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VISA REVOCATIONS II: STILL POROUS, SLOW TO FIX

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS AND INTERNATIONAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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CONTENTS

Page

Hearing held on July 13, 2004 1

Statement of:

Ford, Jess T., Director, International Affairs and Trade, U.S. General Accounting Office; Tony Edson, Managing Director, Office of Visa Services, U.S. Department of State; Donna A. Bucella, Director, Terrorist Screening Center, Federal Bureau of Investigation, U.S. Department of Justice; Robert M. Jacksta, Executive Director, Border Security and Facilitation, U.S. Customs and Border Protection, U.S. Department of Homeland Security; and Robert Schoch, Deputy Assistant Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security 12

Letters, statements, etc., submitted for the record by:

Bucella, Donna A., Director, Terrorist Screening Center, Federal Bureau of Investigation, U.S. Department of Justice, prepared statement of 35

Edson, Tony, Managing Director, Office of Visa Services, U.S. Department of State, followp question and response 93

Ford, Jess T., Director, International Affairs and Trade, U.S. General Accounting Office, prepared statement of 15

Jacksta, Robert M., Executive Director, Border Security and Facilitation, U.S. Customs and Border Protection, U.S. Department of Homeland Security, prepared statement of 45

Kucinich, Hon. Dennis J., a Representative in Congress from the State of Ohio, prepared statement of 6

Schoch, Robert, Deputy Assistant Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security:

Letters dated July 12, 2004 79

Prepared statement of 54

Shays, Hon. Christopher, a Representative in Congress from the State of Connecticut, prepared statement of 3

VISA REVOCATIONS II: STILL POROUS, SLOW TO FIX

TUESDAY, JULY 13, 2004

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS AND INTERNATIONAL RELATIONS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2247, Rayburn House Office Building, Hon. Christopher Shays (chairman of the subcommittee) presiding.

Present: Representatives Shays, Duncan, Schrock, Kucinich, Ruppersberger, and Watson.

Staff present: Lawrence Halloran, staff director and counsel; Thomas Costa, professional staff member; Robert A. Briggs, clerk; Jean Gosa, minority assistant clerk; and Andrew Su, minority professional staff member.

Mr. SHAYS. A quorum being present, the Subcommittee on National Security, Emerging Threats and International Relations hearing entitled Visa Revocations II: Still Porous, Slow to Fix, is called to order.

Entry by a non-citizen into the United States is a privilege, not a right. For a variety of reasons, a request for a visa may be denied. If those reasons arise only after a visa is issued, it can be revoked. The discretionary process of visa revocation is an important tool used by the Departments of State and Homeland Security, DHS, to protect our borders.

But when a visa is revoked after the alien has arrived here, what happens? Thirteen months ago, at a hearing on visa revocation as a counter-terrorism tool, the General Accounting office, GAO, described a process riddled with flawed communications within and between agencies. Poor coordination and haphazard followup meant suspected terrorists who entered the United States were not being tracked or removed. Parallel inconsistent data systems treated visa revocation actions differently, creating confusion about the number, as well as the status of aliens no longer welcome here.

We were assured the problems would be fixed. We were told new procedures were being implemented to share visa revocation information quickly and effectively. We were assured the language of the visa revocation instrument would be reviewed to close the apparent loophole making the revocation effective only after the alien left the United States.

We asked GAO to audit compliance with those commitments. More than a year later, GAO reports some progress in strengthen-

ing revocation processes, but finds continual delays and disconnects plaguing the system. Information about visa revocations based on terrorism concerns can still take weeks or months to appear on watch lists used at the border.

DHS may not investigate some aliens who enter or remain in the United States on a revoked visa. Additionally, discussions of a regulatory change to permit removal of an alien holding a revoked visa seem stuck in a legalistic and bureaucratic quagmire.

Border security against terrorists depends on multiple layers of protection. One of those layers, the visa revocation process, remains partially blind and needlessly porous to incursions by individuals who might pose a grave risk to our security. We continue to look for a far sharper use of the visa revocation tool to turn away, or if necessary, remove anyone intent on abusing the privilege of visiting our shores.

We know all our witnesses share that goal, don't have any doubt about that, and we look forward to their testimony.

[The prepared statement of Hon. Christopher Shays follows:]

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Statement of Rep. Christopher Shays
July 13, 2004

Entry by a non-citizen into the United States is a privilege, not a right. For a variety of reasons, a request for a visa may be denied. If those reasons arise only after a visa is issued, it can be revoked. The discretionary process of visa revocation is an important tool used by the Departments of State and Homeland Security (DHS) to protect our borders.

But when a visa is revoked after the alien has arrived here, what happens?

Thirteen months ago, at a hearing on visa revocation as a counterterrorism tool, the General Accounting Office (GAO) described a process riddled with flawed communications within and between agencies. Poor coordination and haphazard follow up meant suspected terrorists who entered the United States were not being tracked or removed. Parallel, inconsistent data systems treated visa revocation actions differently, creating confusion about the number as well as the status of aliens no longer welcome here.

We were assured the problems would be fixed. We were told new procedures were being implemented to share visa revocation information quickly and effectively. We were assured the language of the visa revocation instrument would be reviewed to close the apparent loophole making the revocation effective only after the alien left the United States. We asked GAO to audit compliance with those commitments.

More than a year later, GAO reports some progress strengthening revocation processes, but finds continuing delays and disconnects plaguing the system. Information about visa revocations based on terrorism concerns can still take weeks or months to appear on watch lists used at the border. DHS may not investigate some aliens who entered or remain in the United States on a revoked visa. Discussions of a regulatory change to permit removal of an alien holding a revoked visa seem stuck in a legalistic and bureaucratic quagmire.

Border security against terrorists depends upon multiple layers of protection. One of those layers, the visa revocation process, remains partially blind and needlessly porous to incursions by individuals who might pose a grave risk to our security. We continue to look for far sharper use of the visa revocation tool to turn away, or if necessary remove, anyone intent on abusing the privilege of visiting our shores.

We know all our witnesses share that goal, and we look forward to their testimony.

Mr. SHAYS. At this time the Chair would recognize Mr. Kucinich and ask if he has a statement.

Mr. KUCINICH. Yes, thank you very much, Mr. Chairman. And thank you to the witnesses.

It's disappointing that are holding another hearing on this matter. Last June when the subcommittee held a hearing on visa revocation problems, we were told by GAO that anywhere from 100 to 200 U.S. aliens, who we suspected terrorists, could be freely entering and moving around inside our country. Yet in many instances, we could not take any actions to investigate or even locate these individuals.

How could this be the case? Once again, agencies in the U.S. intelligence community did not talk to one another or even share information about suspected terrorists with each other. There were different lists of suspected terrorists, different lists of immigrants who had their visas revoked, even different lists on which all of these people were still in the country.

The subcommittee was told that the problem would be fixed, that better communication between the State, Homeland Security and the FBI would resolve these problems. We also expected that a regulatory solution could be worked out by those agencies so that suspected terrorists could be immediately deported from the United States, even if the terms of their entry visa had not been violated.

Over a year has passed now, and the GAO tell us that many problems remain with our visa revocation process. While an informal process has been established now to notify intelligence screeners of individuals on a terrorist watch list, delays and communication problems persist. By the time a border inspector or immigration investigator begins to look for a suspect, weeks may have gone by.

I understand that GAO even found instances where it took 6 months or longer for State and DHS personnel to simply match the names of terrorists or suspected terrorists with individuals whose visas had been revoked. This is simply unacceptable. I don't know if any of these individuals are terrorists or not, but what I do know is it should not take 6 months or more to locate these persons.

So I would just like to submit the rest of the record for the record.

[The prepared statement of Hon. Dennis J. Kucinich follows:]

Statement of Rep. Dennis J. Kucinich
Ranking Minority Member
House Subcommittee on National Security, Emerging Threats, and International Relations

Hearing on "Visa Revocations II: Still Porous, Slow to Fix"

July 13, 2004

Good morning and thank you to all of the witnesses who are testifying here today.

It is disappointing to me that we are holding another hearing on this matter. Last June, this Subcommittee held a hearing on visa revocation problems. GAO told us that anywhere from 100-200 U.S. aliens, who were suspected terrorists, could be freely entering and moving around inside our country. Yet, in many instances, we could not take any actions to investigate or even locate these individuals. How could this be the case? Once again, agencies comprising the U.S. intelligence community did not talk to one another, or even share information about suspected terrorists with each other. There were different lists of suspected terrorists,

different lists of immigrants who had their visas revoked, even different lists on which of these people were still in the country.

This Subcommittee was told that the problem would be fixed, and that better communications between the State Department, Department of Homeland Security, and the FBI would resolve these problems. We also expected that a regulatory solution could be worked out by those agencies so that suspected terrorists could be immediately deported from the United States even if the terms of their entry visa had not been violated.

Over a year has passed now, and the GAO tells us that many problems remain with our visa revocation process. While an informal process has been established now to notify intelligence screeners of individuals on a terrorist "watch list," delays and communication problems persist. By the time a border inspector or immigration investigator begins to look for a suspect, weeks may have gone by. I understand that GAO even found instances

where it took six months or longer for State and DHS personnel to simply match the names of terrorists with names of individuals whose visas had been revoked. This is simply unacceptable to me. I don't know if any of these individuals are terrorists or not, but what I do know is that it should not take six months or more to locate these persons and find out.

Ironically, while there seems to be no hurry by this Administration to find these foreign nationals here on visas, this Administration and the Republican majority of this body has stridently pushed to strengthen the Patriot Act and harass its own citizens. Apparently, suspected terrorists are of no imminent danger to our nation's security, but the library books and emails of U.S. citizens are of concern. It seems to me that when it comes to taking a real stand against our nation's enemies, this Administration doesn't even know where to look.

Mr. Chairman, I too am frustrated at the lack of urgency this Administration has shown in fixing this visa revocation problem. We've given them a year to make changes, and they have not done so expediently. It may indeed be necessary for Congress to step in now and impose a legislative remedy.

Thank you, I yield back to the Chair.

Mr. SHAYS. I thank the gentleman.

At this time, the Chair would recognize John Duncan, the gentleman from Tennessee.

Mr. DUNCAN. Thank you very much, Mr. Chairman, for calling this important hearing. I know just a week and a half ago, the Washington Times had a major story that said suspected terrorists are not kicked out of the United States after their visas are revoked, even though Congress last year asked the Department of Homeland Security to fix a legal loophole that has allowed more than 100 people with links to terrorism to skip deportation.

One of our first witnesses sums up this situation and says that we have backlogs and long delays in screening names of terrorists against the State Department's data base. Current visa holders and delays and backlogs in transmitting recommendations to revoke individual visas, delays and backlogs in revoking individual visas after receiving a recommendation to do so, delays in requesting that field offices investigate individuals with visas revoked on terrorism grounds who may be in the country. This is a very serious matter, and it's not a problem, a situation of money. Because we're giving all of these departments and agencies all kinds of money and big increases in appropriations to handle these types of problems.

I remember, the INS is not here with us today, but I remember after it was pointed out that 15 of the 19 terrorists involved in the September 11 incidents were here illegally that one of our colleagues, Congressman Gallegly from California, was on 60 Minutes. The INS had claimed that it was underfunded and he pointed out that we had given INS a 250 percent increase in funding over the previous 8 years, which was about 10 times the rate of inflation. So there's plenty of money around, but apparently, there are still some problems that need to be worked on. So I look forward to hearing these witnesses, and I appreciate your calling this hearing. Thank you very much.

Mr. SHAYS. I thank the gentleman. At this time, the Chair will recognize Mr. Ruppersberger.

Mr. RUPPERSBERGER. First thing, I want to thank you for bringing this issue back to the table. We know that GAO is going to be releasing a report today about where we need to go with respect to visa revocation process. I think it's about time we all stopped the blame game. We need to identify the issues that are there and then move forward.

I'm interested today in hearing where we need to go in the future and what we need to do to fix the problem to address the issue. Hopefully that's what the testimony will show today, so that we can start implementing. Because we all want the same thing, and that's our national security. Thank you.

Mr. SHAYS. I thank the gentleman.

At this time, the Chair would recognize the distinguished gentleman from Virginia.

Mr. SCHROCK. I thank you, Mr. Chairman. I too want to thank you for holding this hearing and my friend, Mr. Duncan, said it all, and he said it very well.

I read the notes last night from the meetings we've had in the past, and it seems like we're asking the same old questions. You

heard Mr. Ruppersberger say a report's coming out today on where we ought to go. There ought to be a report coming out today on where we've been and how this thing has been fixed. I think we're getting tired of waiting. This terrorism thing isn't going to get any better, and I'm hoping the witnesses today will come up with some concrete answers that will get us an idea of where we are, because it's clearly gone on entirely too long.

I guess if the chairman has to have these hearings every 2 or 3 months, he'll have to have them every 2 or 3 months. But this thing's got to get resolved and it's got to get answered. I appreciate you all coming today and certainly look forward to hearing what you have to say.

Thank you, Mr. Chairman.

Mr. SHAYS. I thank the gentleman.

At this time I'd ask unanimous consent that all members of the subcommittee be permitted to place an opening statement in the record, and that the record remain open for 3 days for that purpose. Without objection, so ordered.

I ask further unanimous consent that all witnesses be permitted to include their written statements in the record and without objection, so ordered.

At this time, we will announce our one panel, our only panel. I appreciate all of them coming and allowing us to crunch you into one table here. Mr. Jess T. Ford, Director of International Affairs and Trade Division, U.S. General Accounting Office; Mr. Tony Edson, who is the Managing Director, Office of Visa Services, U.S. Department of State; Ms. Donna A. Bucella, Director, Terrorist Screening Center, Federal Bureau of Investigation, U.S. Department of Justice; Mr. Robert M. Jacksta, Executive Director, Border Security and Facilitation, Bureau of Customs and Border Protection, U.S. Department of Homeland Security; and Mr. Robert A. Schoch, Deputy Assistant Director, National Security Investigations, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security.

At this time, I would ask our witnesses to stand so I may administer the oath. Please raise your right hands.

[Witnesses sworn.]

Mr. SHAYS. Note for the record that all our witnesses have responded in the affirmative.

I think we'll go down the list as I called you. So I'll ask you, Mr. Ford, to put that mic in front of you, speak nice and loud.

STATEMENTS OF JESS T. FORD, DIRECTOR, INTERNATIONAL AFFAIRS AND TRADE, U.S. GENERAL ACCOUNTING OFFICE; TONY EDSON, MANAGING DIRECTOR, OFFICE OF VISA SERVICES, U.S. DEPARTMENT OF STATE; DONNA A. BUCELLA, DIRECTOR, TERRORIST SCREENING CENTER, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE; ROBERT M. JACKSTA, EXECUTIVE DIRECTOR, BORDER SECURITY AND FACILITATION, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY; AND ROBERT SCHOCH, DEPUTY ASSISTANT DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. FORD. Mr. Chairman, members of the subcommittee, I'm pleased to be here today to discuss the report that we are issuing today on the visa revocation process and the steps that the Department of State and Homeland Security and other Federal agencies have taken to improve the use of this process as an anti-terrorism tool.

In June 2003, we reported that agencies lacked written procedures to ensure that appropriate personnel are notified and take specific actions when the Department of State revokes visas on terrorism grounds. As a result, lookouts were not always posted. Other agencies were not always notified of visa revocations and there were potential investigative gaps on individuals with visas revoked based on terrorism concerns who were in the United States.

We recommended that the Secretary of Homeland Security, in conjunction with the Secretary of State and the Attorney General, develop specific policies and procedures for interagency visa revocation process to ensure that information is transmitted to the appropriate immigration and law enforcement agencies in a timely manner. We also recommended that they develop a specific policy on actions that immigration and law enforcement agencies should take to investigate and locate individuals who remain in the United States after their visas have been revoked.

At your request, we examined whether the weaknesses in the visa revocation process identified in June 2003 were being addressed. The Departments of State and Homeland Security took some actions in the summer of 2003 to address the weaknesses identified in our June 2003 report. State and the U.S. Customs and Border Protection Office, a component of DHS, developed procedures outlining their respective processes for handling visa revocations.

However, our analysis of visas revoked based on terrorism concerns from October through December 2003 revealed that weaknesses remained in the implementation of the visa revocation process, especially related to timely transmission of information among the Federal agencies. For instance, we found delays sometimes occurred in screening names of suspected terrorists against State Department data base for current visa holders.

We found delays in transmission of recommendations to revoke individual visas. We found some delays in the revoking of individual visas after receiving a recommendation to do so from the terrorist tracking center. We found delays in posting appropriate look-

outs used to alert border inspectors of the revocation. Also in notifying DHS of visa revocations.

And finally, we found that there were delays in investigating individuals with visas revoked on suspected terrorism grounds who may be in the country. For example, based on our sample, we found that it took over 2 months for immigration officials to initiate investigations on individuals identified. We also found that agencies involved in the visa revocation process had conflicting records on how many visas were revoked for terrorism concerns, and whether individuals who held these visas may be in the country.

Our review of visa revocations showed that DHS has located individuals in the country whose visas were revoked because they may be suspected or actual terrorists. DHS officials told us that some are still being investigated, three have been arrested on immigration charges and others have been cleared.

With respect to an alien already present in the United States, the Department of State's current visa revocation certificate makes the revocation effective only upon the alien's departure. Therefore, according to DH officials, if U.S. Immigration special agents locate an alien for whom State has issued a revoke certificate that states that the revocation is effective upon his departure, they would be unable to place the alien in removal proceedings based solely on the visa revocation.

State, DHS and Justice have been discussing how to resolve this issue for the past year. And State and DHS officials recently told us that they have reached informal agreements to take necessary actions on a case by case basis. Since we initiated our inquiry, State and DHS have taken additional actions to address the weaknesses we identified from our analysis. State and DHS believe these actions will avoid the delays that were experienced in the past. In April and May, State made significant revisions to its procedures and formalized its tracking system for visa revocation cases. Between January and May, DHS took steps to develop additional written procedures, improve the sharing of information on visa revocation cases, and ensure that immigration investigators were aware of individuals whose visas were revoked who may still be in the country.

Finally, State and DHS began discussing how to address the legal and policy issues regarding the removal of individuals with revoked visas. In addition, the terrorist screening center and interagency organization established under the FBI in December 2003 recently took steps to improve the visa revocation process, including developing written standard operating procedures related to the screening of intelligence information and training additional staff to perform this function.

Nevertheless, additional measures are needed to further improve the process. The written policies and procedures often neither contain performance standards such as timeframes for completing individual steps in the process, nor do they reflect a fully coordinated approach in the process. As a consequence, we are recommending that the Secretary of Homeland Security, in conjunction with the Department of State, work jointly with other appropriate agencies to develop a written, Government-wide policy that clearly defines

the roles and responsibilities and sets performance standards for the agencies involved in the visa revocation process.

We also recommend that DHS and State address the outstanding legal and policy issues related to removing individuals with revoked visas from the country, and by October 1st of this year, provide Congress with a list of actions that they intend to take.

This concludes my opening statement and I would be happy to answer any questions you may have to ask.

[NOTE.—The General Accounting Office report entitled, "Border Security, Additional Actions Needed to Eliminate Weaknesses in the Visa Revocation Process," may be found in subcommittee files.]

[The prepared statement of Mr. Ford follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, House of Representatives

For Release on Delivery
Expected at 10:00 a.m. EDT
Tuesday, July 13, 2004

BORDER SECURITY

Additional Actions Needed to Eliminate Weaknesses in the Visa Revocation Process

Statement of Jess T. Ford
Director, International Affairs and Trade

GAO-04-899T

July 13, 2004

GAO
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Highlights

Highlights of GAO-04-899T, a testimony before the Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, House of Representatives

BORDER SECURITY

Additional Actions Needed to Eliminate Weaknesses in the Visa Revocation Process

Why GAO Did This Study

The *National Strategy for Homeland Security* calls for preventing foreign terrorists from entering our country and using all legal means to identify; halt; and where appropriate, prosecute or bring immigration or other civil charges against terrorists in the United States. GAO reported in June 2003 that the visa revocation process needed to be strengthened as an antiterrorism tool and recommended that the Department of Homeland Security (DHS), in conjunction with the Departments of State (State) and Justice, develop specific policies and procedures to ensure that appropriate agencies are notified of revocations based on terrorism grounds and take proper actions. GAO examined whether weaknesses in the visa revocation process identified in our June 2003 report were addressed.

What GAO Recommends

To improve the visa revocation process as an antiterrorism tool, we recommend that the Secretaries of Homeland Security and State jointly (1) develop a written governmentwide policy that clearly defines agencies' roles and responsibilities and sets performance standards and (2) address outstanding legal and policy issues in this area or provide Congress with specific actions it could take to resolve them. DHS generally concurred with these recommendations. State agreed to consult with DHS regarding our recommendations.

ww.gao.gov/cgi-bin/getrpt?GAO-04-899T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Jess T. Ford at (202) 512-4128 or fordj@gao.gov.

What GAO Found

GAO's analysis shows that the Departments of State and Homeland Security took some actions in summer 2003 to address weaknesses in the visa revocation process that we identified in June 2003. However, GAO's review of visas revoked from October to December 2003, including a detailed review of a random sample of 35 cases, showed that weaknesses remained.

- Delays existed in matching names of suspected terrorists with names of visa holders and in forwarding necessary information to consular officials at State. In at least 3 of the 35 cases, it took State 6 months or longer to revoke visas after receiving a recommendation to do so.
- In 3 cases, State took a week or longer after deciding to revoke visas to post a lookout or notify DHS. Without these notifications, DHS may not know to investigate those individuals who may be in the country.
- In 10 cases, DHS either failed or took several months to notify immigration investigators that individuals with revoked visas may be in the country. It then took more than 2 months for immigration investigators to initiate field investigations of these individuals.

After GAO initiated its inquiry for this report in January 2004, additional actions were taken to improve the process. DHS and State believe these actions will help avoid the delays experienced in the past. In April and May, State revised its procedures and formalized its tracking system for visa revocation cases. In March, DHS developed new written procedures and acted to ensure that immigration investigators were aware of all individuals with revoked visas who may be in the country. State and DHS also took some steps to address legal and policy issues related to visa revocations. Further, in April, the Terrorist Screening Center (TSC), an interagency group organized under the Federal Bureau of Investigation, identified the visa revocation process as a potential homeland security vulnerability and developed an informal process for TSC to handle visa revocation cases. However, weaknesses remain. For example, State's and DHS's procedures are not fully coordinated and lack performance standards, such as specific time frames for completing each step of the process. Moreover, outstanding legal and policy issues continue to exist regarding removing individuals based solely on their visa revocation.

Points of Delay Observed in the Visa Revocation Process

Agency	Process	Weakness observed
• Department of State • Terrorist Screening Center	Step 1: Compile intelligence on suspected or actual terrorists	
• Department of State • Terrorist Screening Center	Step 2: Identify visa holders who may be suspected or actual terrorists	• Backlog • Delays
• Department of State	Step 3: Post appropriate lookouts	• Delays
• Department of State	Step 4: Revoke visa	• Delays
• Department of State	Step 5: Notify overseas post, DHS, and others of visa revocation	• Delays
• Department of Homeland Security	Step 6: Determine if alien may already be in the United States	• Delays
• Department of Homeland Security • Federal Bureau of Investigation	Step 7: If alien is in the country, locate, investigate, and (as appropriate), remove the person	• Delays

Source: GAO.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here to discuss the report[1] we are issuing today on the visa revocation process and the steps that the Departments of State (State) and Homeland Security (DHS) and other federal agencies have taken to improve the use of this process as an antiterrorism tool. In June 2003 we reported[2] that agencies lacked written procedures to ensure that appropriate personnel are notified and take specific actions when the Department of State revokes visas[3] on terrorism grounds.[4] As a result, lookouts were not always posted, other agencies were not always notified of visa revocations, and there were potential investigative gaps on individuals with visas revoked based on terrorism concerns who were in the United States. We recommended that the Secretary of Homeland Security, in conjunction with the Secretary of State and the Attorney General, develop specific policies and procedures for the interagency visa revocation process to ensure that information is transmitted to the appropriate immigration and law enforcement agencies in a timely manner. We also recommended that they develop a specific policy on actions that immigration and law enforcement agencies should take to investigate and locate individuals who remain in the United States after their visas are revoked.

[1]U.S. General Accounting Office, *Border Security: Additional Actions Needed to Eliminate Weaknesses in the Visa Revocation Process*, GAO-04-795 (Washington, D.C.: July 13, 2004).

[2]U.S. General Accounting Office, *Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process*, GAO-03-798 (Washington, D.C.: June 18, 2003).

[3]In this testimony, we use the term "visa" to refer to nonimmigrant visas only. The United States also grants visas to people who intend to immigrate to the United States. A visa is a travel document that allows a foreign visitor to present himself or herself at a port of entry for admission to the United States.

[4]The Department of State revokes a person's visa as a precautionary measure after it learns that person may be a suspected terrorist. The purpose of this revocation is to obtain additional information from the person to determine if the individual is the same person who is suspected of being a terrorist by requiring him or her to return to the consulate that issued the visa. According to State officials, this authority is an important and useful tool for more closely scrutinizing the individual as he or she reapplies for a new visa. State also revokes visas for reasons other than terrorism, such as alien smuggling, drug trafficking, and misrepresentation. State officials told us that visas revoked on terrorism grounds account for the vast majority of all visas revoked on national security grounds.

At your request, we examined whether weaknesses in the visa revocation process identified in our June 2003 report were addressed. To accomplish our objective, we obtained information on policies and procedures put in place to improve the visa revocation process; interviewed key State and DHS officials responsible for visa revocations; determined the steps taken to resolve legal and policy issues raised in our June 2003 report; and analyzed data on all visas revoked on terrorism grounds over a 3-month period,[5] including detailed information on a random sample of 35 cases selected from data provided by State in February 2004. We did not review activities by the Federal Bureau of Investigation (FBI) to investigate suspected terrorists. This testimony is based on a published report that was done in accordance with generally accepted government auditing standards.

Summary

The Departments of State and Homeland Security took some actions in the summer of 2003 to address the weaknesses identified in our June 2003 report. State and U.S. Customs and Border Protection (CBP), a component of DHS, developed procedures outlining their respective processes for handling visa revocations. However, our analysis of visas revoked based on terrorism concerns from October through December 2003 revealed that weaknesses remained in the implementation of the visa revocation process, especially relating to the timely transmission of information among federal agencies. For instance, we found that backlogs or long delays sometimes occurred in:

- screening names of terrorists against State's database of current visa holders,
- transmitting recommendations to revoke individual visas,
- revoking individual visas after receiving a recommendation to do so,

[5]Our review covered only nonimmigrant visas that State revoked on terrorism grounds from October 1, 2003, through December 31, 2003. In this testimony, when we refer to individuals whose visas have been revoked, we are referring to those individuals for whom the Department of State has issued a visa revocation certificate. According to the terms of the certificate, the revocation is effective immediately on the date the certificate is signed unless the alien is already in the United States, in which case the revocation becomes effective immediately upon the alien's departure from the United States.

- posting appropriate lookouts used to alert border inspectors of the revocation,
- notifying DHS of visa revocations, and
- requesting that field offices investigate individuals with visas revoked on terrorism grounds who may be in the country.

We also found that agencies involved in the visa revocation process had conflicting records of how many visas were revoked for terrorism concerns and whether individuals who held these visas may be in the country. In addition, officials from DHS's Customs and Border Protection could not document that they consistently notified immigration officials of individuals with revoked visas who were present in the United States. Our review of visa revocations shows that DHS has located individuals in the country whose visas were revoked because they may be suspected or actual terrorists. DHS officials told us that some are still being investigated, three have been arrested on immigration charges, and others have been cleared. With respect to an alien already present in the United States, the Department of State's current visa revocation certificate makes the revocation effective only upon the alien's departure. Therefore, according to DHS officials, if U.S. Immigration and Customs Enforcement (ICE) special agents locate an alien for whom State has issued a revocation certificate that states the revocation is effective upon his or her departure, ICE would be unable to place the alien in removal proceedings based solely on a visa revocation that had not yet taken place.[6]

After we initiated our inquiry for this report in January 2004, State and DHS took additional actions to address the weaknesses we identified through our analysis. State and DHS believe these actions will avoid delays experienced in the past. In April and May, State made significant revisions to its procedures and formalized its tracking system for visa revocation cases. Between January and May, DHS took steps to develop additional written procedures, improve the sharing of information on visa revocation cases, and ensure that immigration investigators are aware of individuals whose visas were revoked and who may be in the country. Finally, State and DHS began discussing how to address the legal and policy issues regarding the removal of individuals with revoked visas. In addition, the

[6]DHS could also attempt to remove these aliens based on the derogatory information that led State to revoke the individual's visa.

Terrorist Screening Center (TSC), an interagency organization established under the FBI in December 2003, recently took some steps to improve the visa revocation process, including developing written standard operating procedures related to the screening of intelligence information and training additional staff to perform this function. We did not fully assess the effectiveness of these actions because they were taken after the October to December 2003 time period that we reviewed. Nonetheless, additional measures are needed to further improve the process. The written policies and procedures often neither contain performance standards such as time frames for completing individual steps of the visa revocation process, nor do they reflect a fully coordinated approach to implementing the process. Further, State and DHS have not concluded their discussion of legal and policy issues related to removing individuals with revoked visas from the country.

In light of our past work and the weaknesses we identified through our review, we are recommending that the Secretaries of Homeland Security and State work jointly and with other appropriate agencies to develop a written, governmentwide policy that clearly defines roles and responsibilities and sets performance standards for the agencies involved in the visa revocation process. We also recommend that DHS and State address outstanding legal and policy issues related to removing individuals with revoked visas from the country or, by October 1, 2004, provide Congress with a list of specific actions that could help resolve them.

Background

Our nation's border security process involves multiple tools for addressing potential terrorist threats to the United States. These tools generally include (1) preventing potential terrorists from entering the country and (2) identifying, locating, and investigating potential terrorists already in the United States. One such tool is the visa revocation process, which involves multiple federal agencies including the Terrorist Screening Center and the Departments of State and Homeland Security. The visa revocation process typically begins with the development of derogatory information about individuals by various federal agencies. This information is then forwarded to TSC, which, along with State, identifies visa holders who may be suspected or actual terrorists. State then posts lookouts regarding the revocation for these individuals; revokes their visas; and notifies the overseas post that issued the visa, DHS, and other agencies. Based on the notification from State, DHS then determines if any of these individuals may be in the country. If so, DHS attempts to locate, investigate, and, as appropriate, remove them from the country.

Initial Actions Taken to Address Weaknesses Were Inadequate

Mr. Chairman, following our June 2003 report, State and DHS's U.S. Customs and Border Protection developed written policies outlining their respective processes for handling visa revocations. However, our analysis of subsequent visa revocations shows that weaknesses remained in the implementation of the visa revocation process.

Delays Occurred at Many Steps in the Visa Revocation Process

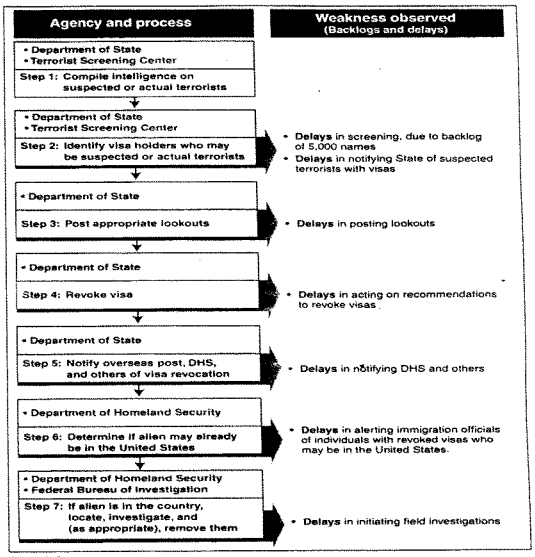
State's July 7, 2003, standard operating procedures outlined its internal process for handling visa revocations, including posting lookouts and notifying other agencies of the visa revocation. U.S. Customs and Border Protection's procedures developed following our June 2003 report explained the process for determining whether an individual with a revoked visa may be in the country and, if so, taking appropriate steps to notify investigators. Despite these initial efforts, our review of visas revoked on terrorism grounds from October through December 2003 showed that weaknesses remained in the visa revocation process, especially regarding timely transmission of information among federal agencies. As shown in figure 1, we found delays in agency efforts to:

- *Identify individuals whose visas should be revoked.* In August and September 2003, there was a backlog of approximately 5,000 names of suspected terrorists that had not been screened to identify any visa holders.
- *Transmit recommendations to consular officials to revoke certain individuals' visas.* Instead of sending the typical average of 2 to 6 recommendations to revoke per day, intelligence screeners waited until they had large batches of nearly 100 recommendations or more before sending them to consular officials at State.
- *Post lookouts to alert border inspectors of visa revocations.* Although State's standard operating procedures directed Consular Affairs officials to post lookouts regarding the revocation before finalizing it, we found that in 6 of the 35 cases we examined in detail, Consular Affairs did not do so until after the revocation was finalized.
- *Revoke individual visas.* State officials told us it should take no more than a week to revoke an individual's visa after receiving a recommendation to do so. In 6 cases, we had sufficient information to determine how long it took State to revoke a visa after receiving a recommendation to do so. In 3 of these cases, it took State at least 6 months and, in one case, as long as 17 months to revoke the individual's visa.

- *Notify DHS of visa revocations.* Of the 35 cases we reviewed in detail, DHS received notification from State the same day a revocation was finalized in 9 cases; in 1 to 6 days in 23 cases; and in 7 days or longer in 3 cases. It is particularly important that these notifications are timely when the alien may already be in the country so that DHS can locate and investigate him or her.

- *Investigate individuals with visas revoked on terrorism grounds who may be in the country.* After receiving notification from State, DHS's U.S. Immigration and Customs Enforcement (ICE) determined that field offices should investigate 8 of the 35 cases we examined in detail. In all 8 of these cases, ICE waited more than 2 months to initiate field investigations.

Figure 1: Points of Delay in the Visa Revocation Process

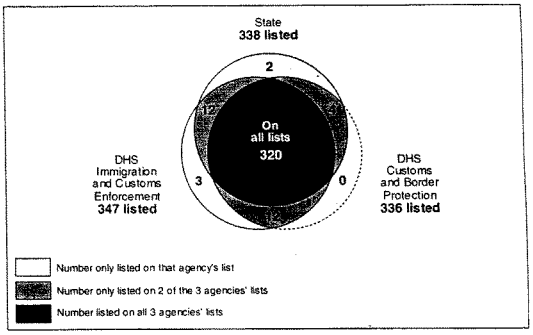


Source: GAO.

Conflicting Data among Agencies

We also found that for the October to December 2003 time period, State, CBP, and ICE reported different numbers of revocations based on terrorism concerns. As shown in figure 2, State listed 338; ICE, 347; and CBP, 336. We found that only 320 names were on all three lists and that some lists contained names that were not on either of the other lists. Instances where a name did not appear on all three lists show a potential breakdown in the visa revocation process and raise concern because DHS may not have been able to take timely action to determine if these individuals were in the country and, if so, to locate and investigate them.

Figure 2: Inconsistencies among Agencies on Number of Visas Revoked from October through December 2003



Source: Conceptual drawing of GAO's analysis of State and Department of Homeland Security data.

Our detailed review of 35 visa revocations on terrorism grounds also showed that CBP's[7] and ICE's records conflicted on whether certain individuals may have been in the country. In 3 of the 35 cases, CBP and ICE disagreed about whether an individual might have been in the country at the time of visa revocation and whether he or she might still be in the country. In 2 of the cases, CBP did not believe the individual was in the country and, therefore, did not refer the cases to ICE for investigation. However, ICE special agents determined that both of these individuals were and still are in the country—one is awaiting adjudication of a political asylum claim, and the other has a pending application to become

[7]CBP's data come from the Nonimmigrant Information System (NIIS), which does not have complete arrival and departure records for all non-U.S. citizens. NIIS records arrivals and departures of foreign citizens through the collection of I-94 forms. Some aliens are required to fill out and turn in these forms to inspectors at air and sea ports of entry as well as at land borders. (Canadians and U.S. permanent residents are not required to fill out I-94 forms when they enter the United States.) NIIS does not have departure data for aliens if they fail to turn in the bottom portion of their I-94 when they depart.

a lawful permanent resident of the United States.[8] In another instance, CBP believed an individual was in the country when his visa was revoked and subsequently notified ICE of the need to locate and investigate him. However, ICE performed its own search of immigration records based on State's notification and concluded that the individual was not in the country. Therefore, it did not investigate him. According to CBP data, this individual has been in the country for more than a year.

Lapses in Notification, Provision of Derogatory Information

We further found that although Customs and Border Protection officials are supposed to immediately notify Immigration and Customs Enforcement of individuals with revoked visas who may be in the country, CBP could not document that it had notified ICE promptly or, in several cases, that it notified ICE at all. According to CBP data on the 35 cases in our sample, 10 aliens might have been in the United States at the time of their revocation. In 3 of these cases, CBP records indicate that ICE was never notified; in the other 7 cases, CBP notified ICE but could not document that the notification occurred until at least 3 months after the revocation.

In addition, Immigration and Customs Enforcement officials stated that they often received no derogatory information showing that individuals whose visas State had revoked on terrorism concerns may pose a national security threat. Without this information, ICE may expend resources conducting investigations on individuals who they believe may pose little or no threat to national security. According to ICE officials, the growing number of visa revocation cases based on terrorism concerns places a significant strain on their investigative resources, forcing ICE to pull agents off active investigations of known national security threats to investigate visa revocation cases.

State officials told us that the vast majority of visa revocations on terrorism grounds are based on derogatory information in the TIPOFF database. However, in May 2004, ICE officials told us that they were not aware that most of State's visa revocations on terrorism grounds are based on information in TIPOFF. According to TSC, of the 35 cases we examined in detail, 32 of the individuals appeared in TIPOFF. In June 2004, ICE

[8]On June 8, 2004, ICE investigators told us that they have no specific derogatory information that would indicate that any of the individuals remaining in the United States currently represent a threat to national security.

informed us that its records check located only 6 of the 35 individuals from our sample in TIPOFF. Also in June, State officials told us they recently began providing the TIPOFF record number to DHS for each individual whose revocation was based on derogatory information in TIPOFF.

Majority of ICE Investigations Concluded, but Legal and Policy Issues Regarding Removing Aliens Remain

Separate from our detailed review of 35 visa revocation cases, we obtained information on the more than 330 visa revocations on terrorism grounds from October through December 2003. According to ICE records, ICE identified 64 individuals whose visas were revoked on national security grounds between October and December 2003 and may be in the country, initiated investigations of all these individuals, and concluded a majority of these investigations. Data provided by ICE show that these investigations resulted in confirming departure of some aliens, clearing others, and arresting 3 on administrative immigration charges.[9] On June 8, 2004, ICE investigators told us that they have no specific derogatory information that would indicate that any of the individuals remaining in the United States currently represent a threat to national security. We also noted several cases where the visa revocation process prevented individuals with visas revoked based on terrorism concerns from entering the United States or helped remove them from the United States.

While ICE has investigated individuals with visas revoked on terrorism grounds, if ICE special agents told us that if they locate an alien in the United States for whom State has issued a revocation certificate using its current wording, ICE would be unable to remove the individual based solely on the visa revocation. State's current visa revocation certificate states that the revocation shall become effective immediately on the date the certificate is signed unless the alien is already in the United States, in which case the revocation will become effective immediately upon the alien's departure.

[9]ICE provided us a breakdown of results of the 64 investigations, but we have not included these data because DHS classified them as law enforcement sensitive.

Actions Have Been Taken Recently to Address Identified Weaknesses

Since we initiated our inquiry in January 2004, State and DHS have taken additional steps to address identified weaknesses in the visa revocation process. These include revising procedures, reviewing past visa revocation cases, and taking steps to address legal and policy issues. In addition, in mid-April, TSC identified visa revocations as a potential homeland security vulnerability and developed an informal process for coordinating actions and sharing information on visa revocations. However, we identified some weaknesses that still need to be addressed.

State Revised Standard Operation Procedures and Formalized Its Revocation Tracking System

In the course of responding to our inquiries, State's Visa Office discovered that its standard operating procedures had not always been followed correctly. As a result, in April and May, State made significant revisions to its procedures to provide more explicit instructions for each step in the process.[10] Also in April, a State official told us that the Visa Office planned to formalize its previously informal system for tracking visa revocations to make it a definitive reference point for information about all visa revocations.

DHS Acted to Improve Policies and Information Sharing, Review Visa Revocations, and Resolve Legal and Policy Issues

DHS also took several actions following the initiation of our inquiry. In January, ICE assigned a special agent to CBP to assist with information exchange and coordination of visa revocation issues and in March issued written standard operating procedures for visa revocation investigations. In May, CBP reviewed all visa revocations in its lookout database to ensure that all appropriate notifications had been sent to ICE and sent additional notifications. This review identified 656 individuals with revoked visas who may be in the country. We reviewed these data and determined that 34 of these individuals' visas were revoked on terrorism grounds during the period of our review.

In February 2004, DHS officials also told us that they were considering a regulation relating to visa revocations that could allow the removal of individuals from the United States because their visas have been revoked by State. In June 2004, DHS officials told us that they were still considering this regulation and were coordinating with State and the Department of Justice. Also in June 2004, DHS officials told us that they had reached an informal understanding with State that, on a case-by-case basis, DHS may

[10]State officials told us that, in light of the evolving relationships among the agencies involved in the visa revocation process, they revise their procedures as necessary.

ask that State change its revocation certificate related to an admitted alien to make the revocation effective retroactively to the date of issuance of the visa, and State will consider such a request in consultation with DHS and the Department of Justice. State and DHS further agreed that should the wording of the revocation certificate be changed, it would not be changed in all instances, but only on a case-by-case basis. According to DHS officials, if State changed the wording of the certificate to make the revocation effective retroactively to the date of issuance of the visa, the government would no longer be effectively barred from litigating the issue. Nonetheless, revocation of a visa is not explicitly a stated grounds for removal under the Immigration and Nationality Act.[11] Moreover, the issue of whether, under current statute and regulations, DHS would have the authority to initiate removal proceedings solely on the basis of a visa revocation has not been litigated and remains unresolved legally. As of June 2004, DHS did not have any specific time frame for completing discussions with State and other agencies regarding legal and policy issues relating to visa revocations.

TSC Developed Procedures, Trained Additional Staff, and Assessed the Visa Revocation Process

Since its formation in December 2003, TSC has taken actions to clarify its role, increase its capacity to handle visa revocation cases, and analyze the visa revocation process as an antiterrorism tool. Specifically, in March 2004, TSC developed written standard operating procedures outlining the process for screening intelligence information to identify visa holders who may be terrorists. TSC also recently began training additional staff to screen terrorism intelligence for matches with visa holders.[12] TSC officials told us that, in mid-April 2004, TSC identified the visa revocation process as a potential vulnerability to homeland security. As a result, it developed a process to enable the Center to coordinate the sharing of information on visa revocation cases without relying on formal notifications transmitted among the agencies.

Additional Actions Still Needed

While steps have been taken to improve the visa revocation process, which State and DHS believe will help avoid delays experienced in the past, additional actions are needed to further improve it. There is no governmentwide policy outlining roles and responsibilities for the visa

[11] 8 U.S.C. § 1101 et seq.

[12] Previously, the center had one full-time staff member dedicated to performing this function.

revocation process. Although CBP and ICE have written internal procedures related to their respective roles and responsibilities in the visa revocation process, DHS has still not developed an agencywide policy governing the process. The written procedures also often lack specific time frames for completing individual steps in the process. For instance, State's procedures lack guidance on how quickly Consular Affairs officials should act on recommendations from TSC to revoke individuals' visas, and ICE's written procedures do not specify a time frame for referring cases to field offices. In addition, State and DHS have not concluded their discussions on legal and policy issues related to removing individuals with revoked visas from the United States.

Mr. Chairman, in light of the weaknesses we identified in our most recent review of the visa revocation process as an antiterrorism tool, we are recommending that the Secretary of Homeland Security work jointly with the Secretary of State and other appropriate agencies to take the following two actions:

- Develop a written, governmentwide policy that clearly defines the roles and responsibilities of the agencies involved in the visa revocation process, including the Terrorist Screening Center. This policy should include directions for sharing information and tracking visa revocation cases throughout the interagency visa revocation process. It should incorporate performance standards (e.g., time frames for completing each step in the process) and periodic interagency assessments to determine whether information is being shared among the agencies involved, appropriate follow-up action is being taken, and data differences, if they occur, are being reconciled; and

- Address outstanding legal and policy issues regarding the status of aliens with visas revoked on national security grounds who are in the United States at the time of the revocation. If these issues cannot be addressed, the executive branch should, by October 1, 2004, provide Congress with a list of specific actions (including any potential legislative changes) that could help resolve them.

In commenting on a draft of our report, the Department of Homeland Security said it generally concurred with the report and its recommendations. It added that our identification of areas where improvements are needed will contribute to ongoing efforts to strengthen the visa revocation process. The Department of State indicated that it believes that its handling of the revocation process overall has been

excellent and has improved over time. State indicated that it would consult with DHS regarding implementation of our recommendations.

Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions you or other Members of the Subcommittee may have at this time.

GAO Contacts and Staff Acknowledgments

For further information on this testimony, please call Jess Ford or John Brummet at (202) 512-4128. Individuals making key contributions to this testimony include Jason Bair, Elizabeth Singer, Mary Moutsos, Janey Cohen, and Etana Finkler.

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Mr. SHAYS. Thank you, Mr. Ford.

Mr. Edson.

Mr. EDSON. Good morning, Mr. Chairman, members of the , subcommittee. I appreciate the opportunity to testify today on the subject of visa revocations, where they fit into the overall strategy of strengthening the visa process as an anti-terrorism tool, and the improvements we've made in the revocation process.

The use of the revocation authority is one element in a multi-layered, interlocking system of border security measures. We act when relevant derogatory information becomes available after a visa has been issued to an applicant, who at the time of visa issuance appeared eligible for the visa. Since the attacks of September 11, we have used this authority to revoke more than 1,250 visa based on information suggesting possible terrorist activities or links.

When the terrorist screening center receives derogatory information about an alien, the subject's name is immediately entered into the Department of State's consular lookout and support system CLASS, or name check system, into that data base and into the Department of Homeland Security's IBIS data base, prior to determining whether the subject has been issued a visa. This safeguard prevents further visa issuance or admission into the United States. The consolidated consular data base of more than 70 million visa records is then checked to determine if a visa has ever been issued to the individual in question.

If it appears that a visa has been issued to a terrorist suspect, the TSC forwards the derogatory information to the visa office at the Department of State, which reviews the information to ensure that it pertains to the individual who was issued a visa. When we determine there is sufficient evidence that links the visa holder to the derogatory information, the visa is formally revoked.

In most cases, the revocation has been prudential, rather than based on a definitive finding that the alien is inadmissible. This is in part because at the time of revocation, we're often unable to conclude with certainty that the visa holder is the same as the subject of the derogatory information.

Nevertheless, given the seriousness, given the terrorism related nature of the information that may relate to the visa holder, we deem it prudent to revoke the visa promptly after the information becomes available and to rely on the visa application process to resolve identity and other questions at a later time, in case the visa holder reapplies.

We work closely with our partners in the revocation process to make sure that the fact that a visa has been revoked is disseminated to those in other agencies who need to carry out followup action. However, it is important to note that long before this communication and coordination takes place, safeguards have been put in place to prevent the traveler from entering the United States. Visa revocation usually takes effect upon the departure of the visa holder from the United States. This approach was agreed to a number of years ago among the Department of Justice, the Immigration and Naturalization Service and State to minimize the likelihood that persons in the United States would be permitted to block the revocation process in our courts.

Since September 11, we have worked closely with the Department of Homeland Security to evaluate when and under what circumstances it might be appropriate and helpful to DHS for the Department of State to make its revocations effective immediately or even retroactively for persons physically present in the United States.

We have agreed that revoking visas effective immediately when an alien is at a port of entry allows DHS to deny entry on the grounds that the alien does not have a valid visa. We have also agreed that revoking a visa retroactively to the time of issuance could be helpful to DHS in the case of an alien in the United States by allowing it to place the alien in removal proceedings on the grounds that he entered without a valid visa.

Because these scenarios raise a number of legal issues, however, we have agreed that States should revoke in this way only on a case by case basis, at the request of DHS. DHS will make such requests when it has confirmed that the presence of the alien in the United States may pose a significant security risk. We are also working with DHS on its efforts to draft a regulation that would facilitate DHS in appropriate cases removing from the United State an alien who has been admitted by whose visa has been revoked.

Visa revocations are an important tool in maintaining the security of our borders and our Nation. We and our colleagues in the Department of Homeland Security are committed to furthering our mutual efforts to keep persons who would do us harm out of the country and to taking every step in our power to safeguard our borders.

Thank you.

Mr. SHAYS. Thank you very much.

Ms. Bucella.

Ms. BUCELLA. Good morning, Chairman Shays, members of the subcommittee. Thank you for the opportunity to discuss the missions and objectives of the Terrorist Screening Center as they relate to the visa revocation process.

First, I'd like to say a few words about our overall mission. Homeland Security Presidential Directive 6 ordered the creation of the TSC, and our operations began on December 1, 2003. Our mission is to consolidate the U.S. Government's approach to screening for known and suspected terrorists, and to provide for the appropriate and lawful use of terrorist information in the screening process.

A year ago, this subcommittee held a hearing on visa revocation. Chairman Shays noted that the Departments of State, Homeland Security and Justice bring disparate practices, informal customs, and clashing cultures to what should be a seamless process. Since our inception, the Terrorist Screening Center has facilitated communications and coordination among these agencies through both physical and automated processes.

The TSC is a dynamic, multi-agency center, including participants from the Department of Justice, Homeland Security, State, and Treasury. Our consolidated data base, the Terrorist Screening Data Base, contains information on known or suspected terrorists, complied by the intelligence community, the FBI, DHS and the State Department. Names and identifying information from our

data base are accessed daily by 18,000 agencies with National Crime Information Center, NCIC, terminals and by State Department consular officials.

Because our data can be accessed by any police officer in real time, we have dramatically improved one aspect of the visa revocation process: locating the subject. If a police officer stops a vehicle for speeding, he will run the name of the driver and often the passengers through an NCIC check. If one of the vehicle's occupants is shown to have a terrorist related revoked visa, the TSC assists in the identification process and transfers the officer to the FBI's counter-terrorism watch for an operational response from the Joint Terrorism Task Force.

How is this different from a year ago? Last year, the officers simply issued a speeding ticket without knowing that the driver or passengers might be known or suspected terrorists with revoked visas. In fact, the encounter would have neither been communicated to the intelligence community nor coordinated with Federal law enforcement.

Another aspect of visa revocations is the coordination among agencies. State Department assignees now screen visa applications and revocations at our center, a function that was earlier performed at the State Department. They have daily interaction with DHS and DOJ personnel. This interaction has paid off recently when a suspected terrorist arrived on an international flight and went through routine screening. His name was shown in our data base and the TSC was contacted for further identifying information.

This particular case was coordinated by DHS and the State Department personnel in real time, physically located at our center, allowing the visa to be immediately revoked and for the individuals to be denied entry into the United States. At our center, the TSC State Department assignees alert their consular affairs counterparts to review specific cases for visa revocation.

The TSC, an inter-agency entity, is well positioned to assist communications between agencies. In May, we chaired a meeting of the U.S. Government agencies involved in the visa revocation process to discuss ways to better coordinate the Government's response after the State revokes a visa. Although we began our operations in December, by March we had consolidated 10 of the 12 data bases listed in the April 2003 GAO report. That data base, through the NCIC, is available to appropriate screeners, including local law enforcement, border inspectors, consular officials and others with appropriate access.

We participate in the visa revocation process by facilitating communications and coordination among agencies and consolidating terrorist screening information into a single, accessible data base. I appreciate the subcommittee's interest in our activities, and I look forward to answering any questions that you may have regarding TSC's operations.

Thank you.

[The prepared statement of Ms. Bucella follows:]

STATEMENT OF DONNA A. BUCELLA

DIRECTOR, TERRORIST SCREENING CENTER,

BEFORE THE HOUSE COMMITTEE ON GOVERNMENT REFORM,

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS

VISA REVOCATIONS II: STILL POROUS, SLOW TO FIX

July 13, 2004

Good morning Chairman Shays and members of the Subcommittee. Thank you for the opportunity to discuss the missions and objectives of the Terrorist Screening Center (TSC) as they relate to the visa revocation process.

Homeland Security Presidential Directive 6 (HSPD-6), issued on September 16, 2003, ordered the creation of the TSC, directing its operations to begin on December 1, 2003. The TSC was created to consolidate the United States Government's approach to screening for known and suspected terrorists and to provide for the appropriate and lawful use of terrorist information in this process. The TSC ensures that government investigators, screeners, federal agents, and state and local law enforcement officers have ready access to the information and expertise they need in order to respond quickly when a known or suspected terrorist is encountered here in the United States, at our borders and at our embassies. Today, I will tell you about our daily operations as they relate to the U.S. Department of State and the TSC's role in the visa revocation process. I will

provide as much information as I can in this open forum, however, I will be happy to provide additional, classified details in a closed setting at your request.

TSC Operations

The TSC is a multi-agency center, including participants from the FBI, Departments of Justice, Homeland Security, State, and Treasury. Being a diverse center manned by personnel from all of those agencies, we coordinate terrorist screening efforts across the full spectrum of federal, state and local government agencies, and share information pursuant to the applicable legal framework.

Since December 1, 2003, TSC has been providing key resources for screeners and law enforcement personnel. These include: (1) a single coordination point for terrorist screening data; (2) a 24/7 call center for encounter identification assistance; (3) access to a coordinated law enforcement response; (4) a formal process for tracking encounters; (5) feedback to the appropriate entities; and (6) a process to address misidentification issues.

The TSC has consolidated the names of all known or suspected terrorists within the Terrorist Screening Database (TSDB). TSDB is fed from two primary sources; international terrorist (IT) information from the Terrorist Threat Integration Center (TTIC) and domestic terrorist (DT) information from the FBI. The TSDB has the names of all known and suspected terrorists in ten (10) of the twelve (12) databases described in the April 2003 GAO report entitled, "Information Technology: Terrorist Watch Lists

Should Be Consolidated to Promote Better Integration and Sharing." The ten databases that are currently incorporated into TSC are:

1. Consular Lookout and Support System (CLASS) – Department of State
2. TIPOFF – Terrorist Threat Integration Center
3. Interagency Border Inspection System (IBIS) – Department of Homeland Security
4. No-Fly – Department of Transportation
5. Selectee – Department of Transportation
6. National Automated Immigration Lookout System (NAILS) – Department of Homeland Security
7. Warrant Information – Justice Department
8. Violent Gang and Terrorist Organization File (VGTOF) – Justice Department
9. Interpol Terrorism Watch List – Justice Department
10. Air Force Top Ten Fugitive List – Department of Defense

IBIS and CLASS are updated at the TSC daily. Prior to incorporation with the TSC, these two systems were updated on a weekly basis. The only two databases not incorporated into TSC at this time are the Automated Biometric Identification System , which resides with Immigration and Customs Enforcement (ICE), and the Integrated Automated Fingerprint Identification System, which is housed at the FBI.

Key to the success of the TSC's mission was to push TSDB's information out to agencies across the spectrum. This is now being done. There are three fundamental types of inquiries: interior (within the U.S.), border (at the points of entry at our borders

and ports) and exterior (outside the border). Interior inquiries will normally be made by local law enforcement. Border inquiries are made by U.S. Customs and Border Protection. Exterior inquiries are conducted by the State Department.

The process for making an internal inquiry is relatively simple. A police officer checks the National Crime Information Center (NCIC) database on a routine traffic stop, and is advised to call the TSC because the person stopped has similar identifying information to a known or suspected terrorist. When the officer contacts TSC, we verify and authenticate the caller's identity, record the information and circumstances of the encounter, and check the name through TSDB. The TSDB includes the name, date of birth, passport number, country of origin, and other identifying information for known or suspected international terrorists. The call center quickly researches the underlying information, including classified, sensitive information and makes a determination as to whether the person encountered is the same person as the one in our database, TSDB. If we have a positive match, we forward the call to our operational component at the FBI's Counterterrorism Division, the Counterterrorism Watch Center (CT Watch). CT Watch coordinates with the officer and directs the law enforcement response. CT Watch also dispatches the local Joint Terrorism Task Force (JTTF) to respond. In some cases, officers provide valuable information from a simple car stop, and in other cases, JTTF agents will respond to assist.

In addition to serving local law enforcement, the TSC receives a high volume of calls from Customs and Border Protection (CBP) inspectors who are stationed on the

Nation's borders. A typical CBP call involves incoming passengers on an international flight. A CBP inspector will query the TSC's data and may receive several possible suspected terrorist hits from the Interagency Border Information System (IBIS) and NCIC. The CBP inspector will go through their National Targeting Center (NTC), where the record will be screened, analyzed, and then passed to TSC. Our process is the same as it would be for a law enforcement call, that is, to quickly examine the underlying record, and determine whether the individual is identical to the person in the Terrorist Screening Center Database. The TSC then appropriately passes any derogatory information on the subject, and CBP makes a determination on whether the individual will be allowed into the United States. One example happened in June when a family attempted to travel to the U.S. The father was a positive match with derogatory information. Based on the derogatory information, the family was denied entry into the U.S. and their visas were revoked.

Visa Authority and TSC's Involvement

Consular officers are our first line of defense in keeping known and suspected terrorists out of our Homeland by denying visas to these individuals. In this regard, State Department assignees at the TSC are continuing the work of vetting visa applications against the TSDB, a process handled by Security Advisory Opinions. Since December 1, 2003, when the TSC began operations, State Department assignees and their staff at the TSC have reviewed over 90,000 Security Advisory Opinions to determine if the visa applicants described in these cables were possible matches with individuals in the TSDB. For example, in December, an individual with links to a terrorist organization applied for

a visa at a U.S. consulate overseas. As the Department of State has the sole authority to issue, deny, and revoke visas, the TSC works hand-in-hand with the Bureau of Consular Affairs on these issues. Accordingly, consular officials denied the visa based on the TSC's analysis that the individual was a match and the TSC's arranging for the provision of the background derogatory information to Consular Affairs. The same process applied to a senior member of a proscribed terrorist organization based overseas. His visa was also denied.

Cases in which visas were issued *before* derogatory information was known about the visa applicant require vetting to determine if a visa revocation is warranted, the focus of this hearing.

Since the TSC was established, the TSC has alerted the Department of State to the need to review over 180 cases for possible visa revocation, as the Department of State has the sole authority to issue, deny, and revoke visas. Standard Operating Procedures are in place at the TSC to detail its part in this process, as follows:

- The TSC reviews and analyzes any possible matches of names derived from this Consular Consolidated Database (CCD) to determine if a visa holder is a possible match with an individual in the TSDB. If the individual is a possible match, the TSC arranges for the Bureau of Consular Affairs to receive the record's supporting documentation. As supporting documentation varies in its depth and detail, the Bureau of Consular Affairs must examine it carefully to determine

whether it supports revocation. A possible match is defined as having at least two biographic elements sufficiently in common to warrant acting on the possibility that the visa holder is the person to whom the information pertains.

- The Bureau of Consular Affairs notifies the TSC when a visa is revoked, and the appropriate notations are made in the database

I would like to emphasize that there is no backlog of visa revocation cases to be reviewed at the TSC at this time. The process of clearing the backlog for screening purposes was begun at State before its cadre moved to the TSC, and finished here.

Meeting Challenges and Reform

The TSC, as an interagency entity, is well-positioned to assist communications between agencies. On May 18, 2004, TSC chaired a meeting of U.S. agencies involved in the visa revocation process to discuss ways it could assist in the coordination of actions required after the Department of State revokes a visa. The TSC has been active in determining whether, for instance, there are any pending law enforcement investigations on individuals whose visas are pending revocation or have been revoked. The TSC also lets ICE know of possible visa revocations to speed the notification process.

In those circumstances where a pending investigation has been identified, that FBI Case Agent is notified of the subject's status and directed to coordinate with the local ICE Agent. In many instances, the FBI Case Agent and local ICE Agent are on the same JTTF (Joint Terrorism Task Force). In those cases where no investigation has been

initiated, TSC notifies and requests ICE and other FBI entities to locate the individual. Once located, the local FBI and ICE offices are notified and directed to coordinate actions which result in the initiation of an investigation and/or threat assessment. The TSC facilitates communications between the various agencies so that cases can expeditiously be initiated on those individuals whose visas have been revoked but remain in the United States.

Conclusion

TSC is a multi-agency organization, working closely with Departments of State, Justice, Homeland Security, and Treasury, contributing to nationwide efforts to keep terrorists out of the U.S. and locate those who may already be in the country.

Since December 1, 2003, we have screened over 5,000 calls, including more than 700 exterior inquiries. We have reviewed over 90,000 Security Advisory Opinions and alerted the Department of State to over 180 possible visa revocations. We look forward to working with the Subcommittee in its efforts to on national security matters.

Mr. SCHROCK [assuming Chair]. Thank you, Ms. Bucella. We appreciate your being here, too.

Mr. Jacksta.

Mr. JACKSTA. Good morning, members of the subcommittee. Thank you for this opportunity to appear today before you to update you on our efforts to formalize and reinforce the role of Customs and Border Protection in the visa revocation process. I am also pleased to be here with my colleagues.

CBP firmly believes that the visa revocation process is the key component of the layered defense that we deploy in conducting our primary anti-terror mission. For CBP, a great deal of progress has been made on a number of fronts since June of last year. I would like to provide a brief status update on our efforts in this area before turning to our response to the General Accounting Office's recommendations.

Prior to the arrival of international travel at air and seaports, CBP screens these travelers using electronic manifests provided by the carriers. CBP checks the names of passengers and crew members in the Interagency Border Inspection System, a name driven data base that includes lookouts from the Department of Homeland Security, the Department of Justice and the Department of State. CBP's National Targeting Center also reviews manifests for potential items of interest and can highlight passengers for additional screening, or in certain cases identify passengers who CBP officers will meet plane-side.

Beginning June 2003, CBP began training inspectors with Customs and Immigration background to function as members of joint rover and analytical units. These teams cover terrorism, immigration and narcotics enforcement concerns in the passenger environment. Additionally, these joint teams have received counter-terrorism training since September 2003.

CBP has now delivered counter-terrorism response training to over 1,700 CBP officers. This training provides procedures to follow when a terrorist referral is made from an inspector, an advanced lookout or a cold stop by a CBP inspector. We have highly trained officers and we are working aggressively to provide them with the additional specialized training they need to meet our constantly evolving anti-terrorism missions.

Since we testified on the topic of visa revocations in June 2003, CBP has addressed the operational concerns identify by GAO. CBP's role int eh revocation process is to prevent holders of revoked visas from gaining entry into the United States. To this end, we have taken steps to formalize internal procedures for processing visa revocations, enhanced the automation tools that support the process and ensure that information sharing is timely is consistent.

The CBP verifies that visa revocations issued by the Department of State are properly posted in our IBIS system, and that any lead information is promptly provided to Immigration and Customs Enforcement for investigation. CBP recognizes that ICE is independently vetting visa revocations for lead information; however, CBP suggest that our efforts, rather than being redundant, offer an additional source of information against which ICE can validate its findings.

CBP personnel now follow a written work flow outline for visa revocations which includes specifications instructions for verifying that the revocation has been posted in IBIS, conducting the proper checks to determine if the subject may be in the United States, consistently recording results of the visa revocation process, and ensuring that ICE is notified where CBP feels that the subject of the revocation is in the United States.

It should be noted that the presence of ICE, FBI, TSA, and CBP's National Targeting Center has greatly streamlined the sharing of information. In order to improve and strengthen our procedures for interdicting travelers who may be traveling on revoked visas, CBP has identified visa revocation in our automated targeting system and assigned them the highest risk. This places passengers suspected of traveling on revoked visas on our start page, where they are identified as high risk passengers prior to arrival. This enhancement to ATS allows CBP personnel to easily identify these travelers.

Additionally, our National Targeting Center closely monitors these high risk passengers and works directly with local ports of entry to respond to exactly matches and to resolve close matches.

Finally, CBP has developed a pilot program, the Immigration Security Initiative, to further improve our effectiveness in identifying terrorists, criminals and other inadmissible passengers prior to boarding. In June 2004, CBP deployed four officers to the Netherlands, a visa waiver country, for a 90 day ISI pilot program. Not only will CBP now have an opportunity to examine passengers prior to boarding, but airlines will have the opportunity to consult with trained CBP officers during the check-in and boarding process.

Identifying and preventing the entry of persons, be they using fraudulent documents to conceal their true intentions about the purpose of their visit, or because they have had their visa revoked is a key responsibility of CBP. Applying GAO's recommendation to our process helps CBP to better fulfill its mission at the ports of entry. The procedures work. A review of the National Targeting Center activity log for the last 12 months shows that they have stopped 72 people and refused them entry into the United States based on revocation hits.

In conclusion, CBP is dedicated to enforcing the visa revocation program cooperatively with our colleagues. And I thank you today for having the opportunity to testify and I will address questions at the end.

[The prepared statement of Mr. Jacksta follows:]

STATEMENT BY ROBERT M. JACKSTA
EXECUTIVE DIRECTOR, BORDER SECURITY AND FACILITATION
U.S. CUSTOMS AND BORDER PROTECTION
HEARING ON "VISA REVOCATIONS II: STILL POROUS, SLOW TO FIX"
BEFORE THE HOUSE COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON NATIONAL SECURITY EMERGING THREATS AND INTERNATIONAL RELATIONS
JULY 13, 2004 – 10:00 AM
2247 RHOB

Good morning, Chairman Shays and Members of the Subcommittee. Thank you for this opportunity to appear before you to update you on our efforts to formalize and reinforce the role of Customs and Border Protection in the visa revocation process.

I am also pleased to be here with my colleagues from the Department of State, Immigration and Customs Enforcement, the Terrorist Screening Center, and the General Accounting Office. CBP firmly believes that the visa revocation process is a key component of the "layered defense" that we deploy in conducting our primary anti-terror mission.

For CBP, a great deal of progress has been made on a number of fronts since June of last year. I would like to provide a brief status update on our agency before turning to our response to the General Accounting Office's recommendations regarding visa revocations.

Advance Passenger Information System

Prior to the arrival of international travelers at air and sea ports, CBP screens these travelers using electronic manifests provided by the carriers through the Advance Passenger Information System (APIS). CBP checks the

names of passengers and crew members in the Interagency Border Inspection System (IBIS), a name-based database that includes the Department of Homeland Security, the Department of Justice, the Department of State and other agencies' lookouts. CBP's National Targeting Center also reviews manifests for potential items of interest and can highlight passengers for additional screening or, in certain cases, identify passengers who CBP Officers will meet plane-side.

Rover and PAU Training

Beginning in June of 2003, CBP began training inspectors with customs and immigration backgrounds to function as members of joint Passenger Enforcement Rover and Passenger Analytical Units. These teams cover terrorism, immigration, and narcotics enforcement concerns in the passenger environment. Additionally, these joint teams have been receiving Counter-Terrorism Response training since September of 2003.

One Face at the Border

CBP places great importance on cultivating a highly skilled workforce by creating an environment where our personnel can operate effectively, and by delivering training to increase skill at every level of our operations. CBP is responsible for deploying approximately 42,000 employees and preserving the traditional missions of our predecessor agencies. Over the past year, we have:

- Refocused and broadened the skills of our employees by delivering Unified Primary training to ensure frontline personnel are knowledgeable in agriculture, customs, and immigration processes.
- Introduced new CBP Officer and CBP Agriculture Specialist positions.
- Trained over 1,491 newly hired CBP officers under a unified, integrated curriculum delivered at the Federal Law Enforcement Training Center as of July 1, 2004.
- Delivered Counter Terrorism Response Training (CTR) to over 1,700 CBP inspectors to date. This training course provides procedures to follow when a terrorist referral is made from an airport primary inspector, an advanced lookout, or a "cold stop" by a CBP inspector.

We have highly trained Officers, and we are working aggressively to provide them with the specialized training they need to optimize their skills to meet our constantly evolving anti-terror mission.

GAO Audit and Recommendations

Since we testified on the topic of visa revocations in June of 2003, CBP has addressed the operational concerns identified by GAO. CBP's role in the revocation process is to prevent holders of revoked visas from gaining entry into the United States. To this end, we have formalized internal procedures for processing visa revocations, enhanced the automation tools supporting this process, and ensured that information sharing is timely and consistent.

CBP Workflow Outline for Visa Revocations

CBP verifies that visa revocations issued by the Department of State (DOS) are properly posted to the IBIS by manually cross-checking the records in IBIS to the communications received from DOS. Then, any lead information is promptly provided to Immigration and Customs Enforcement (ICE) for investigation. CBP recognizes that ICE is independently vetting visa revocations for lead information; however, CBP suggests that our efforts, rather than being redundant, offer an additional source of information against which ICE can validate or augment its findings.

CBP has addressed the GAO finding that we could not document consistent notification of ICE concerning the potential need to locate and investigate individuals with revoked visas who may be present in the United States.

CBP personnel now follow a written work flow outline for visa revocations which includes specific instructions for:

- Verifying that revocations have been posted in IBIS,
- Conducting the proper checks to determine if the subject may be in the United States,
- Consistently recording results of the Visa Revocation process,
- And ensuring that ICE is notified and provided supporting research documents for cases where CBP feels that the subject of the revocation is in the United States.

The presence of ICE, FBI, and Transportation Security Administration liaisons at the National Targeting Center has greatly streamlined the sharing of information. The CBP Officers researching visa revocations work side by side with the ICE liaison at the NTC, thereby ensuring improved coordination.

CBP's efforts to improve internal processes have not been confined to GAO recommendations and observations. CBP has also undertaken an additional measure in the form of a complete audit of all visa revocations in IBIS in an effort to mitigate previous shortfalls in information sharing. Records for which CBP could not identify a departure were turned over to ICE for further investigation. It should be noted that the reasons for revocation encompassed by this audit included all grounds for possible ineligibility, not just national security reasons.

Visa Revocations and the Automated Targeting System

The Automated Targeting System – Passenger (ATS-P) is CBP's premier targeting tool in the passenger environment, and it is available to CBP personnel at U.S. ports of entry nationwide. This system utilizes information from the National Crime Information Center (NCIC), the Treasury Enforcement Communications System (TECS), the Consular Lookout and Support System (CLASS) and other law enforcement databases to provide automated risk assessments on arriving international air passengers.

In order to improve and strengthen our procedures for interdicting arriving passengers who may be traveling on revoked visas, CBP has incorporated visa

revocation records into the ATS-P methodology for assigning the highest risk. This places passengers suspected of traveling on revoked visas on the ATS-P start page, where they are identified as high-risk passengers prior to arrival. This enhancement to ATS-P allows CBP personnel to easily identify these passengers. This has improved CBP's response at ports of entry, including meeting the passenger plane-side for escort, if warranted.

Additionally, our CBP National Targeting Center closely monitors these high-risk passengers and works directly with the local ports of entry on an as needed basis to respond to exact matches and to resolve close matches.

Immigration Security Initiative

CBP has developed a pilot program, the Immigration Security Initiative (ISI), to further improve our effectiveness in identifying terrorists, criminals, and other inadmissible passengers prior to boarding. In June 2004, CBP deployed four officers to the Netherlands, a Visa Waiver Program country, for a 90-day ISI pilot program. Not only will CBP have an opportunity to examine passengers prior to boarding, but airlines will have the opportunity to consult with trained CBP Officers during the check-in and boarding process in order to prevent transporting passengers who are inadmissible. CBP has coordinated this program with the Netherlands and the Department of State. CBP Officers assigned to this program have been specifically trained for this task.

Enforcement Success

Identifying and preventing the entry of persons, whether they are using fraudulent documents, concealing their true purpose of their visit, or because they have had their visa revoked, is a key responsibility of CBP. Applying GAO's recommendations to our processes helps CBP to better fulfill its role in visa revocations at U.S. ports of entry. A review of the National Targeting Center Activity Log for the past 12-month period shows that there have been 71 refusals stemming from revocation hits. This is a good indication that CBP is routinely identifying subjects of revocations at ports of entry and denying them admission to the United States based on those records.

Conclusion

The steps we have taken to reinforce our internal procedures demonstrate CBP's commitment to the visa revocation process and the interagency cooperation that propels it. CBP will continue to strengthen its policies under the existing regulations and work on an interagency basis to ensure that persons with revoked visas are identified at ports of entry. In conclusion, CBP is dedicated to working cooperatively with our colleagues at the Department of State and Immigration and Customs Enforcement to use visa revocations effectively as a border security tool. Thank for this opportunity to testify. I will be happy to answer any questions you may have.

Mr. SCHROCK. Thank you, Mr. Jacksta.

Mr. Schoch.

Mr. SCHOCH. Good morning, distinguished members of the subcommittee. Thank you for the opportunity today to update you on the improvements made to the visa revocation process by U.S. Immigration and Customs Enforcement, ICE.

Identifying and investigating individuals who pose potential threats to the security of the United States is a critical task in fulfilling ICE's mission of preventing terrorists and other criminal activity by targeting the people, money and materials that support terrorists and criminal organizations. Strengthening the visa revocation process and utilizing all of ICE's unique authorities to investigate, prosecute and remove individuals with revoked visas from the United States is an important tool in the war against terrorism.

Central to the ICE national security mission is the National Security Investigations Division within the Office of Investigations. The National Security Division is comprised of investigative units that apply traditional customs and immigration authorities needed to effectively combat the threat of terrorism and to enhance our national security.

As you are aware, the visa revocation process involves a coordinated effort by many members of the Federal law enforcement community. In June 2003, the Government Accountability Office identified weaknesses in that process, including difficulties in receiving the visa revocation cables and a lack of specific derogatory information behind those cables. ICE addressed these weaknesses. However, a followup report by GAO released today identified the need for additional coordination between DHS and the State Department and for the implementation of performance standards, such as specific timeframes for completing each step of the process.

I am pleased to describe the actions that ICE has taken to address the concerns raised by GAO. ICE has thoroughly reviewed our role in the visa revocation process and has implemented a number of aggressive changes to increase the efficiency and coordination of visa revocation investigations. The following are key changes that have been made since June 2003: The State Department now transmits daily visa revocation notifications to ICE electronically via e-mail as they are issued, allowing for ICE to initiate more timely investigations; The State Department now provides a terror screening center [TSC], reference number for every national security revocation based on a TSC record that allows ICE to retrieve the specific derogatory behind the revocation with certainty; The State Department, the TSC and ICE now reconcile visa revocation lists to ensure that all visa revocation cases have been received by the investigating agencies; All national security visa revocation cases identified by State Department are prioritized by ICE. Those identified by the TSC as having a nexus to terrorism are given the absolute highest priority and are jointly investigated by ICE and the FBI through the Joint Terrorism Task Force.

Over the last year, ICE has investigated hundreds of visa revocation cases. Just last month, ICE agents in Atlanta arrested the subject of a visa revocation referral on an overstay violation. The subject, an Afghani national, is listed in the TIPOFF data base,

was identified by the TSC as a person of interest. This case was initiated by ICE, coordinated through the JTTF, all within approximately a 30 day time period.

While some cases have led to arrests, many of the referred cases are ultimately closed through the determination that the subject of the revocation has either never entered the United States, has departed from the United States or has been cleared as not in fact being a national security threat. In cases where the investigation concludes that the subject is not in the United States, ICE ensures and coordinates with CBP and State to ensure the proper looks are placed on these individuals.

As you are aware, neither existing regulations nor statutes expressly provide for the removal of aliens based solely on visa revocations. Revocation of a visa is not explicitly a stated ground of removal under the Immigration and Nationality Act. State Department's visa revocation certificate generally states that the revocation shall become effectively immediately on the date that the certificate is signed unless the alien is already in the United States, in which case the revocation will become effective immediately upon the alien's departure from the United States.

Therefore, if an ICE special agent locates an alien in the United States for whom State has issued a visa revocation certificate, ICE would be unable to place the admitted alien in removal proceedings solely based on the visa revocation that had not yet taken place. However, State Department and DHS have recently agreed that on a case by case basis, the Department of State will consider issuing a superseding revocation certificate to make the revocation effective retroactively to the date of issuance of the visa. Such a change in the language of the certificate may make it possible for DHS to place an alien in removal proceedings.

DHS and the Department of State have also exchanged letters to ensure that the two agencies are aware of operational steps that each are taking when a visa revocation occurs. These letters essentially define the roles and responsibilities of each agency involved in the visa revocation process. DHS and State are also considering formalizing letters into a memorandum of understanding.

In summary, the Department of Homeland Security and ICE have worked diligently to strengthen our Nation's security by implementing new procedures and refining old procedures. We continue to work closely with our partners in a mission to assure that any and all threats are addressed and challenged by our agency's full authority. We appreciate the extensive work and cooperation by GAO in the review of the visa revocation process. I thank you for the opportunity to be here toady and speak to you and look forward to any questions that you may have.

[The prepared statement of Mr. Schoch follows:]

U.S. Department of Homeland Security

STATEMENT

OF

Robert Schoch
DEPUTY ASSISTANT DIRECTOR
FOR
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"VISA REVOCATIONS II: STILL POROUS, SLOW TO FIX"

BEFORE THE
HOUSE SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS

July 13, 2004
10:00 A.M.
2247 Room Rayburn House Office Building

Good morning Mr. Chairman, Vice Chairman, Ranking Member Kucinich, and Distinguished Members of the Subcommittee. Thank you for the opportunity today to update you on improvements made to the visa revocation process by U.S. Immigration and Customs Enforcement (ICE). Identifying and investigating individuals who pose potential threats to the security of the United States is a critical task in fulfilling ICE's mission of preventing terrorist and other criminal activity by targeting the people, money, and materials that support terrorist and criminal organizations. Strengthening the visa revocation process, and utilizing all of ICE's unique authorities to investigate, prosecute, and remove individuals with revoked visas from the United States, is an important tool in the war against terrorism.

The Department of Homeland Security (DHS) was created in part to bring Federal security agencies together to eliminate vulnerabilities exposing the United States to possible future terrorist attacks. ICE has thoroughly reviewed our role in the visa revocation process, and, in coordination with our colleagues from U.S. Customs and Border Protection (CBP), the Department of Justice, and the Department of State; we have taken steps to address possible vulnerabilities. I am pleased to be here today to discuss these developments with you.

INTRODUCTION

Over the last year, ICE has grown into a comprehensive and robust law enforcement agency dedicated to detecting vulnerabilities and preventing violations that threaten national security -- in particular, border security, economic security and public security.

Central to the ICE national security mission is the National Security Investigations Division (NSD) within the Office of Investigations. The NSD is comprised of investigative units that apply the traditional customs and immigration authorities needed to effectively combat the threat of terrorism and to enhance national security. The Compliance Enforcement Unit (CEU) and the National Security and Threat Protection Unit (NSTP) work in tandem to ensure the thorough and timely investigation of all visa revocation cases referred from the State Department.

HISTORY

As you are aware, the visa revocation process involves a coordinated effort by many members of the federal law enforcement community. In June of 2003, the Government Accountability Office (GAO) identified weaknesses in that process, including difficulties in receiving the visa revocation cables and a lack of specific derogatory information behind those cables. ICE addressed these weaknesses; however, a follow-up report by GAO in July 2004 identified a need for additional coordination between DHS and the State Department and for the implementation of performance standards, such as specific time frames, for completing each step of the process. I am pleased to describe the actions that ICE has taken to address the concerns raised by GAO.

CURRENT PROCESS

Along with our colleagues within DHS, the Department of Justice and the State Department, ICE has thoroughly reviewed our role in the visa revocation process and has implemented a number of changes to increase the efficiency and coordination of visa

revocation investigations. Visa revocation investigations are a priority for ICE, and we are committed to thoroughly investigating all referrals from the State Department. The following are the key changes that have been made since June 2003:

- The State Department now transmits visa revocation notifications to ICE electronically via e-mail. Ice receives these visa revocation notifications daily. This is an improvement over the prior practice of sending revocation cables periodically via facsimile. The State Department now transmits visa revocation certificates as they are issued, allowing ICE to initiate an investigation in a timelier manner.
- The State Department now provides a Terrorist Screening Center (TSC) reference number for every national security revocation based on a TSC record that allows ICE to retrieve the specific derogatory information behind the revocation. This is an improvement over the prior practice whereby ICE would often search classified information systems for the specific derogatory information often with uncertain results.
- The State Department on a case-by-case basis will now consider revoking a visa retroactive to the date of issuance of the visa for persons in the United States who pose a significant risk to the national security of the United States. This new tool may allow ICE to place individuals posing a serious national security threat in removal proceedings.

- The State Department on a case-by-case will now consider revoking a visa effective immediately for a person at a port of entry who poses a security risk, thus allowing CBP to deny entry based on lack of a valid visa.
- The State Department, the TSC, and ICE now reconcile visa revocation lists to ensure that all visa revocation cases have been received by the investigating agencies. This allows us to provide for case de-confliction in the event that more than one investigation has been initiated and to share information on the presence of visa revocation subjects in the United States.
- All national security visa revocation cases identified by the State Department are prioritized by ICE and those identified by the TSC as having a nexus to terrorism are given the highest priority and are jointly investigated by ICE and the Federal Bureau of Investigation through the National Joint Terrorism Task Force (JTTF).
- ICE has updated its Standard Operating Procedure (SOP) for the visa revocation workflow to include required time frames for research, assignment, and investigation.
- ICE enters all visa revocation referrals from the State Department into a lead-tracking database that creates an audit trail of all case milestones as well as records the results of case research and investigation. The use of this database allows ICE to more closely monitor the status of all visa revocation cases and to insure compliance with the time frames required by the SOP.

The ICE visa revocation workflow is well documented in an SOP that is summarized as follows:

1. Visa revocation referrals are immediately entered into the lead-tracking database as they are received from the State Department.
2. The lead is then assigned to a research analyst to review all relevant DHS databases as well as other law enforcement and open source databases to determine if the subject of the visa revocation certificate is currently in the United States, and if in the U.S., whether the subject has violated the conditions of his or her immigration status.
3. If there is no indication that the subject is present in the United States, the Compliance Enforcement Unit (CEU) ensures that the appropriate lookouts have been placed to prevent re-entry into the U.S., and closes the lead.
4. If the subject appears to be in the United States, the derogatory information behind the visa revocation certificate is then pulled and the case is assigned to the ICE National Security and Threat Protection Unit (NSTP) for review and proper field assignment. Steps one through four must be completed within one week of receiving the State Department cable.
5. Once an assignment determination is made, the case is opened in the Treasury Enforcement Communications System (TECS) case management system and is electronically transmitted to the appropriate ICE Special-Agent-in-Charge (SAC) field office. Special-Agent–in-Charge offices are given one week from the date of case assignment to initiate the field

investigation. In all instances, ICE investigates the case in coordination with the Joint Terrorism Task Force.

6. After assignment to the Special-Agent–in-Charge, desk officers of the NSTP and the CEU closely monitor the cases and update the lead tracking database with results.

RESULTS

Over the past year, ICE has investigated hundreds of visa revocation cases. Just last week, ICE agents in Atlanta arrested the subject of a visa revocation referral for an overstay violation. The subject, an Afghani national, is listed in the TIPOFF database and was identified by the TSC as a person of interest. This case was initiated by ICE and coordinated through the JTTF. While some cases have led to arrests, many of the referred cases are ultimately closed through a determination that the subject of the revocation has either never entered the United States, has departed from the United States, or has been cleared as not in fact being a national security threat. In cases where the field investigation concludes that the subject is not in the United States, ICE ensures that the appropriate lookouts have been placed by CBP and/or the State Department prior to closure, to prevent the subject's re-entry.

DHS' LEGAL EFFORTS TO REMOVE ALIENS WHOSE VISAS ARE REVOKED

As you are aware, neither existing regulations nor statutes expressly provide for the removal of aliens based solely on visa revocations. Revocation of a visa is not explicitly a stated ground for removal under the Immigration and Nationality Act. Department of

State's visa revocation certificate generally states that the revocation shall become effective immediately on the date the certificate is signed unless the alien is already in the United States, in which case the revocation will become effective immediately upon the alien's departure from the United States. Therefore, if ICE special agents locate an alien in the United States for whom State has issued a revocation certificate that states that the alien's visa is revoked effective upon his or her departure, ICE would be unable to place the admitted alien in removal proceedings based solely on a visa revocation that had not yet taken place. However, State and DHS have recently agreed that on a case-by-case basis, Department of State will consider issuing a superseding revocation certificate to make the revocation effective retroactively to the date of issuance of the visa. Such a change in the language of the certificate may make it possible for DHS to place the alien in removal proceedings. By proceeding this way only on a case-by-case basis, we will be able to ensure that we target aliens of genuine concern and that the Department of State can continue to revoke visas on a very low threshold of information and without giving notice to the visa holder – that is, we want State to maintain a quick and prudential revocation process because it best serves the interests of homeland security.

As indicated in DHS' Memorandum of Understanding with State, DHS is working "cooperatively to create and maintain an effective, efficient visa process" to protect the United States from threats to our security.

DHS and the Department of State have exchanged letters to ensure that the two agencies are aware of the operational steps that each is taking when a visa revocation occurs. These letters essentially define the roles and responsibilities of each agency involved in

the visa revocation process. DHS and State are considering formalizing the letters in a memorandum of understanding.

CONCLUSION

ICE initially upon notification treats every visa revocation referral as a national security priority for investigation; the ultimate disposition of these cases will vary. As Deputy Assistant Secretary of State Jacobs has explained in her testimony on visa revocation matters, the derogatory information behind many visa revocations is often vague and ambiguous and identifies people with common names -- often without other biographic information such as dates and places of birth that can be used for corroboration. Thus, on investigation we may conclude that the person whose visa was revoked is not a person of true concern. There will be other cases, however, where the person is of concern. Our job is to determine whether the person is in the United States and if so to make these distinctions and take appropriate action in light of the results of our assessment. In many cases, we will make no arrest. But we will make arrests when appropriate. ICE believes that if one potential or suspected terrorist is arrested and prevented from taking action to harm the United States and its people, then the effort exerted in each investigation is well justified.

In summary, ICE has worked diligently to strengthen our nation's security by implementing new procedures and refining old procedures. We continue to work closely with our partners in this mission to assure that any and all threats are addressed and challenged with our agency's full authority. We appreciate the extensive work and the

cooperation of GAO in the review of the visa revocation process. Thank you for the opportunity to speak to you today and I look forward to your questions.

Mr. SCHROCK. Thank you, Mr. Schoch.

I have a couple of real long questions, but I want to ask Mr. Ford, I guess my key question is why does it take so long, why does it take so long. Your testimony on page three says, Immigration and Customs enforcement would be unable to place an alien in removal proceedings based solely on a visa revocation that has not yet taken place. Help me understand that, and why that is the case.

Mr. FORD. Our understanding of the process is that the revocation itself, based on the State Department's certificate, does not really take effect until an individual actually leaves the country, that they in effect—somebody that's here illegally, their visa status doesn't change until they actually leave. Therefore, the concern——

Mr. SCHROCK. Why?

Mr. FORD. Why?

Mr. SCHROCK. Doesn't the status change until they leave? Why isn't it instant?

Mr. FORD. My understanding is, the interpretation of their legal staff is that they——

Mr. SCHROCK. The legal status or legal staff?

Mr. FORD. The legal staff at the State Department, it is my understanding their interpretation of the law is that they can't or won't change the certificate to make it either retroactive or to make it the day that they actually do the revocation. Actually, I would prefer to have the State Department comment on that, because this is, in my view, a policy issue that probably needs to be discussed in terms of whether or not that's the right kind of policy.

Mr. SCHROCK. Does anybody else want to comment on that? Mr. Edson.

Mr. EDSON. I think one of the issues is the distinction between the visa, which is the travel document that allows them to apply for entry at the border, and the admission by DHS. We're revoking only the visa. So for an individual who's in the United States, unless it were to be retroactive to the date of issuance, it has no legal effect, since they're already here and they're not using the visa at that point until they travel internationally. But we are now in agreement with DHS on steps that can be taken to reword that revocation certificate when it's appropriate and when DHS feels it's useful.

Mr. SCHROCK. Is that something that a legislative fix will solve?

Mr. EDSON. I think we have the fix now. The DHS is looking at other changes on the regulatory-legislative side. But we have a way to work together when DHS sees it to be in their——

Mr. SCHROCK. As I heard Mr. Ford say, some people interpret or fail to do such and so, and does it need to be so specific that they'll know what it is exactly and they don't have to go in there and interpret it for themselves?

Mr. EDSON. Our preference, if I could, the revocation process is a very blunt tool. We use a very low standard of evidence when we revoke visas. We revoke most of them prudentially just because we feel it's prudent and not because we've actually proven a thing.

We are concerned that we not tie the hands of the Secretary and DHS in using this tool bluntly and broadly. We'd like to be able to continue to do that, and we are a little concerned about things that

would open it up to further judicial review or more specifically, if we always had to revoke in a particular way, i.e., retroactive back to the date of issuance, we're concerned that we might find ourselves using or being forced to use a higher standard of evidence in these cases.

For example, we recently revoked five people's visas based on a single piece of derogatory information that clearly referred to only a single person. We had no way to know which of those five it was, so we went ahead and revoked them all because we were able to do that. If we had to use a higher standard of evidence we'd have to spend more time trying to figure out which of the five with those matching names was the appropriate person.

And that's the sort of concern we're facing.

Mr. SCHROCK. This is probably along the same lines, and it's a long, convoluted question, so bear with me. I understand we face serious legal ramifications and obstacles in removing an alien who's already in country and has his visa revoked. And I recognize that the Immigration and Nationality Act calls for a judge to conduct proceedings to determine if the alien has been removable, and that the alien has rights to question witnesses, which I think is ridiculous, see evidence and so forth.

I further recognize that intelligence and law enforcement organizations will be reluctant to disclose such potentially classified information due to releasing sources and methods. Where or how can we meet in the middle to get a better grip on this situation and frankly, expel potential terrorists and aliens who are here for whatever reasons, criminals, suspected terror connections, whatever, and have come to meet the criteria for having their visas revoked after they enter our borders? It seems like we're being a little too lenient on some of these people.

When I had cancer, they cut out a whole bunch of stuff around the cancer, just to make sure we got it all. If they had taken out just the cancer part, they might have missed some of it. Thank God they didn't. Maybe that's what we're dealing with here. I don't know. Tell me.

Mr. EDSON. I'd like to comment briefly, and then maybe if I could, defer to my colleague from ICE. But the situation you describe is precisely why we think the working arrangement we've come to at DHS is the best way to go. So on a case by case basis, if it looks as if the evidence is clear and the risk to the United States warrants revocation retroactively, on balance against the down sides that you just mentioned, then DHS would request that of us and that's what we would do.

Mr. SCHROCK. Does anybody else want to comment?

Mr. SCHOCH. I can comment. On any situation where we had a person we identified, our agents are out working, we identify this individual as being in the United States, I think first we would look at the status. We currently do this in all of our cases, whether or not this person is still conforming to the status they were admitted for. That's first and foremost.

If they are in status and there is a national security concern that remains, then we can also, and working with the intelligence and law enforcement community, we can get certain information that

can be declassified, and we can go in and work with national security removable grounds that exist today. That would be second.

We have recently, as was pointed out by the State Department, we recently have this agreement that I think also is a stop-gap measure that helps us tremendously in that on a case by case basis we can now go back retroactively and now we have somebody who is presently in the United States who has not been admitted with a valid visa, gives us the grounds to put that person in proceedings. We have three different ways to handle that situation.

Mr. SCHROCK. Being basically an inpatient, does it take this long, this long, this long? And if it takes this long, why? Because a lot of bad things can happen when it takes this long.

Mr. SCHOCH. I think the system we have in place now is immediate, it's immediate.

Mr. SCHROCK. Good.

Mr. SCHOCH. We have BTS level that would talk to the State Department, these actions would be taken immediately.

Mr. SCHROCK. Great. Thank you.

Mr. Ruppersberger.

Mr. RUPPERSBERGER. Let me get to the issue that the GAO report stated that the State and DHS, this is for Mr. Edson and Mr. Schoch, that the procedures regarding the visa revocation are not coordinated and lack performance standards, such as specific timeframes and process. Do you agree with that statement, and if not, where do you think we are right now as it relates to performance standards?

Mr. SCHOCH. Let me speak to, in March of this year we put in place several different procedures, basically to audit and make sure that we are meeting the timeframes that were acceptable for these types of cases. We now, as ICE use the TECS–II system, it's a tracking system that allows us to put all of our cases in it. That was new to ICE that recently has come into the fold. So we have put measures in place that within receipt of the revocation from State, within 7 days our headquarters has to get that.

Mr. RUPPERSBERGER. How recently has that been in effect?

Mr. SCHOCH. I'd say within the last couple of months that has been in place. We have also, the field, having now, as lead is sent out to our TECS system, they have 7 days to also respond back to us. We have very tight, measurable timeframes that are put in place specifically to ensure that the field is responsive, that we are responsive. And not to mention another layer is every week we reconcile with the State Department to ensure that what they're sending us is what we actually got. And there's this weekly reconciliation to ensure that we are getting what they are pushing to our agency as a referral.

Mr. RUPPERSBERGER. Let me ask you this, and again, Mr. Edson or Mr. Schoch. It seems the information sharing notification of visa revocation among agencies, especially your two agencies, has been done internally or on an informal basis. Do you believe that a Government-wide policy should be created and be in effect to deal with this issue? And there are advantages and disadvantages for that, too.

Mr. EDSON. We've gotten to the point, I think particularly with the creation of TSC, when TSC was stood up in December, there

are pretty consistent policies being followed now for information sharing. We actually appreciate very much the opportunity to work with GAO on reviewing our processes, because they bring an auditor's eye to the process that we don't always use.

Mr. RUPPERSBERGER. And they bring accountability, which is extremely important.

Mr. EDSON. Yes. And they give us the opportunity to look at things like the performance standards. We had over-used the word "immediately," or "as soon as possible" in our standard operating procedures, and now have very specifically indicated when things have to happen by the end of the same working day.

We have very specifically worked out with ICE, CBP, the National Targeting Center and TSC the methods, and we have redundant, overlapping methods of communication for all of these cases, so that we're, with those overlapping methods of communication and the weekly reconciliations with different agencies involved, and other things we've got in the works, a consolidated, we developed a module for our own data base that all of the agencies involved in this process will use for reporting and accountability, so that we can track cases together through the same module. It won't be multiple data bases.

I think those things together are going to enable us not only to share the information effectively, which we're probably already doing, but to verify that it's being shared effectively, to get at the core of the GAO report, and that's our inability to actually have full, 100 percent assurance and an audit trail.

Mr. RUPPERSBERGER. A question for Ms. Bucella. I know in the past that the intelligence community felt that the visa revocation process was a vulnerability to the United States. Since the last GAO report up until now, and what you're aware of with the testimony we've heard today and the process and procedures that have been in place, do you still feel, based on your position, that the visa revocation process is still a vulnerability to the United States as it relates to terrorism and national security?

Ms. BUCELLA. Yes, sir. Initially, when we stood up, we are looking at the Government's processes and procedures with a totally fresh look. The Terrorist Screening Center, as I mentioned to you before, is a multi-agency organization. The one advantage that we really have is that we have representatives from all the different agencies co-located where we are.

So every time we would have an encounter, that is, someone stopped on the road for a routine traffic stop, we would have somebody there from State, somebody from CBP, ICE, DHS, and the FBI. When the officer would pull the person over, we would find out who this person is, and if there was a visa that had been revoked, we'd say when was it revoked, and DHS, ICE and CBP, when did they come into the country, where did they come into the country and how.

And then what we require to do, that's when we found out that there was in fact some vulnerabilities. We realized that there was not a written process of how we had agreed on sending information back and forth, and what we would do once we found the individual. So we started a series of meetings back in, I guess April we saw this vulnerability, in May, and we started to talk on a pretty

routine basis and came up with a written business process which we shared, I believe with GAO, on what we would do when we had information about a revoked visa.

When the State Department would revoke a visa, real time right at our center, we would enter it through our CBP and ICE people, right into IBIS and right into the CLASS system. So for the first time, every Government agency had the information real time. All they had to do was access NCIC.

And this was a hole that we decided we needed to work together on. And we're endeavoring to do that. That is one of the challenges that I believe we all have. But for once we are all sitting at the same table, working a written business process together.

Mr. RUPPERSBERGER. Yes. We have a lot of challenges out there. And we have a lot of people working on a lot of issues. It takes a lot of coordination. Unfortunately sometimes we get caught up in our own little world, in our own projects, and we forget about the integration of all information we need to get to the people that can react. And the Terrorist Screening Center, the purpose is to very quickly identify someone that can be a threat to the United States.

Now, what do you feel needs to be done, from your perspective, working with the Terrorist Screening Center, to make things even more effective than they are now, and maybe relate to Homeland Security and State? Because it seems to me that's where we really have to bring that coordination together and that integration.

Ms. BUCELLA. We as the Terrorist Screening Center have only been in existence for about 8 months. And so what we are, as we see an issue, we deal with it right then and there.

Fortunately, because of the structure of the Terrorist Screening Center, I'm a DHS employee. That's who pays my paycheck. But I am, the Terrorist Screening Center is administered by the FBI. So I immediately report to Bob Mueller, the Director of the FBI. So I don't have that bureaucratic delay.

Because we have representatives, one of my deputies, my principal deputy is from DHS, he was former CBP. My other deputy is from the FBI. My other deputy is from the State Department. They're all at levels that they can literally penetrate into those organizations without dealing with the bureaucracy and waiting for the delay time in receiving information and getting information.

Unfortunately, we don't have the wisdom and maturity of experience. That could be a good thing, and it could be a bad thing. What we are doing now, though, is as we see an issue, we're trying to fix it. But I believe that we are on the right road. I will tell you, we don't have cables that come into the Terrorist Screening Center. We have e-mail. E-mail comes in a lot faster. We can just literally pick up the phone when there's a visa that's been revoked and contract and coordinate, which we do with the National Targeting Center, which is the Department of Homeland Security's operations center. We are in constant communication with them on a daily basis.

Mr. RUPPERSBERGER. It seems to me that what you're focusing on is where we need to be. Are we there from a technology point of view?

Ms. BUCELLA. I don't believe we're there from a technology standpoint.

Mr. RUPPERSBERGER. Explain why you think that.

Ms. BUCELLA. When we stood up, we were announced in September. My staff, probably about 10 of us were there in October. But we had to be fully operational 24/7, call center by December 1st, which we were. And we had to borrow and take everyone's data bases so we had accessibility and the ability to communicate real time with the different agencies, to include the intelligence community.

We are now developing a data base which will be accessible by other Government agencies as well as the intel community. But that is under current development and probably will not be done until the beginning part of next year.

Mr. RUPPERSBERGER. The thing that worries us all, and we look at September 11 and we look at the mistakes we've made so we can hopefully correct those mistakes, but what really I'm hearing today is that we still have a way to go as far as stopping maybe a terrorist out on the road somewhere, getting that individual, that police officer on the street, getting it to the agencies that need to react on it.

Ms. BUCELLA. Let me clarify. I'm not waiting for us to have the super-duper communications system. We're doing go-arounds. So if I could, I'd like to explain to you how an encounter works on the street and what we do as far as communicating with not only everybody at this table, but the intelligence community.

A law enforcement officer stops someone for speeding, for example, going 100 miles an hour down the road. Right now, that law enforcement officer either, on his vehicle if he has the NCIC, or if he contacts his dispatcher, will put the person's name into the data base, into the NCIC. There will be an indication that will come up, please contact the Terrorist Screening Center, with the telephone number. They will contact us. Our staff, as a 24/7 call center, has representatives from each of the different agencies and quite frankly, at our center, I have CBP people accessing FBI data bases, and I have FBI agents that are accessing CBP data bases. It truly is a partnership.

That will——

Mr. RUPPERSBERGER. Are you working with JTTF also?

Ms. BUCELLA. Yes, and I'll explain how they are the operational arm. The law enforcement officer and/or the dispatcher will call in and give us a name. We'll ask for the date of birth and the passport number, country of origin. Right now, those are the four sources of information that are not classified that we can have in our data base.

However, because law enforcement is not involved necessarily in the intel community, any information they solicit from the individual we can add into our data base. For example, height, weight, any kind of distinguishing marks, sex, those types of things.

We then facilitate and help that law enforcement officer to be able to identify that person is in fact the person that is in our data base as a known or suspected terrorist. Name alone is not enough. And just because they get the monitor to say, please contact us, doesn't mean they have a terrorist. So we listen to the information that they are sharing with us.

We also have accessibility to classified information. So for example, if we have information from the former State Department TIPOFF system, which has classified information, for example, had distinguishing marks like, the individual has only one right arm, we may say to the officer, please describe what he looks like, height, weight, anything else. Well, he doesn't have an arm.

We do not tell that officer, bingo, you've got somebody, nor do we tell him the individual only has one arm, because we are very cautious about not sharing classified information. If it appears that person that the law enforcement officer is encountering is in fact the same person that we have in our data base, we then forward the phone call to CT Watch, Counter-Terrorist Watch, at the FBI. They then give instruction or advise that law enforcement officer——

Mr. RUPPERSBERGER. And give us the time period that all this is occurring.

Ms. BUCELLA. This happens probably on average within 10 minutes. And by the way, the only reason why they would get the Terrorist Screening Center is that there has to be information that this individual is related to terrorism. We do not have the absconders or murderers, only if it relates to terrorism.

So the law enforcement officer then gets forwarded, we just touch a button, they're conferenced in with the CT Watch, CT Watch then gives them instructions, either arrest the individual because there is an indictment, there is a charge document, ask questions, and the questions that they can ask them will be those routine questions in law enforcement, or there could actually be questions that the case agent, and that could either be from the intel community or from the law enforcement community, would ask. If you encounter this individual, what do you want to know. Well, I'd like to know where he's been, I'd like to know, does he attend the university of whatever. Those questions are then given to the law enforcement officer. And the law enforcement officer solicits that information.

The other category is detain the individual. If for example, in the first example I gave, people driving 100 miles an hour, fortunately they've violated, and this in fact did happen in the United States, they violated a State law. And the law enforcement officers could in fact arrest the individual. If it appears that is in fact a person, the CT Watch dispatches out the JTTFs at the local communities. There's probably about 86 of them around the country. And the JTTFs go out and assist the law enforcement officer.

The law enforcement officer may not ever know who had the original case, may not know that DIA or the CIA is looking at this individual.

Mr. RUPPERSBERGER. One other thing I want to ask you, and I ask you, Mr. Chairman, for a little more time. There are two issues. First thing, if someone's going 100 miles an hour and you catch them, and that's fine, that's reactive. How about the issue of being proactive as it relates to your organization, the Terrorist Screening Center? Someone that's not going 100 miles an hour, are you investigating those individuals whose visas have been revoked and that we also are attempting to find? How are you doing that?

And the second question, because I know my time, would be volume. I know one of the problems we have is volume. NSA, look at the volume they deal with. How, based on the program from your perspective, working both in Homeland Security and in FBI, how are we dealing with the volume as it relates to this issue. Maybe Mr. Ford might want to come in on that. That's the end of my questions. Thank you.

Ms. BUCELLA. I'm going to answer the first question first, sir, because that deals with those individuals that haven't violated a State law. Those individuals that haven't violated State law, the law enforcement officer gathers that information from the individual. If that person, if there's a revoked visa, what we do is then, through the JTTF, I need to clarify that the Terrorism Screening Center is, think of us as a clearinghouse or pointer system. We do not investigate.

We have the operational arm, which is the JTTF, which could in fact be someone from CBP, ICE or the FBI. They then send out leads, because we want to make sure, for example, if that person whose visa has been revoked, who now is in the United States, what are they doing, where are they. The JTTF will send out a lead to either do a threat assessment on that individual or to start an investigation. That coordination is done between ICE and the FBI on a daily basis. First.

Second, volume. As far as volume, right now since we have been in existence since December 1st, we have responded to approximately close to 6,000 calls in total. Of the 6,000 phone calls that we have——

Mr. RUPPERSBERGER. Are those 6,000 calls from police officers stopping somebody or what?

Ms. BUCELLA. Could be. Could be police officers stopping somebody, could be somebody applying for a State job, could be somebody that's putting bond up for an individual, it could be——

Mr. RUPPERSBERGER. Every citizen?

Ms. BUCELLA. Excuse me?

Mr. RUPPERSBERGER. Just John Q. Public?

Ms. BUCELLA. No, no. We only deal, our interface is only with law enforcement.

Mr. RUPPERSBERGER. OK.

Ms. BUCELLA. So that is the volume that we have right now. We are increasing that volume based on the amount of data that we have in our system. But we do not, in our data base, have the derogatory information. That is the reason why they're there. That stays with the different agencies, whether it be the intelligence community, State Department, or CBP or ICE or FBI. But we do have accessibility to that.

Mr. RUPPERSBERGER. OK, Mr. Ford, you're batting cleanup. You've heard the testimony here today. The purpose of this hearing is to make the issue that we're dealing with better. We're trying to learn from past mistakes. Moving forward, we need to implement now. Based on the testimony we've heard today, where are we as it relates to GAO?

Mr. FORD. I guess I want to put this in a little context, since I testified on this issue a year ago. I think that since we've pretty much been looking at this issue now for almost 2 years, clearly the

level of response on the part of the executive branch on this issue has deeply increased from where we were, say, 2 years ago. When we conducted the work last year, many of the handoffs, the communication between the agencies, the problems in notifying people on a timely basis was more egregious than we believe it is today.

The analysis that's in our report was based on a sample we took from October to December 2003. The TSC was stood up in December 2003. So prior to that time, there wasn't this coordinating mechanism in place. Many of the actions taken by the agencies since we've done our analysis in our view are steps in the right direction.

I think the one area that we still believe needs more transparency is the, a clearer statement, and we think it should come from DHS as the lead agency, to ensure that all of these improvements in the visa revocation process are properly codified, and in fact, we think they need to have performance standards that lay out how long it should take to properly notify one agency or another in the process. And we shouldn't have to run into the same problems we did——

Mr. RUPPERSBERGER. And would those performance standards be for both Department of Homeland Security and also State?

Mr. FORD. Absolutely. We think everyone involved in the process needs to step to the plate in terms of taking action on a timely basis. The reality of it is that what we are trying to prevent here is a suspected terrorist that may enter the country legally, may be here, from doing something harmful. And the best way to deal with it, to counteract that, is to alert the appropriate officials on a timely basis. So we think those kinds of metrics should be included in the policies and procedures.

So we think a lot of things we're doing are the right kinds of things. We haven't seen the metrics yet, but if they are in fact putting those in place, those are in our view steps in the right direction.

Mr. RUPPERSBERGER. Given that visa revocation that is occurring while the applicant is overseas are not subject to judicial review, our Chairman Shays has a bill that he's introduced that would also use that process in individuals in the United States, that if they are revoked, they would not be subject to judicial review. What is your opinion of his bill as it relates to this process?

Mr. FORD. Well, the GAO has not, we don't have a view on that institutionally. We've heard some discussion from the executive branch witnesses here about, I guess you could say, the pros and cons of statutorily trying to fix this problem. I guess we're going to have to bow out on that. We don't have a view on whether that's the right way to go. We just know that it's an issue that law enforcement was concerned about. In our view, that needs to be addressed, and a policy needs to be established whether——

Mr. RUPPERSBERGER. It seems to me it's a good process, and it's a good idea, because it's going to make something happen. Thank you.

Mr. SCHROCK. Before I yield to Chairman Shays, let me ask one thing. Ms. Bucella, I thought I heard you say, not having a right arm is classified. Did I misunderstand you?

Ms. BUCELLA. No. There is some information that is gathered from our intelligence community that is source protected. For example, if there was an individual that was only dealt with by someone who was a source, but the bad guy didn't know about it, and the only way they would have known about it is if they had seen the person and this person has spent much of his entire career not being seen out in the public, then not having an arm may actually be source protected and classified.

Mr. SCHROCK. Chairman Shays.

Mr. SHAYS [resuming Chair]. I thank the chairman, and I thank the committee for their good questions, and our participants here.

Basically, I have two parts to try and sort out. The issue of the granting of visas, and then when we've made a mistake, how we revoke them. I want to know, first, have we made a lot of progress or a modest amount of progress in getting information to the right people in such a timely basis we never even issue the visa? And then, when we've issued the visa and we determine it shouldn't be granted, then I want to talk about that. So maybe Mr. Ford, you could jump in.

Mr. FORD. OK. I want to make sure I understand your first question. Before a visa is issued?

Mr. SHAYS. Right, and the information we get to the right people, so they can make an intelligent decision. It seems to me when a visa is granted and it shouldn't be, that should only occur when information, when we didn't have information. But when we grant them a visa, when we had information but we simply failed to get it to the right people in time, then that's something that obviously I want to correct first. let's not even give them the visa.

So can I get an assessment of how we're doing there?

Mr. FORD. Well, let me comment first of all on the process that the State Department employs for approving visas itself. An applicant must meet the standards in the Immigration and Nationality Act. A consular official oversees, makes a judgment whether that person is eligible to receive a visa.

Now, if the State Department has some information regarding an individual, or if the consular official has some suspicious that this individual may be a person of concern, in that case they would go back to the headquarters and basically have that person screened by a security official here in Washington. They may or may not grant the visa on that process. They have a technology system that allows them to send electronically information back and forth. That's real time, they can make a decision at that time whether a person should get a visa or not.

If a person does have a visa, is granted a visa, then the process changes, because at that point in time, the person is legally entitled to enter the United States, or at least come to our border. And the visa revocation process, if the State Department gets information subsequent to the issuance of the visa that indicates, hey, maybe we'd better not let this person in here, we'd better revoke the visa, then what they want to do is immediately get that information to the port of entry so that the DHS-Customs officials can stop them from entering.

If on the other hand, if the individual is already in the United States, then the problem becomes law enforcement following up

and finding out whether that individual in fact is a person of concern. And that's what needs to be, that information needs to be timely presented.

Mr. SHAYS. I'm seeing three steps. I'm seeing one, what can we know first, to not even grant the visa. The second is, we've granted them the visa, they haven't yet entered the country, and then the third is, they're in the country, go find them. Then what do you do? We don't have a legalistic issue in the first two stages, is that correct? That individual has no legal rights. If they came to the border of the United States, they flew in and they were not granted visa, they can be shipped out right away, no lawyers get to—I'm seeing nodding of heads. Is that correct?

Mr. FORD. That's my understanding.

Mr. SHAYS. Anybody disagree with that? OK.

Ms. BUCELLA. Correct.

Mr. SHAYS. Well, are you in a position to be able to assess the first two parts of that stage before I get to the whole issue of revoking a visa once they're here? Are you comfortable in assessing how well they're doing or not doing?

Mr. FORD. Well, we haven't looked at the approval process for visas, we haven't looked at that recently. We have done some work a couple of years ago where we looked at the process prior to September 11.

Mr. SHAYS. OK, so the approval process, how about once it was granted up to the border? Because we had interesting dialog in our last hearing about that.

Mr. FORD. Again, in the course of conducting this work, we took a limited sample. We tried to find out the extent to which persons may have been stopped at the border. Based on information from our sample, we found that DHS had done a good job of stopping people when they came to the border when they had the information.

Mr. SHAYS. Anybody want to comment on this issue?

Ms. BUCELLA. Right now, if there's information on an individual, the CLASS system, which is entered into when they're approving a visa, or even reviewing the person's name, the CLASS system and IBIS——

Mr. SHAYS. Is that State Department?

Ms. BUCELLA. State Department is CLASS, IBIS is DHS. They are updated now on a daily basis, where previously they were updated, I'm not quite sure, either on a weekly basis or biweekly basis. But they're updated right from the Terrorist Screening Center on a daily basis now.

So as to your first example, should you even give them a visa, at least the information as to what they need to look at in determining whether or not this person is or is not a known or suspected terrorist is available right then and there.

Mr. SHAYS. So in theory, as soon as they realize they've made a mistake, granted a visa, that's State, they are going to put that in the system immediately. And in theory then, it is available at our border.

Ms. BUCELLA. Yes, real time.

Mr. JACKSTA. That's correct, sir, and if I can just add a little bit onto that. What happens is that, my understanding is that infor-

mation is real time, the connectivity between the Department of State data base and the data base that's used by our officers at the port of entry. With advanced information on the international air travelers and the commercial vessel operators, we get that information, we do the query before they actually arrive at the port of entry, and that allows us to take appropriate action where necessary to meet the flight at the plane side. And if we have someone who's identified as a possible high risk terrorist that we can actually grab them right at the plane side and do our inspection in the Federal inspection areas.

So there is a process in place. If the name is in the system, we will respond and we'll stop that person at the border and take the appropriate action.

Mr. SHAYS. I just would make a point, that in theory, this should work pretty well. Steps in the right direction, though, Senator Nunn pointed out that a deer running from a hungry cougar is taking steps to get away, and so it really demands that there be some speed in this process of steps in the right direction.

How much time do I have left? [Laughter.]

I'd rather do a second round, but you haven't gone. You know what I want to do? I'll defer, but I want to get into the whole issue of the chart on page 14. I want to make sure, do you all have this chart? I'm going to be asking each of you to respond to the whole issue of, the State has lists of revoked visas, 338. DHS, ICE has 347, and DHS Customs and Border Protection has 336. But what's interesting is, they are different. The list would be bigger if we added them all up collectively. In other words, I need to have that sorted out and explained to me, if we're moving in the right direction, why that would be a different list.

But I'd like to defer to my colleague.

Ms. WATSON. Yes, I had a couple of questions. In reading the analysis of the GAO report, it says that communication problems across systems persist. I was listening very closely, probably you've answered most of this. But you report that there are still no written procedures for sharing visa revocation information among agencies. So I'd like Mr. Ford to respond to that.

And in some cases, the revocation of visas takes 6 months or more. That's the second comment I'd like to hear. And then why shouldn't the revocation be grounds for removal and why should not, when we locate a person whose visa has expired, or we have some suspicion that person is connected to terrorism, why should they not be immediately removed from U.S. soil? Mr. Ford, can you lead off, please?

Mr. FORD. OK. I believe your first question had to do with the policies and procedures and place. Actually, I want to put this in some context.

Ms. WATSON. If I may just interject, I notice it was in your report of 2003.

Mr. FORD. Yes, that's correct. That's where I was going to begin. We've found from our work from last year that each of the agencies, they did have policies and procedures, but they weren't very clear. There wasn't much of a linkage between each of them in terms of how they were supposed to work together. We made a rec-

ommendation in 2003 that they develop such policies and procedures.

Subsequent to that, the Department of State in fact did develop standard operating procedures for visa revocations, soon after that report was done. DHS, some components of DHS developed some policies and procedures after that. But most of the recent changes that are designed to tighten this process up have occurred after the first of this year, generally from the spring of this year.

So you have to kind of track this from last year up to where we are now. There are many more policies and procedures in place that we were advocating a year ago that are now in place with the agencies.

Your second question had to do with, I believe it was why it took 6 months for the Department of State, I'll just tell you that was based on the sample that we conduced from October to November, excuse me, from October to December and I guess I'll defer to the State Department on why it took them that long, in one case it took that long.

Ms. WATSON. All right, somebody from State can address that.

Mr. EDSON. Actually, if I could, on the written standard operating procedures, one thing that we have started working on, actually almost finished working on, taking our cue from this latest GAO report, is coordinating the SOPs of the three agencies involved here at the table, putting them in a consolidated flow chart, so that we all are fully aware in writing of what the other players are doing in this process. That was a good recommendation and we're working on it.

Ms. WATSON. Great.

Mr. EDSON. On the revocation, in the report there were a couple of cases mentioned. It was a small sample that the GAO reviewed. There were reasons for the delays. In one case, the individual, when the case was sent over from TSC originally, TIPOFF originally, it was reviewed and it was determined that it would not be revoked. Six months later, additional derogatory information was made available. At that point, the visa was revoked. But the gap between the original referral and the revocation was 6 months.

In another case, the visa was actually revoked in the field by our officers for non-terrorism grounds. Six months later, terrorism information came up. We felt that it was the safe thing to do to revoke it again, just to create a paper trail that was explicitly linked to terrorism. So there was a 6-month gap in there as well.

But those cases, I'm not saying that all cases are that clear. But in those cases, in any event, there were clear explanations, it was an accounting gap rather than a gap in action. There was nothing waiting for 6 months.

Ms. WATSON. Ms. Bucella, I heard you say that you can identify in a rapid fashion. I am just thinking that we need to be able to have information, and now we have the technology at our fingertips, because these people have been here a while. And they are planning probably as we speak. We need to move as quickly as possible, so I would hope that these long gaps would some way be eliminated and we can move very quickly.

Can you comment on that again, Ms. Bucella, on the time it takes you to get the information from your agency to the others?

Ms. BUCELLA. Because of the unique position that we have, we have State Department representatives at our agency as well as Homeland Security, and a multitude of, whether it's Coast Guard, CBP, ICE, Secret Service, we have FBI there. Because we have the accessibility to everybody else's data bases, we are able to update and upload the information real time, right from our center.

So we don't have to wait for cables to go back and forth between the different agencies and maybe they don't get to where they need to get to. But we do it right from the same data base that's going to be accessed by those inspectors at our border, if we put the individual's information in because we found out from the State Department the person's visa was revoked, we put it into the IBIS system. They access the IBIS system right at the port and so the inspector will see right there that this person's visa has been revoked and they can deny entry right then and there. So there's not that lag time.

And quite frankly, I can't comment on how long it took for the information to get to the original agencies. I can only speak to how long it's taking now, since the TSC has been in operation.

Ms. WATSON. I argued loud and long when we were developing the Department of Homeland Security and where the visa investigations and where the visa granting authority ought to be. I opted for the State Department because of the training and the experience. I know we depended greatly in my embassy on the consul that took care of visas. These people develop another sense to be able to detect that.

Can you then instantly approach and get information from their data base, say in an embassy 10,000 miles away and there's a decision made, can you put your hands on that same information, Ms. Bucella?

Ms. BUCELLA. If they put that information into the CLASS system.

Ms. WATSON. Are they doing that now, State Department?

Mr. EDSON. We use a consolidated global data base of all our visa transactions, all of our posts, immediately reflected in a corporate data base back here in Washington, a consolidated data base. That's accessible from the TSC.

Ms. WATSON. Very good. The other question I have, do we have any idea how many visitors with possible links to terrorism are here in the United States, and do we have any numbers to demonstrate improvement in the system? Are we catching them? And are we deporting them or whatever?

Ms. BUCELLA. I can tell, since the Terrorist Screening Center, the way we operate is there has to be a routine law enforcement encounter, or there has to be some sort of a screening process, whether somebody's applied for a job, or some type of clearance. But I could not give you how many people are here. I can say that since we've been in existence, just on the known or suspected international terrorists we have encountered here in the United States in excess of 500 since December 1st.

Ms. WATSON. We are hearing about cells that possibly have been here in the United States for decades. I know I got a call from someone who said that men in robes and wraps around their head, and this is 10 years ago, would come and meet in the apartment

next to me late at night. She said she was always wondering why they were meeting so late at night. So I gave that information as I heard it on to the authorities. And I do believe, from the way she described what was going on that there could be a connection.

I know it's almost impossible for you, because you don't do the investigative work. But in other agencies, they are, I'm sure they are operating on tips of this kind. Does anyone else want to comment about what you think?

Mr. SCHOCH. If I can just comment first on the visa revocations themselves. Any referral that we get from the State Department is aggressively pursued to its end. Be it we take an administrative action, there might even be a criminal action possibly that result, or we clear the person. So that in this whole process, and there are many departments involved and agencies within, on any referral which basically starts with the State Department, where they notify us that there's been a visa revocation, we exhaustively look at every and all of those leads. And we're confident that we're looking at those and investigating those to the end, to where we can take an action or no action if necessary.

Ms. WATSON. That information then is shared across the agencies, and we talked about procedures. But is it your feeling, Mr. Ford, that those procedures need to be strengthened?

Mr. FORD. I think our view is that we want to see, the comment was made that currently, the procedures of the three agencies are now talking to each other, and they're going to share them. I think we want to see that and make sure that everybody is fully aware of what everybody else is doing, and that the next time there's a hearing on this issue, everybody, we won't find the same kinds of problems we found in the current report.

Ms. WATSON. I thank you, and let me give my time back to the Chair.

Mr. SCHROCK. Well, the artificial Chair would like to make a comment. [Laughter.]

Kind of a followup on what the Ambassador was asking. Can we ask for the following documents for the record, letters between State Department and DHS, agreeing on rewording the revocation in specific cases, and the flow chart that details the steps of all involved agencies? Thank you.

Let me ask one——

Mr. SHAYS. Just to clarify, so we're aware, who is going to give us which of that? State and——

Ms. BUCELLA. We'll give you the business process that we've documented now.

Mr. SHAYS. And the letters?

Mr. SCHOCH. Both DHS and State.

[The information referred to follows:]

Security

July 12, 2004

Ambassador Maura Harty
Assistant Secretary of State
for Consular Affairs
United States Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Maura:

This letter serves two purposes. The first is to inform the Department of State (DOS) of the actions that the Department of Homeland Security (DHS) takes once DOS has revoked an alien's visa. The second is to confirm our shared understanding of how our departments will act in the event an alien who poses a security threat to national security obtains a visa, and presents himself at a port of entry or has arrived in the United States. It is the shared understanding of DHS and DOS that the agencies involved in the visa revocation process should make standard operating procedures known to one another to ensure that the process from revocation to investigation is accurate, thorough, and rapid.

I would first like to describe the actions that DHS takes when DOS revokes a visa. DOS notifies both the U.S. Customs and Border Protection (CBP) and the U.S. Immigration and Customs Enforcement (ICE) of the revocation. The role of CBP in the revocation process is to prevent aliens whose visas are revoked from gaining entry into the United States. Before international travelers arrive at air and sea ports in the United States, CBP screens them through the Advance Passenger Information System (APIS), an electronic manifest provided by the carriers. CBP also checks the names of passengers and crew members against the Interagency Border Inspection System (IBIS). CBP's National Targeting Center may highlight passengers for additional screening or, in certain cases, identify passengers who CBP Officers will meet on arrival.

CBP personnel follow a written work flow outline for visa revocations. When DOS revokes an alien's visa, CBP verifies that the revocation is properly posted to IBIS, and conducts checks to determine whether the alien may be in the United States. If CBP determines that the alien is in the United States, they notify ICE of their findings as ICE is the agency charged with interior enforcement. ICE itself fully investigates all aliens who are present in the United States whose visas are revoked on national security grounds. CBP's efforts offer an additional source of information against which ICE can validate or augment its findings. CBP consistently records the results of the visa revocation process.

It should be noted that the presence of liaisons from ICE, the Federal Bureau of Investigations (FBI), and the Transportation Security Administration at the National Targeting Center greatly streamline the sharing of information, and ensure improved coordination. It should also be noted that CBP has performed a complete audit of all visa revocations in IBIS in an effort to mitigate previous shortfalls in information sharing.

CBP's premier targeting tool in the passenger environment is the Automated Targeting System – Passenger (ATS-P). It is available to CBP personnel at ports of entry throughout the United States. This system utilizes information from a diverse set of law enforcement databases to provide automated risk assessments on arriving international air passengers. CBP has incorporated visa revocation records into the ATS-P methodology for assigning the highest risk. This places passengers suspected of traveling on revoked visas on the ATS-P start page, where they are identified as high-risk passengers prior to arrival. This allows CBP to easily identify such passengers.

CBP's National Targeting Center closely monitors high-risk passengers and works directly with the local ports of entry on an as-needed basis to respond to exact matches and to resolve close matches. The NTC has procedures to access the TIPOFF records on which visa revocations may be based, and is able to retrieve and review the specific derogatory information behind the revocation.

ICE, as the primary law enforcement agency of DHS, plays a critical role in investigating visa revocation cases. Its National Security Investigations Division, located in the Office of Investigations, is comprised of investigative units that apply the traditional customs and immigration authorities needed to effectively combat the threat of terrorism and to enhance national security. The Compliance Enforcement Unit (CEU) and the National Security and Threat Protection Unit (NSTP) work together to ensure the thorough and timely investigation of all visa revocation cases referred from DOS.

ICE receives visa revocation notifications from DOS electronically via e-mail. DOS includes a Terrorist Screening Center (TSC) reference number for every national security revocation that is based on a TSC record. This allows ICE to retrieve the specific derogatory information behind the revocation.

All national security visa revocation cases identified by DOS are prioritized by ICE. Those identified by the TSC as having a nexus to terrorism are given the highest priority, and are jointly investigated by ICE and the FBI through the National Joint Terrorism Task Force (JTTF). ICE enters all visa revocation referrals from DOS into a lead-tracking database that creates an audit trail of all case milestones, and records the results of case research and investigation. The use of this database allows ICE to more closely monitor the status of all visa revocation cases, and to ensure compliance with the time frames required by its standard operating procedures.

After the visa revocation referral from DOS is immediately entered into the lead-tracking database, the lead is then assigned to a research analyst to review all relevant DHS databases as well as other law enforcement and open-source databases. The analyst will attempt to learn whether the subject alien is currently in the United States, and if so, whether the alien has violated the conditions of his immigration status. If there is no indication that the alien is present in the United States, the CEU ensures that the appropriate lookouts are placed, and then closes the lead. If the subject appears to be in the United States, the derogatory information behind the visa revocation is pulled and the case is assigned to the NSTP for review and proper field assignment. These steps are completed within one week.

Once an assignment determination is made that the alien may be present in the United States, the case is opened in the Treasury Enforcement Communications System, and is electronically transmitted to the appropriate ICE Special-Agent-in-Charge (SAC) field office. SAC offices are given one week from the date of case assignment to initiate the field investigation. SACs are expected to investigate the case in coordination with the JTTF. Desk officers of the NSTP and the CEU closely monitor the cases and update the lead-tracking database with results.

I will now turn to our understanding of how our departments will act in the event a potential security threat is located at a port of entry before admission. DHS concurs with DOS' policy that it will, on a case-by-case basis, revoke the alien's visa effective immediately when requested to do so by DHS. This action will make it possible for DHS to deny the alien entry on the ground that the alien lacks a valid visa. DHS agrees that it will make such requests to DOS through CBP's National Targeting Center after CBP policy-level staff have concluded that an immediate visa revocation would significantly assist DHS' ability to deny the alien entry into the United States.

In the event that DHS locates an alien who has already been admitted to United States, and who poses a significant security threat, DHS may request that DOS revoke the alien's visa retroactively to the date of issuance of the visa so that DHS may place the alien in removal proceedings on the grounds that the alien entered the United States without a visa. DHS agrees that it will request a retroactive revocation only in extraordinary cases when senior operations, legal, and policy staff from DHS' Border and Transportation Security Directorate conclude that the alien poses a significant security threat, and that relying on a retroactive visa revocation to bring removal charges against the alien would provide an essential tool for dealing with the alien's presence in the United States.

I understand that your Deputy Assistant Secretary of State for Visa Services, Janice Jacobs, will be our point of contact in visa revocation cases. DHS' point of contact in visa revocation cases will be the Director of Operations in the Border and Transportation Security Directorate, Randy Beardsworth. The Under Secretary at DHS will be responsible for approving requests that DOS retroactively revoke an alien's visa.

Sincerely,

Asa Hutchinson
Under Secretary
Border & Transportation Security

for Consular Affairs
Washington, D.C. 20520

JUL 12 2004

Dear Asa,

I am writing both to ensure that the Department of Homeland Security (DHS) is aware of the operational steps the Department of State (DOS) takes when it revokes a visa in a case of potential terrorist or other security concern and to confirm various understandings that have been reached between DOS and DHS concerning when we will make our visa revocations effective in cases involving a possible nexus to terrorism. These understandings relate to the possibility of DOS revoking visas in a manner that would facilitate DHS efforts to deny entry to an alien or to remove an alien from the United States. They have evolved since DOS wrote to DHS in September 2003, noting the commitments DOS had made in previous discussions with the Immigration and Naturalization Service (INS) and suggesting that our two agencies together undertake a legal and policy review of options in this area.

The revocation process in terrorism-related cases sequentially involves the Terrorist Screening Center (TSC), DOS, and DHS. Although we occasionally receive terrorism-related requests to revoke visas from sources other than TSC, in the vast majority of cases a revocation is initiated when DOS staff at TSC alert the Visa Office to the fact that an agency has watchlisted an alien as a possible security concern who is a possible match to an alien holding a visa. This alert triggers our consideration of visa revocation. As a result of recent refinements, when they notify the Visa Office of the possible need to revoke a visa, DOS staff at TSC also share that information with DHS staff at TSC. Thus DHS may, if it wishes, begin investigating a visa holder as soon as it receives notification from its staff at TSC that DOS has been alerted to the possible need to revoke the alien's visa based on the alien being a possible match with an alien who has been watchlisted.

Once DOS receives a notification from the TSC, we enter the revocation lookout -- VRVK -- into the DOS CLASS lookout system, which

updates the DHS IBIS lookout system almost immediately. This lookout, which is entered for each visa holder who is a possible match to the watchlisted alien, alerts the inspectors that the alien's visa is being reviewed for possible revocation, or has been revoked.

We then follow through with the necessary review of the information (almost always, but not necessarily, resulting in our revoking the visas held by all aliens who are possibly the alien to whom the derogatory information pertains) and complete the formal certificate of revocation if appropriate. Once the certificate is signed, we notify the relevant consular post by cable. We also provide the cable to elements of CBP, ICE, and NTC by email and fax. The email communications now include the TSC reference number so that DHS can easily access the derogatory information on individuals whose visas have been revoked. (We are working on modifications to the Consolidated Consular Database that should make our revocation actions even more transparent to DHS.) We understand that DHS will determine whether the alien is in the United States and, if so, what follow-up action as warranted in light of the nature of the information that led to the revocation and other enforcement priorities.

DOS will continue to issue visa revocation certificates for aliens who are of national security concern prudentially, using a very low threshold of information consistent with the fact that we are not determining the alien's admissibility but rather making a decision that the alien should be required to appear for a new visa interview and reestablish his identity and admissibility before being allowed to seek future admission to the United States. In addition, we will continue to act as quickly as possible, without attempting first to determine whether the alien is in the United States and without first providing the alien with notice.

With respect to the effective date of our prudential revocations, in normal circumstances we will continue to use the formula agreed to some years ago among DOJ, INS, and DOS, making the revocation effective immediately unless the alien is in the United States, in which case it will take effect upon the alien's departure from the country. On a case-by-case basis, however, DOS may at DHS request revoke the visa of an alien DHS has located in the United States effective retroactively to the date of visa issuance, thereby making it possible for DHS to place the alien in removal proceedings on a charge that the alien entered the United States without a valid visa. This will normally result in issuance of a second revocation

certificate, since the initial revocation will not yet be effective. We understand that DHS will ask us to undertake such a revocation only in an extraordinary case in which it concludes, at a senior policy level, that the alien is a significant risk to homeland security and that relying on a retroactive visa revocation to bring removal charges against him would provide an essential tool for dealing with his presence in the United States.

Further, when requested by DHS, DOS remains prepared, on a case-by-case basis, to revoke effective immediately the visa of an alien who has presented himself to DHS for inspection at a port of entry but has not yet been admitted, thereby making it possible for DHS to deny admission on the ground that the alien lacks a valid visa. We understand that DHS will not ask us to undertake such a revocation except in cases involving potential security issues. Given its responsibility for providing assistance to port of entry inspectors on national security matters, we suggest that such requests come to DOS via the DHS National Targeting Center (NTC) after a DHS policy-level person has concluded that an immediate visa revocation would significantly assist DHS's ability to deny entry to the alien. In addition, DHS will seek port-of-entry revocations of A or G visas only on an exceptional basis. When revocation of an A or G visa is requested, DHS will make all information about the alien available to DOS on an expedited basis. In cases involving aliens covered by U.S. commitments to the United Nations, DOS will agree to revoke a visa to facilitate DHS denial of entry only when the Under Secretary of State for Political Affairs (or a more senior Department official) has agreed that denial of entry would be consistent with such commitments.

The Deputy Assistant Secretary of State for Visa Services, now Janice Jacobs, will be our point of contact for DHS on these cases. I understand that DHS' point of contact in visa revocation cases will be the Director of Operations in the Border and Transportation Security Directorate, Randy Beardsworth. We understanding that he will be responsible for approving requests for immediate revocations before they are forwarded through the NTC; for forwarding requests for retroactive visa revocations after they have been approved at a more senior level; and for helping coordinate the necessary interagency consultations. I further understand that you will personally approve requests that DOS revoke the visa of an alien in the United States effectively retroactively.

At an appropriate time, we may wish to document these and related understandings in an interagency memorandum of understanding. In the meantime, however, this letter and your anticipated response should provide a sound basis for future action. We very much look forward to continuing our cooperative efforts in this process.

Sincerely,

Maura Harty

DRAFT

TSC Watch List Visa

The **TSC Visa Revocation Process** will detail the process of comparing the watch list with visas issued. The process will include the interactions of the Terrorist Screening Center (TSC), along with TSC's interaction with other agencies. Specifically, the process will detail the procedure the TSC will oversee to ensure the FBI has open cases when appropriate and the case agent on open cases is notified of any change or attempted change to the visa status of a given person on the watch list regardless of the person's location. In addition, the process will detail any follow up procedures to ensure the FBI is successfully meeting its goals of opening and assigning cases on terrorists when needed.

TSC Process Flow

1. TSC will compare the current watch list with VISA's that are issued.
2. TSC will determine the VISA status of each new entry into the Terrorist Screening Data Base (TSDB).
3. If a VISA has been issued, expired or revoked for an individual, the TSC will check the TSDB for possible name matches. A possible name match may indicate the person is a known or suspected terrorist. A possible name match is not an absolute name match.
4. If the name is not matched, the process is complete.
5. If the name is matched and the VISA has been issued GOTO 7.
6. If the name is matched and the VISA has expired or has been revoked GOTO 10.

VISA Issued

7. If the VISA has been issued, and is a positive match in TSDB, a notification is sent to Consular Affairs for revocation.
8. Department of State (DOS) sends cables to the TSC and Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE).
9. GOTO 11.

VISA Expired or Revoked

10. If the VISA has expired or has been revoked, and is a positive match in TSDB, GOTO11.

Locality Determination Process

The TSC will coordinate a process to determine a subject's location between the TSC, ICE and the NJTTF.

11. TSC will compile a list of names from the comparison of the watch list and the VISA's issued; TSC determines case status.
12. TSC will send the list of names to ICE.
13. ICE will initiate a background analysis to locate the subject.
14. ICE returns list of individuals with location update.
15. If there is an open FBI case GOTO 17.
16. If subject is in the U.S. and there is not an open FBI case GOTO 19.

TSC Watch List Visa

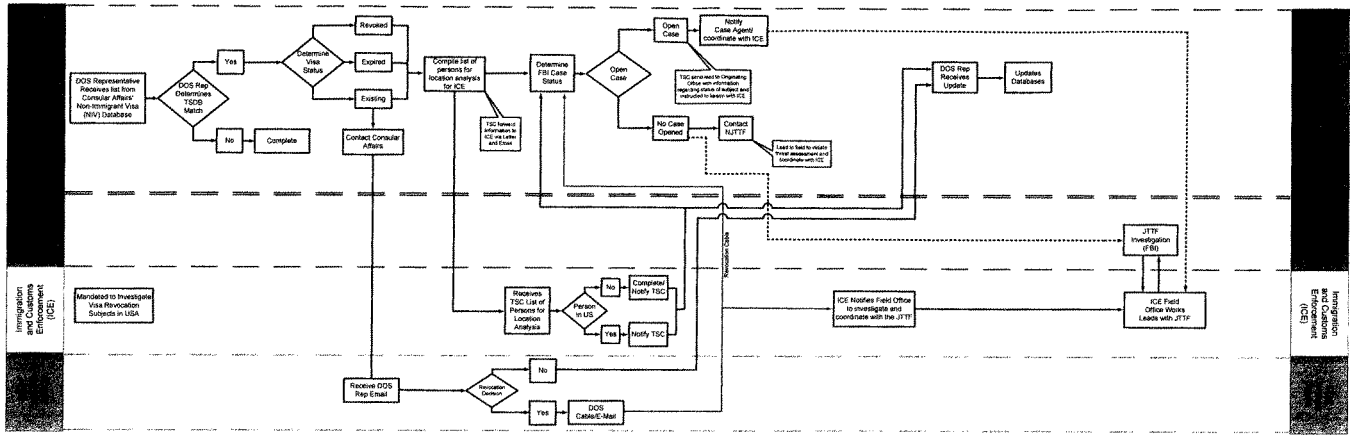
Open FBI Case

17. If there is an open case, TSC will contact the FBI case agent with updates.
18. The FBI case agent will notify and work with ICE.

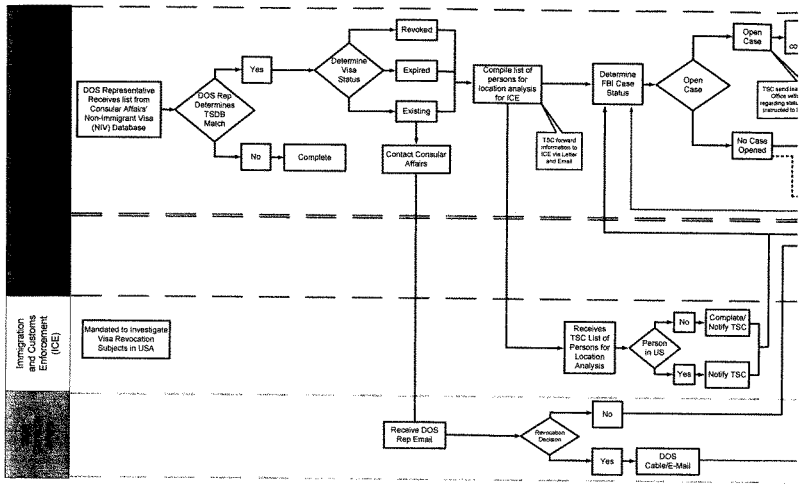
No open FBI case

19. If there is not an open FBI case, TSC will send a lead to the local JTTF, copy NJTTF.
20. JTTF will initiate the investigation and share information with ICE

TSC Visa Revocation Actions



TSC Visa Revoca



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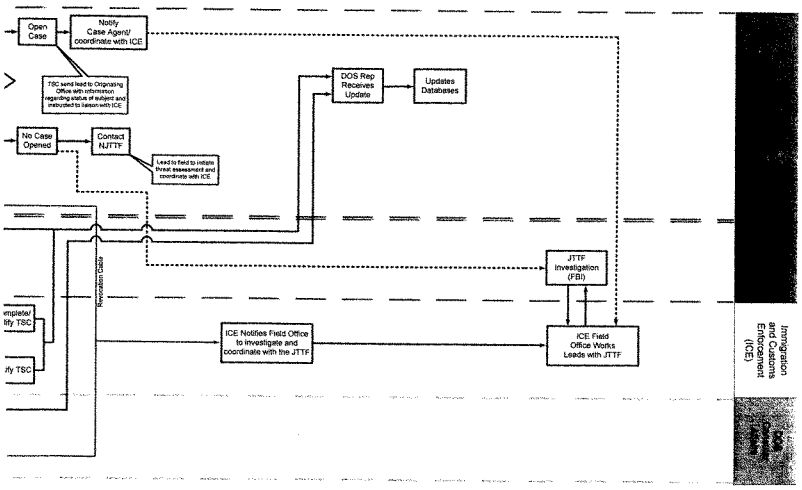
evocation Actions



ICLASSIFIED

Mr. SCHROCK. One of you was comment earlier about information such that if somebody lands in an airplane, you can yank them right off the plane. What about ports, shipping ports? Mr. Ruppersberger represents the Port of Baltimore, I represent the Port of Hampton Roads. It's been a problem where I live. People have jumped ship. Fortunately they've been able to find them. Is the same process in place for that?

Mr. JACKSTA. Yes, sir, the same process takes place whether at the airports, the land border locations or seaports. In the seaports, we work very closely with the Coast Guard.

Mr. SCHROCK. OK. Port security is my No. 1 issue and has been for a long, long time, continues to be and will probably continue to be, because that's, the massive military presence in Norfolk and of course the commercial port is of great concern to me.

I understand the difficulties of pursuing, questioning and apprehending these aliens who have had their visas revoked, especially since the agencies charged with doing so have limited resources and frankly are still underinformed as to the reasoning for the revocation, whether it's terror related, criminal or simply administrative.

In any event, what programs are being utilized to engage the public in helping Government agencies with these identifications and ultimately removals? For example, have we considered utilizing the Federal air waves to broadcast the top 10 aliens wanted, similar to a John Walsh type show or anything along those lines, photographs on milk cartons have played a significant role in finding lost and apprehended children. I frankly think an informed American public would respond favorably and effectively to such programs that are in the interest of national security. Any comments? I know you don't want to get into the milk carton business.

Mr. JACKSTA. I can make a quick comment that, at a number of our ports of entry, we do have various posters up in place of individuals that have been identified not only for terrorist related activities, but other types of criminal activities that may come across specific locations on a regular basis. In addition to that, we also have Web pages we can go to where there are pictures of individuals and it allows the general public to pull up information if necessary.

Mr. SCHROCK. I don't know about any of you here in this room, but I get things in my mail at least once a week about this big having two children's names or adult's names. You know what, I read those things now. I never did before. But I do now, and I'm just wondering if you had something like this for the terrorist element if people might be more inclined to look at that, and that might help as well. I mentioned we have the ports of entries also, it's not unusual for us to receive letters from the general public about issues or concerns or people they've identified. And we work very closely with the JTTFs and ICE to followup on those. So if the public does get something to us, there is a procedure in place.

Mr. SCHROCK. This is for State and DHS. In what types of cases will the State Department agree to change the wording of the revocation certificate? It's loaded, isn't it?

Mr. EDSON. The answer is, when we're asked by DHS. That's the agreement we reached, is when DHS feels it's appropriate, that the

risk to national security is such that it counterbalances the down sides of a request, and we've identified in our exchange of letters formal channels of communication, the people who should be doing this.

Mr. SCHROCK. Well, let's turn that around. When will DHS ask the State Department to agree to wording of the revocation process?

Mr. SCHOCH. I think initially, as we start out this, we will look at very limited, in the most egregious of situations, where we can't take any action administratively based on the removable grounds that exist presently. Possibly we cannot declassify national security information because of sources, compromising sources and so forth. I believe in the most egregious situations we would exercise this option now, to go back retroactively and use this.

Mr. SCHROCK. OK, for the State Department. Does the State Department support the DHS draft regulation regarding removing individuals from the country based on a visa revocation?

Mr. EDSON. I haven't seen that draft in many months. I wasn't working that issue particularly, so I can't comment on that.

Mr. SCHROCK. All right. You just killed the rest of my questions. [Laughter.]

Mr. SHAYS. That's why he's the witness, because he hasn't seen it. [Laughter.]

But you know what, the answer is very serious. We do need an answer. And we should be prepared to give an answer to that question.

Mr. EDSON. We'll take it and respond for the record.

[The information referred to follows:]

July 13, 2004
Tony Edson
Page: 78
Line 1722

Mr. SHROCK:

Does the State Department support the DHS draft regulation regarding removing individuals from the country based on a visa revocation?

Mr. EDSON:

The Department has worked closely with DHS to assist DHS in developing a regulation that could facilitate DHS's ability to remove aliens whose visas have been revoked from the United States. We have reviewed and commented on working drafts in an effort to help DHS achieve this goal without changes that would make visa revocation a less effective border security tool.

Mr. SHAYS. Yes. I think what we want is a response in the next week as to what the position is, so someone looks at it and tells us their position.

Mr. EDSON. Essentially from the beginning our position on this has been that this is a DHS function, and is not directly related to the visa function at all. DHS manages removal from the country. That's the short answer. But we'll get you something more formal.

Mr. SHAYS. But we're all from the same country.

Mr. SCHROCK. Let me just ask one final question of State and DHS. Is a legislative change required to allow immigration officials to remove aliens with revoked visas from the country? Do we need to do it legislatively?

Mr. SCHOCH. I think at this point, as you know, DHS in earnest is looking at a regulatory fix. As you pointed out, myself personally and speaking on behalf of DHS and ICE, I think it's an option that we should explore. I think there's probably a lot of complex issues and policies associated with the regulation. I don't think we should lose this opportunity to at least look at it and entertain it.

Mr. SCHROCK. Exploring says to me, studies which take forever and ever to get done.

Mr. SCHOCH. Yes, again, I would really have to seek more of their opinion from our Office of General Counsel as to the specifics in more detail on just what we would have to look into. But I think in general, it's something that we should probably look into.

Mr. SCHROCK. Is there any sort of statutory authority that you could recommend?

Mr. SCHOCH. I don't think anything comes to mind.

Mr. SCHROCK. Thank you, Mr. Chairman.

Mr. SHAYS. I want to pursue the question on the GAO report entitled, "Border Security: Additional Actions Needed to Eliminate Weakness in the Visa Revocation Process." Turning to page 14, basically State has one list of the revocation number of 338, you have DHS at 347, Immigration and Customs which are basically the cops in this program, the Border folks have 336. GAO did an interesting way with the circles. All of you have 320. State has two that are not listed in the other two. DHS has, ICE has three not listed with either. And Border has zero not listed with either.

You look at it and you find that DHS has 12 that are with State, but not with Border, ICE has 12 with Border that aren't with State. It sounds a little confusing, but the bottom line is we have different numbers. Why wouldn't this number be the same? And what are your agencies doing to reconcile these different numbers?

Mr. EDSON. This was one more aspect of the GAO report that we found helpful, and we have, as was mentioned earlier, created a unified, a single reporting and recording mechanism for us to use and regular audits will cross-check the numbers.

The way that these cases are listed, there are overlapping watch listings for all these individuals that are generated by the TSC or by the State Department or by DHS. So we believe that the security of the system is sound. An auditable, a verifiable audit trail, though, would give us all more assurance. That's why we'd like to have these numbers matching.

Mr. SHAYS. I'd like to have, I guess what I'm having a hard time, liking it to happen and why it isn't happening is my problem.

Mr. EDSON. In this case, GAO took a sample that was time constrained and began on a date, ended on a particular date. Our interaction with those, matter of fact, State started the process with two disparate lists. We ran a report of the number of cases in the watch list system with a revocation code and subsequently ran a report of the number of cases that were revoked with the formal signature on the revocation certificate during that time period. The entry into the watch list system happens immediately. Deliberation occurs before the revocation certificate is generated and signed. So there were some cases that fell outside of the timeframe on those two lists, and the numbers did not agree on the two lists. It would only have agreed when both the watch listing and the revocation took place during the time period.

We feel that is probably the bulk of this.

Mr. SHAYS. But even that, why would it have to take more time? Is it kind of like cars when they're at a red light, the first car goes and the second waits until the first one has left, and it's like this slinky? Why wouldn't they all move at the same time?

Mr. EDSON. We enter the watch list entry, the visa revocation watch list entry immediately just to indicate that we are reviewing a case for possible revocation to provide an alert to DHS. The revocation itself is a deliberative process, involves getting access to the classified derogatory that underlies the lookout from TSC or the referral froM TSC. Sometimes it involves further research and review of legal issues. We don't always revoke the cases that are referred to us by TSC. Almost always, but not always. So there's a period of a couple of days, a couple of weeks, where the deliberation is going on before the revocation certificate is signed.

In that interim period, however, the cases have already been watch listed by TSC as possible terrorist cases. We have already watch listed it as a revocation case under review. So it's that gap that I think is responsible for some of the difference in numbers.

Mr. SHAYS. And it needs to take a couple of weeks?

Mr. EDSON. It needs to take several days, a couple of days. We're getting access to classified material, it doesn't come over—sometimes there's a lag in there in getting access to the material and reviewing it. Again, the case has already been watch listed. The individual cannot enter the United States. And the derogatory that we get for revocation is also getting passed to DHS, in the event that it's extremely serious and specific derogatory information, so that they're able to act on it.

Mr. SHAYS. Wy did it take State at least 6 months, and as much as 17 months to revoke visas in at least three cases? I would like to know the cases, but is that something you can speak to?

Mr. EDSON. These are the three cases out of the GAO report that we checked on. I don't want this to sound like an excuse, but there actually are reasons in these three cases. In one case, the case was referred to us originally, we declined to revoke, 6 months later got additional derogatory information and then did revoke, so the gap between referral and revocation.

The other two were cases that were revoked overseas first, for non-terrorist grounds and then subsequently revoked for terrorist grounds. So there's that gap.

Mr. SHAYS. Anybody else want to respond to these?

Mr. JACKSTA. Yes, sir, I do. First of all, I want to say from DHS' perspective at CBP, we're also concerned about the numbers. Obviously we're going to go back and take a look at this, work with GAO to find out exactly what the problems were. Because I think we all agree that we can't have people being missed and can't be on separate lists. So we'll take that back and work on it.

But there are a couple of things that we've already institutionalized to get going on it. The first one is that because of this concern and the initial observation we've established a mechanism now between Department of State, DHS and the two agencies, CBP and ICE, to verify on a weekly basis how many new revocation records have been established by Department of State, so there's no confusion on the exact number every week that's added to the system. So that's one of the first thing.

The other thing I think is important to note, although the person may not be in the system as a revocation, the fact is that the derogatory information will probably be in the IBIS system. So the person would be stopped. The question is whether you would be able to do, at the border, if you can revoke the person's visa and send them back. That's what we're working with Department of State, to have that capability that if we discover someone at the port of entry through another mechanism, through another data base or through the inspector's questioning that might be identified as someone who's related to terrorism, that we can work with Department of State to have the visa revoked right then and there, and have the person returned.

So I want to get on record to say that even though the record may not show a revocation, the system, the data bases available, will allow us to hopefully identify the individual and still stop them at the border.

Mr. SHAYS. Mr. Schoch, do you have——

Mr. SCHOCH. Yes, to add to this that again, just expounding on what Mr. Jacksta said, we every week reconcile the list now, to make sure that whatever we've received is exactly what State Department has. We also have a full time person at the NTC——

Mr. SHAYS. You're not doing it like a checkbook, where you can't figure out why it doesn't balance, you just accept it? [Laughter.]

Mr. SCHOCH. No, what we do is we have actually a spreadsheet, and we go through and——

Mr. SHAYS. And you try to figure out where the difference is?

Mr. SCHOCH. If there are differences, exactly, we work through the discrepancies, so that we don't get to this point where we have these numbers reflected as they are today in this report.

Mr. SHAYS. When I think of the challenge we have here, I'm thinking I accept it logically and then another part of me says, this is crazy, it's a no-brainer. If you can revoke, if you can decide not to give someone a visa, they don't have a hearing, correct? You make an administrative decision.

If someone at Border Patrol can decide to not allow someone to enter, even though they have a visa, it's decided in a sense administratively, it's decided by that individual, based on the documents they have, without a so-called legal process, why does a legal process occur once someone's in the United States? What triggers that

legal process in the minds of all of you that suggests that somehow we have to handle this differently?

Mr. SCHOCH. If I can just comment, if somebody is picked up based on that revocation, and let's say we have now employed this new——

Mr. SHAYS. They're in the United States of America.

Mr. SCHOCH. They're in the United States.

Mr. SHAYS. As our guests, as a privilege.

Mr. SCHOCH. Correct. And we've gone now retroactively. They are entitled to a hearing before an immigration judge. They have a hearing.

Mr. SHAYS. And that is based on statutory law again, or on regulation?

Mr. SCHOCH. On statutory law.

Mr. SHAYS. OK. And it is outside the typical, it's not part of our civil or criminal justice, it's part of DHS immigration process?

Mr. SCHOCH. Correct.

Mr. SHAYS. OK. And just fairly quickly tell me what that means. What are they entitled to?

Mr. SCHOCH. They are entitled to go before an immigration judge.

Mr. SHAYS. With counsel?

Mr. SCHOCH. Right, with counsel, not appointed, but counsel that they have to acquire themselves.

Mr. SHAYS. Are they incarcerated during that time?

Mr. SCHOCH. We basically make a determination of detention, whether or not they meet the criteria of being detained. It is possible that they will be detained. They have a right to a review of that before the immigration——

Mr. SHAYS. Do we have the delays like we've had where people literally, in some instances, they ask for political asylum and they're given a hearing a year later and they're just allowed to go into the countryside? Is this process at least quick? Or could it take months or longer?

Mr. SCHOCH. I think it can take months sometimes.

Mr. SHAYS. See, I don't understand that at all. I mean, we don't have that many where we might have to revoke. So for me, it would strike me that, you can't kick them out without this process, and maybe I can accept the fact that somehow they got through the system, so we blew it. But so now, they're entitled to privileges that they didn't encounter when they were requesting or when they came. So I understand that. And I also understand the reality that they may be living with an American and the American's making plain that, it can be a family member and all that.

But what I don't understand is why it would take so long. So someone explain to me, if we've identified this as a concern, why the heck is this part of the process taking so long? Anybody able to answer?

Mr. SCHOCH. I would just add that they're entitled to go before the immigration judge. They may have petitions pending. They may seek asylum. There are various things that trigger throughout that proceeding that could delay this, not from day, but could turn into months. I don't know specifically, I can't give you a hard and fast on how long it does take.

I can just tell you from my experience with our cases, once you go through the immigration administrative system there, it could take months.

Mr. SHAYS. OK. And we could put legislation in that would basically just say once it's been denied, they go home without that process, and it wouldn't take any time. There would be some civil liberty issues, I gather, from some. Anyone else who wants to comment?

Let me just end with this. How many of these individuals may still be in the country, those who have revoked visas? I'd like an answer from all three.

Mr. SCHOCH. I will start. ICE has investigated, thoroughly investigated every, thoroughly investigated, either we have continued to investigate or have investigated every referral that we get from the Department of State. I don't have an exact number, but I assure you that every case where we cannot take either an administrative action based no a removable ground that's available to us, we would seek some assistance from State, using some type of retroactive——

Mr. SHAYS. Why would I feel comfortable with you not knowing the answer to that question? Why should that make me feel like that's acceptable? I mean, we're having a hearing on revocations. I would think that would be one of the basic answers.

Mr. SCHOCH. Sure. Most of the cases that we do get that are referred to us that have visa revocations are found not to be in the United States, a vast majority of those cases. Those cases that end up going to the field are later determined to have departed or they are later determined not to be the person or a person of national security——

Mr. SHAYS. OK, that doesn't really answer the question. Are you saying there's nobody?

Mr. SCHOCH. I'm saying the cases we have looked at now that we don't have any persons that we would deem a national security threat.

Mr. SHAYS. That's not what I asked. The question is, how many people are here under revoked visas?

Mr. SCHOCH. I wouldn't have that number available to me.

Mr. SHAYS. Do you know, Mr. Jacksta?

Mr. JACKSTA. No, I don't, sir. I can tell you that when we get the name of a visa revocation from the Department of State, we go through our systems and determine if anybody possibly entered the United States. We use our data bases and our systems and that information is passed over to ICE for investigation.

Mr. SHAYS. Ms. Bucella, do you have that number?

Ms. BUCELLA. We've only looked at it since the 6 months, so I don't have the cases that GAO looked at. But in the 6 months, we've looked at 332; 118 have expired visas. Revoked visas are 147.

Mr. SHAYS. Hold on a second. Put the mic a little closer.

Ms. BUCELLA. I'm sorry. During the 6-month period from December 1st to June 9th, we looked at 332 cases which included expired visas, revoked visas and pending revoked visas. There were 118 expired visas, revoked visas there were——

Mr. SHAYS. So the 118 means they didn't even attempt to come into the country?

Ms. BUCELLA. Yes. Expired visas?

Mr. SHAYS. I need to understand. We don't want bad information.

Ms. BUCELLA. Right. We believe that there are 44 in country. That's the bottom line. From the numbers that we looked at.

Mr. SHAYS. OK, so it's your numbers, you think you have 44.

Ms. BUCELLA. But that's, we are not looking at the total number of visas. We're only looking at those visas that we looked at from December 1st through June 9th of this year.

Mr. SHAYS. Just walk me through why I should feel, I mean, I'm getting uneasy. I was feeling better, I was feeling like maybe the deer was running away from the cheetah faster than cheetah. But it seems almost like this is a basic question and I'm not getting, I don't feel a sense of concern or urgency or anything here. I just feel like—well.

Ms. BUCELLA. One of the processes is trying to determine where these individuals are. One of the challenges that we believe happened was that while these people were, the question was whether or not they were in country or not. ICE then had to first determine who was looking at the individual, who had the derogatory information. Right now, based on the FBI's relationship with ICE, FBI is turning over their files to ICE real time so that they can first figure out if it is in fact an FBI matter. Or we are sharing our information with ICE as to whether or not the underlying derogatory information is with another agency and which agency that is.

Mr. SHAYS. Would you define the 118 number again? I'm unclear as to what that means. You have 118 that are——

Ms. BUCELLA. Expired visas.

Mr. SHAYS. Elaborate. What does that mean, that they came to the United States and they——

Ms. BUCELLA. They could either, they were in the United States and left, or they never came into the United States, the time period for the visa had expired.

Mr. SHAYS. OK, and those are revoked visas?

Ms. BUCELLA. No——

Mr. SHAYS. They were revoked beforehand?

Ms. BUCELLA. No, no. That's a different number. There are three different kinds. There are expired visas, there are revoked visas, and then there are those visas that are pending revocation. That means that they're gathering up the derogatory information.

Mr. SHAYS. I was really asking about the revoked and the pending. I just didn't understand why expired related to my question. That's why I was confused. Why does it relate to the question I asked? The question I asked is, how many revoked visas do we still have, that are still in the country? In other words, individuals who have revoked visas that are still in the country. I don't have an answer to that question.

Ms. BUCELLA. Forty-four.

Mr. SHAYS. Forty-four. OK, now, you're saying 44, and Mr. Schoch is saying basically zero. Walk me through the difference, Mr. Schoch.

Mr. SCHOCH. Well, if I can add, it's definitely not zero. The number is constantly updated. If I was to throw out a number to you today, I would not want to be telling you the wrong number than what it's updated.

Mr. SHAYS. So if you were to make a phone call right now, there is someone who could answer the question of how many you have?

Mr. SCHOCH. I know today based on the investigations that we have conducted, we know exactly how many people have revoked visas who may be in the United States——

Mr. SHAYS. OK, hold on 1 second. Ambassador, do you have any more questions? Because if you do, I'll give him time to call up somebody here.

Ms. WATSON. No, I was following your line.

Mr. SHAYS. OK, let me do this. Would somebody on your staff make that call right now and we'll adjourn as soon as we get that number. So will someone pursue that?

Mr. SCHOCH. We're going to pursue it right away.

Mr. SHAYS. OK. Congressman Moran has an office over here, you can just make a call.

Ms. WATSON. Mr. Chairman, I was getting ready to leave, because I understand we're going to have two or three votes.

Mr. SHAYS. Right.

Ms. WATSON. That can be given to us.

Mr. SHAYS. I'm willing to wait. I'm not going to adjourn until we get the number. But if you have some questions, I'd be glad to fill in.

Ms. WATSON. No, I was following yours. Thank you.

Mr. SHAYS. OK. Well, what else do we talk about here while we're waiting? Mr. Ford, what do you have? How are you acting? What's important about this dialog and what isn't? I want the chaff from the wheat in this dialog.

Mr. FORD. Well, it seems to me that if in fact they're tracing the visa revocations, they ought to be able to tell you how many they suspect are still in the country. I also think that they ought to be able to tell you the disposition of their investigations in terms of how many people were cleared, how many people were judged to be people of concern. And it seems to me that they ought to keep that record in a way that on a daily basis they would know that kind of information.

Mr. SHAYS. Let me ask, Mr. Jacksta and Mr. Schoch, why wouldn't that, it seems logical to me, so why wouldn't that be true? How would you disagree with what Mr. Ford said? Mr. Jacksta.

Mr. JACKSTA. I would begin, sir, by indicating that we clearly want to identify the individual at the port of entry when they arrive, and we want to stop them right there. If they get into the United States and they didn't have a revoked visa but later on, information is obtained and the visa is revoked and they're in the United States, we need to find them and identify who they are.

The process is that when a visa is revoked and we receive it, we go through our data base systems to see, based on the information that we have, did the person arrive at our port of entry. Then what we quickly do is we look to see if there's information that indicates that the person left. Those people that have not left, are still in the United States, are referred to ICE and then at that point they take over the investigative side of the house.

Mr. SHAYS. OK. Thank you. Mr. Schoch, do you have some comments on that?

Mr. SCHOCH. Just to let you know, I have some preliminary numbers, and I can followup with these. We have 37 that were referred to the field, 37 cases presently in the field and we're reviewing 20 currently. And I will say that a large number of the 20 reviewing do not get out to the field, because most of these people have either found, most of them have been found to have not entered or to have departed.

Mr. SHAYS. OK. Of the particularly egregious cases, do we then, even if they have left, do we try to track who they have been interacting with?

Mr. SCHOCH. That's correct. That's why these cases are handled by the Joint Terrorism Task Force, so we're not just looking at that individual, but anybody that they may have touched, their footprints, and absolutely exhausting any type of a lead that may come out of that, on associates or——

Mr. SHAYS. So just relate now the 44 versus 37. I can understand the difference between 20 and 37, but what's the difference between 44 and 37?

Mr. SCHOCH. Well, the 37 could jump up to 44.

Mr. SHAYS. But you don't mean 20 in addition to the 37?

Mr. SCHOCH. That's right, they're at headquarters.

Mr. SHAYS. I'm sorry, I thought that was 20 out of the 37.

Mr. SCHOCH. No.

Mr. SHAYS. OK. Do you have any questions?

Ms. WATSON. Mr. Schoch, the 37 that are in the field now, are we constantly following and monitoring their actions and do we have geographical locations that we could trace their whereabouts? How do we track them in the field?

Mr. SCHOCH. We first of all have a lead tracking system here at headquarters that gives us specific timeframes when to call up, when to be looking again at what field action has taken place on those, as well as we use a TECS system, TECS–II that actually is a case management system. It provides for a refresher every 30 days from the field. The field has basically 7 days when they receive the lead to act on it. Then they have every 30 days thereafter, they have to update us with additional information.

So we have a very tight control over exactly what's ongoing. We have an agent at headquarters devoted just to this, that they are looking at exactly what investigation has been done, almost a quality control, if you will, to look at exactly what measures have been taken, investigative measures that have been taken.

Ms. WATSON. Are there any clustering of these 37 around New York and Boston?

Mr. SCHOCH. I would have to look into that. I don't know that to be a fact.

Ms. WATSON. What keeps coming back to haunt me, and I'm sure the rest of us, is that those involved in September 11, particularly those who went to flight school, I think it was down in Florida, 6 months after September 11, their visas were approved for them to take flying lessons.

So time is of the essence. If we have 37 people in the field, we need to be tracking them very closely. We've heard rumors, and we've seen a heightened alert that we might be attacked around the November election or around our conventions. Though I would

think that actions need to be speeded up and we need to do our due diligence and make it a top priority.

Thank you, Mr. Chairman.

Mr. SHAYS. Is there anything, Mr. Ford, or anyone else, that you need to put on the record? Is there any information that we've asked that would not be, the answers would not be accurate and we could come to some false assumptions? Is there any correcting of the record that needs to be put on? Is there anything you are prepared to answer that we should have had the good sense to ask but didn't that needs to be part of the record? Mr. Ford.

Mr. FORD. I don't really have any comments, Mr. Chairman. I believe at least from GAO's perspective, you've asked a lot of questions that are germane to the issue. I don't really have anything more to add to that.

Mr. SHAYS. Mr. Edson.

Mr. EDSON. In the discussion on numbers, a visa can be revoked for any grounds under the law. We've been discussing terrorism here, but that, I think it is important to bear in mind that revocations cover the whole spectrum of immigration law. Sometimes that can cloud the numbers.

Mr. SHAYS. Ms. Bucella.

Ms. BUCELLA. Nothing.

Mr. SHAYS. Thank you. Mr. Jacksta.

Mr. JACKSTA. No, sir.

Mr. SHAYS. Mr. Schoch.

Mr. SCHOCH. No, sir, thank you.

Mr. SHAYS. I believe all of you have a very difficult job. I think you are working night and day to deal with this issue. I realize that we have a policy issue as it relates to the rights of people once they appear to be here. And that is something that Congress has to decide. And given we've overstepped our bounds in terms, in my judgment, calling people enemy combatants and some other challenges, I'm sure this will become even a more sensitive issue.

But I am struck with the fact that it's difficult to reconcile that we can say no at the beginning, we can say no at the border, but once they're here we can't. If we're the ones who screwed up and we think it's a problem, I just don't know why we can't act more quickly. It does strike me that if we think someone is here on, basically and shouldn't be here, that we should be acting quickly to deal with at least that part of the question.

But I have a lot of respect for what each of you do and I thank you very much for your participation. Thank you.

At this time, the hearing is adjourned.

[Whereupon, at 12:08 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Additional information submitted for the hearing record follows:]

Testimony of Janice Jacobs
Deputy Assistant Secretary of State for Visa Services
House Committee on Government Reform
Subcommittee on National Security, Emerging Threats, and International Relations
July 13, 2004

I appreciate the opportunity to testify today on the subject of visa revocations, where they fit into the overall strategy of strengthening the visa process as an anti-terrorism tool and the improvements we have made in the revocation process. The GAO has devoted substantial attention to this theme, starting with their reports from October 2002 and June 2003, and continuing with the recently released report on this subject.

While the Department of State does not agree with every conclusion reached in these reports, we have nonetheless used them to refine the revocation process. It cannot be overstated that border security is a multi-agency mission that requires information sharing, cooperation, and continuous analysis and procedural review so that we stay ahead of those individuals who would seek to enter the United States to do harm to Americans or our foreign visitors.

The Department of State revokes visas pursuant to the Secretary of State's statutory authority granted in Section 221(i) of the Immigration and Nationality Act (INA). We act when relevant derogatory information becomes available after a visa has been issued to an applicant who, based on information available at the time of application, was found eligible for that visa. Since 9/11, we have used this authority to revoke more than 1,250 visas based on information suggesting possible terrorist activities or links.

The use of the revocation authority is one element in a multi-layered, interlocking system of border security measures. Key elements in this border security system include the newly created Terrorist Threat Integration Center (TTIC) and the Terrorist Screening Center (TSC), which were built on and incorporated the Department's Intelligence and Research Bureau's TIPOFF program (INR/TIPOFF). The revocation process now supplements the terrorist watchlisting work of TSC, which provides the vast majority of the derogatory information on specific individuals that prompts the Department of State to revoke a visa for counterterrorism reasons.

Whenever TTIC provides TSC with derogatory information about an identifiable alien, TSC reviews the information and makes the appropriate watchlist entries in the Department's Consular Lookout and Support System (CLASS) database and the Department of Homeland Security's IBIS database *prior* to determining whether the subject has even been issued a visa. These lookouts immediately put safeguards in place that prevent further visa issuance or admission to the United States. The Consolidated Consular Database of 70 million visa records is then searched to determine if a visa was ever issued to a person who is a probable match with the individual in question.

If it appears that a visa might have been issued to a watchlisted alien, TSC forwards the derogatory information to the Visa Office (VO) of the Bureau of Consular Affairs, which manages the visa revocation process for the Department of State. Initially after 9/11, the majority of derogatory information came to CA from the Bureau of Intelligence and Research, which managed the TIPOFF terrorist database, but since December 2003, the majority of information has come from TSC. VO has also on occasion received information directly from other agencies, such as FBI and DHS, especially when the agencies suspected imminent travel of the individual. (VO also revokes visas for reasons unrelated to terrorist concerns.)

As soon as VO receives the derogatory information from TSC or other agencies, it places a revocation lookout ("VRVK" code) in CLASS, which replicates in real time to the DHS's IBIS lookout system. This action is taken by close of business on the same day that VO receives the derogatory information. The lookout is thus available to DHS inspectors at Ports of Entry into the United States should the person seek to enter the country. It alerts the inspectors that the visa is being reviewed for possible revocation, or has been revoked.

VO then reviews the derogatory information carefully to ensure that, among other things, the information pertains or may pertain to the individual who has been issued a visa. When the Department determines that there is a possible link between the person and the terrorist related information, the visa is formally revoked. When we determine that a visa should be revoked, we prepare a revocation certificate and a revocation cable to the embassy or consulate where the visa was issued. The certificate is the official document revoking the visa. The Deputy Assistant Secretary for Visa Services signs the revocation certificate. The cable to the post contains the language of the

revocation certificate and instructs the consular officer to attempt to call the visa holder in so that the revoked visa can be physically canceled.

The Department works closely with its partners in the revocation process to make sure that the fact that a visa has been revoked is disseminated to those in other agencies who may need to carry out follow-up action. VO immediately sends the cable electronically to the appropriate post as well as to FBI and to Immigration and Customs Enforcement (ICE) within DHS. At the same time, VO emails the revocation cable to the Customs and Border Protection's (CBP) National Targeting Center (NTC) and to elements of CBP and ICE within DHS. We also fax the cable to the NTC. Through these means -- by cable, email and fax -- we inform our partners in the revocation process in a timely manner of each visa that is revoked. However, it is important to remember that long before all of this communication and coordination takes place, the revocation code has already been entered into the lookout system, along with TSC's original watchlist entry, and the traveler is not able to enter the United States.

We do NOT provide the alien with advance notice that we are considering revoking his visa. After we have revoked the visa, we ask the relevant consular post to attempt to contact the alien, but we are not in a position to determine whether the alien is in the United States or to find him and provide him with notice that the revocation has occurred. The revocation takes effect as stipulated in the revocation certificate, regardless of notice to the alien.

In evaluating the significance of visa revocations as a counterterrorism tool, it is important to remember the nature of the information underlying a revocation. The Department of State is continually receiving information that bears on the continued eligibility of aliens to hold their visas. In some cases the information, if it had been known during the application process, would almost certainly have led to a refusal. In other instances the information instead raises questions that would have led to additional inquiries and analysis before making a decision on the application. In still other cases the information pertains to actions taken by the alien after visa issuance; while it might not have affected the original adjudication, it does call into question whether the alien should continue to hold a visa. Information of all three kinds, when it is received subsequent to visa issuance, is used to revoke a visa when the visa holder may pose a

potential threat to the security of the United States as well as in other instances.

Here are several examples of the kinds of information we have acted on:

- In August 2003, we revoked the visa of an individual who bore a physical resemblance to an individual on an FBI Watch List. This action was taken even though we did not have definitive confirmation that the visa holder was the subject of the Watch List hit.

- In December 2003, we revoked the visas of five women, each of whom had the same name as a person identified as a suspected terrorist. Even though we lacked other information regarding the person of concern, we revoked the visas of all five individuals, aware that only one of them could be the suspected terrorist. While TSC attempts to ensure a probable match between an alien who has been watchlisted and a visa holder before flagging a case for possible revocation, identity issues may still result in revocations of visas held by more than one person.

- We have also revoked visas for individuals whose names were similar to names found in address books or computer files of suspected terrorists. As with the December 2003 example above, in these cases, we acted to revoke visas based on name similarities and without information to either confirm a match or to establish a nexus to terrorism.

In these kinds of cases, it is possible that our concerns are unfounded and that these persons would be eligible for visas upon re-application.

- On the other hand, sometimes we receive information that clearly renders the individual ineligible and that triggers the revocation process. In one instance, this involved the head of an investment bank who used the bank to funnel funds to a terrorist organization.

These examples illustrate that the information in question varies greatly in its specificity and accuracy. While that information may lead to a visa revocation, the fact that the visa was revoked does not necessarily mean that the person whose visa is revoked is a terrorist or is remotely related to

terrorism. In short, in almost all cases, the revocation has been prudential rather than based on a definitive finding that the alien is inadmissible. This is in part because, at the time of revocation, we are often unable to conclude with certainty that the visa holder is the subject of derogatory information.

Nevertheless, given the terrorism-related nature of the information that may relate to the visa holder, we deem it prudent to revoke the visa promptly after that information becomes available and to rely on the visa application process to resolve identity and other questions at a later time, should the visa holder wish to reapply for a visa. If the holder of the revoked visa reapplies for a visa at one of our embassies or consulates abroad, a consular officer carefully screens his application and, after consultation with the Department, determines eligibility. The alien whose visa was revoked may well be issued a new visa, if it is determined that the information that led to the revocation does not pertain to the alien or that the alien is in any event eligible.

Internally, there are very clear Standard Operating Procedures (SOP) for visa revocations that have been continually updated over time as the process has been refined and as DHS has clarified the mission and operating practices of its new institutional structure. We have shared the SOP with our revocation partners. VO has a designated revocation officer, who reviews incoming requests to make sure they meet the standard for prudential revocation, and a revocation assistant who prepares all of the appropriate documents. We have internal accountability built into the process as the revocation assistant must complete a checklist of steps taken which is reviewed and verified by a senior officer before the case can be closed.

Our current SOP reflects lessons learned following the attacks of 9/11, when we were inundated with a large amount of derogatory information from a number of agencies. In the haste to respond to these requests, the VO staff concentrated on executing the relevant documents to effect revocations as quickly as possible. After the initial period of heavy revocation activity ended and we began to receive information on a more regular basis, we established a system of revocation record keeping that is excellent. Our database systems have always been the single official electronic record of cases revoked. We now also maintain a master spreadsheet that contains information on all visas that have been revoked since 9/11, and we have established a designated location for easy access to all of the revocation case files.

Finally, I would like to address the issues surrounding the question of when our revocations take effect. The INA allows the Secretary to revoke visas effective retroactively to the date of issuance. We do not, however, normally exercise that authority fully. Instead, we generally revoke visas effectively immediately with the caveat that, if the alien is in the United States, the revocation will take effect upon his departure. This approach was agreed to a number of years ago among the Department of Justice, the former Immigration and Naturalization Service, and State to minimize the likelihood that persons in the U.S. would be permitted to block the revocation process in our courts. Since 9/11, we have worked closely with INS and then the Department of Homeland Security to evaluate when and under what circumstances it might be appropriate and helpful to DHS for the Department of State to make its revocations effective immediately or even retroactively for persons physically present in the United States.

We have agreed that revoking visas effective immediately when an alien is at a port of entry could be helpful to DHS by allowing it to deny entry on the ground that the alien does not have a valid visa, without having to establish that the alien is also of security concern. We have also agreed that revoking a visa retroactively to the time of issuance could be helpful to DHS in the case of an alien in the United States, by allowing it to place the alien in removal proceedings on the ground that he entered without a valid visa. Because these scenarios raise a number of legal and other issues, however, we have agreed that State should revoke visas in this way only on a case-by-case basis, after receiving a request from DHS.

For example, in February 2004 at DHS's request we revoked effectively immediately the visas of two individuals who had been stopped by DHS at a port of entry but who had not yet been admitted. These individuals had been paroled into the custody of law enforcement, the first because of possession of prohibited items on board a commercial airliner and the second because of an apparent attempted export of sensitive technology. If for any reason the criminal charges were not pursued, DHS would be able to deny these aliens admission on the ground that they did not have valid visas and return them to the country from which they came.

To date, we have not received a request to revoke a visa retroactively. We understand that DHS will make such requests only in unusual cases,

when it has confirmed the presence in the United States of an alien who may post a significant security risk.

Our approach to the issue of the effective date of a visa revocation is designed to manage the litigation risks involved in removing aliens based on visa revocations and to avoid steps that will weaken our ability to use revocations flexibly and aggressively to protect homeland security. We do not want to raise the threshold of information on which we act. We do not want to create a situation in which we must provide notice to the alien before we act. We do not want a situation in which courts start second-guessing our revocation decisions. DHS and we are in agreement that a case-by-case approach is the best way to ensure these results while protecting homeland security.

The tragedy of September 11 strengthened the resolve of all the parts of the federal government to take every step in our power to safeguard our borders, and spurred us to think through improvements in our procedures for visa work. Visa revocations are an important tool in maintaining the security of our borders and our nation. We and our colleagues at the Department of Homeland Security are committed to furthering our mutual efforts to keep persons who would do us harm out of our country. I thank you again for the opportunity to testify here today and am now ready to take your questions.

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