 days of their admission to the United States. K-1 nonimmigrant visas are issued by the U.S. Department of State, and individuals issued K-1 nonimmigrant visas are admitted to the United States by U.S. Customs and Border Protection. K-1 nonimmigrant visa holders are required by statute to marry their fiancé or fiancée within 90 days of their admission to the United States, or depart the United States. Once married, the K-1 nonimmigrant visa holder can then file for Lawful Permanent Resident status by filing a Form I-485, "Application to Register Permanent Residence or Adjust Status," with U.S. Citizenship and Immigration Services (USCIS). K-1 nonimmigrant visa holders who do not marry within 90 days of their admission are in violation of the terms and conditions of their nonimmigrant status and subject to removal consistent with Department civil enforcement priorities.

Question#:	9
Topic:	Student and Exchange Visitor Program
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: ICE has responsibility for overseeing the Student and Exchange Visitor Program (SEVP). Past audits by the Government Accountability Office have identified challenges in ICE's management of the SEVP and compliance with federal requirements for ensuring the integrity of this program, including insuring that all schools are recertified every year, that all flight schools participating in the program have appropriate certification by the Federal Aviation Administration (FAA), and that students participating in the Optional Practical Training (OPT) are following the terms of their visa (including collecting information about OPT students' employers). Please answer the following.

Provide a timeline of ICE's process for recertifying SEVP approved schools. Has this process been completed since 2003? What percent of current SEVP-eligible schools were recertified within the past two years? When do you anticipate that the certifications for all schools will be completed?

Response: Per the Enhanced Border Security and Visa Entry Reform Act of 2002, schools are recertified every two years. In the last two years, Student and Exchange Visitor Program (SEVP) has recertified 7,243 schools, the majority of which were the schools' second recertification. Since June 2010, SEVP has adjudicated 13,580 school recertifications. Currently there are 8,669 SEVP-certified schools. There are fewer than 10 schools remaining that have never been recertified, all of which are being actively worked. U.S. Immigration and Customs Enforcement (ICE) anticipates finalizing these last few cases in August 2016. As part of the ongoing recertification process, 71 schools have been denied recertification to date.

Question: Are all flight schools listed as SEVP-eligible on ICE's "Study in the States" website FAA certified?

Response: ICE reviews the list of SEVP approved flight schools on a monthly basis for Federal Aviation Administration (FAA) certification. If a school has lost its FAA certification (or has dropped back to provisional certification), SEVP takes appropriate administrative action to remove the school's SEVP certification. Once that administrative process is complete and the school is no longer SEVP-certified, it is removed from the list on "Study in the States."

Question: How many SEVP visa participants are currently in the United States under the Optional Practical Training program? Please provide the percentage of students

Question#:	9
Topic:	Student and Exchange Visitor Program
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

participating in OPT who lack required information in their file (such as the name of an employer). If ICE cannot provide this information, please explain why.

Response: Students who elect to continue their education through practical training remain in the United States on their F-1 or M-1 visas. Under the current regulations, employer information is only required for students participating in Science Technology Engineering Math (STEM) Optional Practical Training (OPT), which means they graduated with a degree in a STEM field and are participating in OPT. Of the 29,070 students currently on STEM OPT, only 31 (0.11 percent) have files with missing employer information. SEVP is currently working with the schools to ensure that this information is appropriately updated in the Student and Exchange Visitor Information System.

Question#:	10
Topic:	SEVP Challenges
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe what challenges does ICE face in overseeing the SEVP program.

Response: As of May 2016, there are 1.18 million F and M international students and 200,861 J-1 exchange visitors in the United States. There are also 8,687 SEVP-certified U.S. schools to enroll F and M international students. The primary sets of challenges SEVP faces pertain to Information Technology (IT) systems development, compliance efforts, and emerging policy and regulatory requirements.

The Student and Exchange Visitor Information System (SEVIS) houses information on students, schools, and exchange visitors. SEVIS is a web-based information system that maintains records for numerous entities, including SEVP-certified schools, F-1 and M-1 nonimmigrant students and their dependents, exchange visitor program sponsors, and J-1 exchange visitors and their dependents.

This IT system has received considerable attention over the past few years from within Department of Homeland Security (DHS) and ICE. SEVP has status reviews with DHS and ICE at least every quarter. After two years of planning and the development of a robust Analysis of Alternatives, the SEVP program plans to initiate the acquisition process for SEVIS modernization. The increased oversight of SEVIS since 2013 has resulted in dramatic improvement in all five DHS categories that indicate the overall program health of an IT system (i.e., Scope, Technical Performance, Schedule, Funding, and Risk). SEVIS' scoring has changed from red (failing) in all five categories to green (exceptional) in all five categories. Most recently, in 2016, the DHS Under Secretary for Management issued an Acquisition Decision Memorandum to SEVP identifying SEVIS as a DHS IT Acquisition Agile Pilot. This pilot is designed to improve the execution and oversight of DHS IT acquisitions using industry best practices, including Lean and Agile incremental development technologies. The pilot for SEVIS modernization is being conducted within the spirit and intent of Acquisition Management Directive 102-01, focusing on right-sizing the documentation and processes. While keeping with principles outlined in the U.S. Digital Services Playbook, additional flexibility is built into this pilot to execute the project successfully. The lessons learned from this pilot will be used to develop and update policies and procedures for executing these and future IT acquisitions.

SEVP must also manage compliance and enforcement-related challenges. This includes investigating alleged fraud related to curricular practical training and other areas; implementing a risk assessment process for schools and directing SEVP compliance-

Question#:	10
Topic:	SEVP Challenges
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

related resources accordingly; and monitoring state licensing and accreditation of all SEVP-certified schools. Additionally, SEVP provides support to federal law enforcement entities that track and locate students who have overstayed their visas. These challenges must be coordinated not only for compliance with existing laws and regulations, but also with HSI law enforcement assets when necessary. SEVP leverages SEVIS to maintain information on all F, M, and J nonimmigrant students, certified schools, and approved programs of study. SEVP also certifies, recertifies, and withdraws schools that enroll nonimmigrant students in the United States to ensure compliance with federal regulations; oversees the collection of information on SEVP-certified schools and nonimmigrant students for national security and law enforcement agencies; supports criminal enforcement cases related to school fraud; and enforces federal rules and regulations, such as the Accreditation of English Language Training Programs Act. SEVP supports its mission through stakeholder engagement and by promoting program awareness, inclusively through the SEVP Response Center, SEVP field representatives, conferences and outreach efforts, and digital resources such as Study in the States and other online tools.

Question#:	11
Topic:	ICE Immigration Information Requests
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe the policies and procedures that ICE follows when requesting information from immigration files for investigations.

Under what circumstances are ICE agents' requests for information from USCIS denied?

Are you aware of instances when ICE agents have requested information from USCIS files for national security investigations where the information was denied?

If so, please provide a number or estimate of the number of times that this has occurred.

Response: U.S. Immigration and Customs Enforcement (ICE) follows the policies and procedures for requesting information from immigration files (A-Files) as outlined in the U.S. Citizenship and Immigration Service's (USCIS) User Guide for the National File Tracking System (NFTS), as well as USCIS Memorandum HQREC 160/8 P (Immigration File Sharing and Sequestration Procedures Used During a National Security Event). The NFTS User Guide outlines procedures for requesting and receiving A-Files through NFTS. In addition, the memorandum outlines processes for sharing A-Files during a National Security Event (NSE). ICE-Homeland Security Investigations (HSI) takes the lead in coordinating file movement with USCIS and the USCIS-FDNS (Fraud Detection and National Security) Directorate when an NSE occurs.

ICE is unaware of any circumstances in which information requested from USCIS was denied, including for the purpose of national security investigations.

Question#:	12
Topic:	Special Agent Taylor Johnson
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please complete production to my December 28, 2015 letter and respond to my March 4, 2016 letter, both regarding Homeland Security Investigations Special Agent Taylor Johnson.

Response: U.S. Immigration and Customs Enforcement (ICE) provided a partial response to your December 28, 2015 letter on March 9, 2016. ICE responded to five of the six questions included in that letter. A partial response was provided to question three with a note that ICE will provide additional documents as they are identified. ICE continues to search for documents responsive to question three and will provide them as they become available.

ICE also continues to gather documents in response to your March 4, 2016 letter, which contained seven questions, some requiring an extensive search to locate documents that might be responsive. ICE has accorded your letters a high priority, and we endeavor to respond to you as soon as possible.

Question#:	13
Topic:	ICE Referrals to Department of Justice
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe how ICE refers criminal enforcement actions to the Department of Justice (DOJ) for prosecution. How many immigration fraud cases did ICE refer to the DOJ in FY2015? How many of these referrals resulted in a declination to prosecute?

Please describe how ICE refers civil enforcement actions (i.e. monetary fines) authorized under the Immigration and Nationality Act to the DOJ? How many times did ICE make such referrals in FY2015? How many of these referrals resulted in civil enforcement actions?

Response: In most situations, U.S. Immigration and Customs Enforcement (ICE) presents criminal investigations to the Department of Justice (DOJ) for prosecution through an open dialogue with the U.S. Attorney (or delegate), which includes presenting the facts and discussing the investigative evidence that establishes the elements of the criminal violation within the judicial district in which the alleged criminal offense took place. During that discussion, the U.S. Attorney (or delegate) will determine whether a criminal investigation will be accepted for prosecution, or if additional investigation and evidence is necessary.

ICE interprets immigration fraud as immigration benefit fraud, which is an investigative program within ICE. ICE does not categorically track the number of investigations presented to DOJ for prosecution and whether they are accepted or declined. However, in Fiscal Year (FY) 2015, ICE initiated 1,414 investigations, executed 873 criminal arrests, obtained 716 convictions and seized approximately $18.5 million in illicit proceeds and assets relating to immigration benefit fraud.

In regards to civil enforcement actions (i.e., monetary fines) relating to immigration fraud, Section 274C of the Immigration and Nationality Act (INA) allows for civil penalties against an individual or entity for the knowing creation, use, acceptance, forging, altering, counterfeiting and false making of any document for the purpose of satisfying a requirement of, or obtaining a benefit under, the INA. ICE allocates resources toward activities that yield the greatest fraud deterrence effect and weighs the required amount of evidence necessary to successfully fine an individual or entity under this provision. ICE finds it more efficient and effective to pursue criminal violations when immigration fraud is discovered rather than pursue civil penalties under Section 274C of the INA.

Question#:	13
Topic:	ICE Referrals to Department of Justice
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

With respect to civil enforcement actions (i.e., monetary fines) in connection with worksite enforcement investigations, ICE serves a Notice of Intent to Fine (NIF), as authorized by the INA, and charging documents specifying the violations committed by the employer. The employer has the opportunity to either negotiate a settlement with ICE or request a hearing before the DOJ Office of the Chief Administrative Hearing Officer within 30 days of receipt of the NIF. In FY 2015, ICE worksite enforcement investigations resulted in the issuance of 513 final orders for a total of $18,040,977 in fines.

Question#:	14
Topic:	ICE Enforcement Tools
Hearing:	The Security of U.S. Visa Programs
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: Please describe enforcement actions available to ICE against legal representatives who file petitions or represent petitioners that are found to pose a national security risk or be fraudulent.

Response: U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations investigates and refers for prosecution attorneys and representatives who are believed to be knowingly participating in the filing of fraudulent immigration applications and petitions, including those that conceal the fact that the applicant or beneficiary may be a national security risk. The majority of the crimes committed by legal representatives are prosecuted at the federal level for violations of conspiracy (18 U.S.C. §371) as it relates to one or more of the following statutes: 18 U.S.C. § 1546 (visa fraud), 18 U.S.C. § 1001 (false statements), 18 U.S.C. § 1425 (naturalization fraud), and 8 U.S.C. § 1325(c) (marriage fraud). Other federal violations include 18 U.S.C. § 1956 (money laundering), as well as 18 U.S.C. § 1341 (mail fraud), and 18 U.S.C. § 1343 (wire fraud).

Leading the criminal enforcement of immigration fraud are ICE's 23 Document and Benefit Fraud Task Forces (DBFTFs). The ICE DBFTFs maximize resources, eliminate duplication of efforts, and promote the sharing of information between ICE and its law enforcement partners.

Allegations of fraud or misconduct on the part of legal representatives may also be referred to ICE's Ethics Office for potential referral to a state bar, the Disciplinary Counsel for the Executive Office for Immigration Review, or U.S. Citizenship and Immigration Services, depending on the forum in which the conduct occurred. As provided in 8 CFR part 1003, subpart G, the Executive Office for Immigration Review conducts proceedings to suspend or disbar attorneys and representatives from representing individuals before the immigration judges, the Board of Immigration Appeals, and U.S. Citizenship and Immigration Services for violations of the disciplinary rules.

Post-Hearing Questions for the Record
Submitted to the Honorable Sarah R. Saldaña
From Senator Rob Portman

"The Security of U.S. Visa Programs"

March 15, 2016

Question#:	15
Topic:	Consular Officer Training
Hearing:	The Security of U.S. Visa Programs
Primary:	Senator Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: According to the DHS Inspector General's submitted testimony, consular officers have expressed their frustration with not learning essential information to "enhance their skills" from their ICE partners embedded at embassy or consular facilities. What has been done to improve the quantity and quality of the training provided to consular officers from their ICE partners?

Are there any ways that this partnership can be improved?

Response: U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) currently has a strong relationship with U.S. Department of State (DOS) Consular Affairs and U.S. Customs and Border Protection (CBP) at both the headquarters and field levels. ICE and its partners collaborate closely on all Visa Security Program (VSP) matters including the training of consular officers.

ICE has recently taken several steps to provide training to our consular partners. ICE, DOS Consular Affairs, and CBP continually assess the VSP and explore areas of potential improvement, including in the area of training. As such, ICE is currently coordinating with the DOS Office of Screening, Analysis, and Coordination and the Office of Visa Services to update basic training curriculums that meet the needs of the consular employee as well as the intent of the Homeland Security Act and the January 2011 Memorandum of Understanding (MOU) between ICE and DOS (Consular Affairs and Diplomatic Security). This MOU between ICE and DOS defines the roles and responsibilities of VSP operations at Post and directs ICE Special Agents at Post to develop formal training and briefings for DOS consular officers on identified threats relating to the visa process. ICE will request input from both Consular Affairs personnel and ICE Special Agents overseas to ensure that training needs are being met both on programmatic and Post-specific levels while also addressing emerging local threats.

Question#:	15
Topic:	Consular Officer Training
Hearing:	The Security of U.S. Visa Programs
Primary:	Senator Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

In addition, ICE has recently selected an experienced law enforcement instructor to coordinate all VSP training. This training program manager will develop a specialized training module for ICE Special Agents assigned to the VSP to utilize when conducting standardized training sessions for DOS Consular Affairs personnel at Post. The training module will be disseminated to all Posts that include a Visa Security Unit.

Question: Does Congress need to do anything to greater facilitate the effectiveness of this partnership and information-sharing relationship?

Response: ICE enjoys a strong relationship with DOS Consular Affairs and CBP. ICE will continue to build upon this partnership both at Post and at the agencies' headquarters offices. Continued Congressional interest and support of current VSP operations and its expansion is appreciated.

Question#:	16
Topic:	Visa Security Issues
Hearing:	The Security of U.S. Visa Programs
Primary:	Senator Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: The Inspector General's report also highlighted that ICE agents were not documenting how much time they dedicated to visa security issues. In light of this revelation, have ICE agents begun tracking how much time they spend on visa security issues?

If yes, approximately how much time do ICE agents devote to visa security issues in comparison to other tasks?

Response: U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Agents have begun to track the time that they spend on visa security issues. The below chart shows the combined hours since Fiscal Year (FY) 2014 on visa security issues compared to all investigative hours from ICE HSI offices (domestic investigations, intelligence, and international).

Fiscal Year	All Investigative Hours	Total Visa Security and Hours*	Visa Security Hours as a Percent of all Investigative Hours
FY 2014	12,275,815	288,599	2.35%
FY 2015	11,761,856	295,774	2.51%

- Visa Security hours are defined by ICE as those investigative hours worked on visa security operations, the Visa Security Program, the Student Exchange Visitor Program, outreach of same, as well as school fraud that facilitates visa fraud. It must be noted that ICE does not investigate a single mission set; this percentage fits into a larger coordinated investigative mission supporting national and border security.

Question#:	17
Topic:	Timely and Accurate SEVP Information
Hearing:	The Security of U.S. Visa Programs
Primary:	Senator Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: You testified at the March 15 hearing, as well as your submitted testimony indicates, that ICE uses SEVIS to screen for overstays. Further, colleges and universities communicate with ICE through SEVIS regarding the status of students and exchange visitors.

How timely is reporting from the 8,000 universities and colleges who have students and exchange visitors enrolled at their institutions?

Response: Under the regulations that govern the Student and Exchange Visitor Program (SEVP), there are numerous timelines for submission of information. The Student and Exchange Visitor Information System (SEVIS), the database that stores information on schools and students, has a number of automatic actions that occur if a school has not taken action in an appropriate amount of time. For example, if a school does not indicate that a student has enrolled within the required amount of time, SEVIS automatically terminates that student.

Question: How accurate is the information provided by the universities and colleges?

Response: SEVP has an ongoing initiative that regularly validates information in the system and flags information in a school or student record that does not appear to be accurate, such as someone underage enrolled in a doctorate program. Each inaccuracy discovered is examined to determine whether SEVP should simply request that the school update the information, or whether the inaccuracy may be part of a larger pattern of noncompliance warranting further investigation. SEVP combines this examination with risk analysis criteria to determine which schools and students require further review.

Question#:	18
Topic:	Visa Waiver Program Overstays Re-entry
Hearing:	The Security of U.S. Visa Programs
Primary:	Senator Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: Another database used to find overstays is the CTCEU's Visa Waiver Enforcement Program. Entrants via the United States' Visa Waiver Program may stay in country for only ninety days before being designated an overstay. If someone overstays and is subsequently found and removed, is he or she able to re-enter the U.S. under the Visa Waiver Program?

Response: One of the requirements for eligible travel under the Visa Waiver Program (VWP) stipulates that the traveler must have complied with the conditions of any previous admissions. Therefore, an individual that has not complied with those conditions would be unable to subsequently travel under the VWP, and would have to apply for, and receive, a non-immigrant visa to travel to the United States on his/her next visit to the United States.

Question: Will this removal be counted as derogatory when he or she applies for a subsequent re-entry?

Response: The individual's removal from the United States would be reported to the State Department and recorded in the IDENT system. When that individual's fingerprints and name checks are queried as part of the visa process, this information would be available to the Consular officer who would interview that applicant. The reason for the individual's removal, and the reason the applicant is seeking a visa for a subsequent visit, are both considerations in determining their eligibility for a non-immigrant visa.

Post-Hearing Questions for the Record
Submitted to the Honorable John Roth
From Senator Rob Portman

"The Security of U.S. Visa Programs"

March 15, 2016

USCIS and ELIS

1. Your submitted testimony and verbal testimony at the March 15 hearing have outlined the risks associated with USCIS' use of a paper-based file system. You also detailed USCIS' troubles with transferring to an electronic system. What has been the single greatest impediment to the creation, adoption, and implementation of an electronic-based system?

Answer: The greatest impediment to the implementation of the electronic immigration (ELIS) system is longstanding deficiencies in USCIS Office of Transformation's program management practices. The lack of progress and system performance problems we reported in our March 2016 report, "USCIS Automation of Immigration Benefits Processing Remains Ineffective" are the same program deficiencies we previously disclosed in five prior reports concerning USCIS' attempts to transform its antiquated, paper-based processes. Above all, Transformation program management has failed to effectively plan, provide consistent program direction, include stakeholders in system development activities, and address technical end-user concerns. There has been a lot of *activity* over the years, but minimal *productivity* towards accomplishing the end objective of automating about 90 benefits processes—all at a sunk cost of $1.2 billion to date, and an anticipated total program cost of $3.1 billion by 2033. USCIS' ability to execute this program using its own funds derived from benefits processing fees has contributed to the continued waste and inefficiency.

   a. Is there anything that Congress should do accelerate the creation, adoption, and implementation of a system?

      Answer: As discussed in our March 2016 report and the accompanying transmittal letter, USCIS has resisted our repeated audit oversight efforts and findings. Congressional oversight could help improve management accountability and efforts to accomplish the automation program. Routine reporting to Congress would increase visibility and oversight, help identify and ensure mitigation of risks on an ongoing basis, and help avoid further delays and continued cost overruns in USCIS Transformation program performance. Specifically, the Congress could help spur USCIS action to implement our March 2016 report recommendations.

   b. Is/are the impediment(s) internal or external to USCIS?

Answer: The impediments, as described above, are all internal to USCIS. Our four report recommendations outlined above were issued specifically to address these program management deficiencies. However, as discussed in the report, USCIS disagreed with the recommendations regarding the need for improved stakeholder communication and technical end-user support. Both of these issues have existed since the first ELIS release in 2012.

Investor Visa Program

2. Regarding the GAO and previous OIG audits, do you believe legislation clarifying the requirements for the EB-5 program would be helpful to USCIS in administrating the program?

Answer: Clarity and stronger legal authority would help USCIS better administer the program. As we identified in our audit, the laws governing EB-5's regional center program are not clear about USCIS' authority to deny or terminate regional centers based on fraud or national security concerns. Specifically, the *Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act, 1993* only describe requirements for approving a regional center that submits a "general proposal for the promotion of economic growth." Under the Immigration and Nationality Act (INA) USCIS can deny an immigration benefit or visa to those who are a national security concern, but USCIS does not interpret the INA as applying to this situation because regional centers are pooling funds from investors — not seeking an immigration benefit or visa. USCIS has not developed regulations to deny participation in the EB-5 program when regional center principals are connected with questionable activities that may harm national security.

We believe USCIS could better manage the program if, as we recommended in our report, it:

- Updated and clarified Federal regulations to allow it to deny or terminate EB-5 regional center participants in any phase of the process when known connections to national security and/or fraud risks are identified without compromising any ongoing or potential investigation;
- made explicit that fraud and national security concerns can cause revocation of regional center status (under 8 CFR § 205.2);
- is given the authority to verify that the foreign funds are invested in companies that create U.S. jobs; and
- applies requirements for the EB-5 regional center program consistently to all participants.

USCIS has sought a revised rule for EB-5 regulations to clarify the requirements for establishing program eligibility, but two years after our recommendation the draft rule is still in development and does not yet include all policy decisions. According to USCIS, the draft rule will evolve as it goes through the Federal regulatory process. According to USCIS, it may change significantly

depending on input from key players in the process. We expect the revised rule to more clearly define the requirements for individual EB-5 petitions versus regional center-based applications and petitions.

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