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VISA ISSUANCE AND HOMELAND SECURITY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

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VISA ISSUANCE, INFORMATION-SHARING AND ENFORCEMENT IN A POST-9/11 ENVIRONMENT: ARE WE READY YET?

TUESDAY, JULY 15, 2003

UNITED STATES SENATE,
SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY, OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 2:35 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Saxby Chambliss, Chairman of the Subcommittee, presiding.

Present: Senators Chambliss, Sessions, Cornyn, and Durbin.

OPENING STATEMENT OF HON. SAXBY CHAMBLISS, A U.S. SENATOR FROM THE STATE OF GEORGIA

Chairman CHAMBLISS. The Subcommittee will come to order.

Last month, GAO issued a report titled "Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process." That title is still appropriate for today's hearing, even as we look more generally at the visa process.

Overall coordination and information-sharing between the State Department and the Department of Homeland Security is essential to our national security after September 11. We must reshape our Government in accordance with the President's vision for homeland security, from the creation of a new department to the culture change away from old habits, and down to the details of interagency cooperation.

The GAO report brings into sharp focus the lack of communication between the State Department's Consular Affairs and the Homeland Security Department's Bureau of Customs and Border Protection, as well as its Bureau of Immigration and Customs Enforcement. The report exposes how suspected terrorists may have entered the country even after their visas had been revoked.

In this instance, terrorism is still illustrative of the underlying problem: policies and procedures must be adopted and formalized to stop immigration-related threats to our Nation's security.

I understand the State Department has implemented a new code to inform our border inspectors in real time about visa revocations so that the information-sharing mistakes of the past won't be repeated. I applaud this progress, but it remains to be seen whether this code is itself the silver bullet to stop all terrorist threats.

I am concerned that law enforcement is already hamstrung due to the lack of information-sharing, and that the use of the code

alone may not address this problem. Several recommendations from the June GAO report remain unanswered, and today we will seek answers from the State and Homeland Security Departments on those and some other issues.

Several of the issues that we will address today include: Is the State Department transmitting sufficient information on visa revocations, including information to assist immigration and law enforcement with removal or prosecution?

When will the new Department, in accordance with the Homeland Security Act, takes its lead role in the visa process and formulate written policies and procedures? Are State and Homeland Security agencies sharing information fully enough to ensure that terrorists and other threats do not enter the United States and, in case they do, that action can be taken against them?

It is important to establish policies that are clear and procedures that are institutionalized, whether in a memorandum of understanding between departments or with access to agency watch lists.

One problem we saw after 9/11 was the lack of information-sharing either vertically within our Federal agencies, but more significantly horizontally across Federal agencies. It is not just keeping the bad guys out that is important. But when they do get here, anyone who has a suspicious background—we need to make sure that everybody is on the same wave length with respect to sharing of information on individuals in the right way.

Today, we have before us GAO's expert in this area, Mr. Jess Ford. Mr. Ford authored the most recent June 2003 report, as well as its prequel, the October 2002 report titled "Border Security: Visa Process Should Be Strengthened as an Antiterrorism Tool." We appreciate Mr. Ford being with us today to lay out the issues and the remaining problems.

Our second panel includes the three key agency leaders on visa issuance, border security, and immigration enforcement: the State Department's Deputy Assistant Secretary for Visa Services, Ms. Janice Jacobs; within the Department of Homeland Security, the Assistant Commissioner for the Bureau of Customs and Border Protection, Mr. Jay Ahern; and the Director of Operations for the Bureau of Immigration and Customs Enforcement, Mr. Michael Dougherty. I appreciate all of you making yourselves available for today's hearing and we look forward to hearing from you.

This issue of information-sharing has been of particular importance to me during my two years of service on the House Intelligence Committee. It was pretty obvious both before September 11, but more significantly after September 11, that we simply were not only not sharing information, but not sharing the right kind of information between agencies. Our failure to do that probably didn't allow September 11, or the incident of September 11 to happen, but certainly it lessened our opportunity to interrupt and disrupt that specific incident and other terrorist activity because of the fact that we were not sharing information between agencies.

Before going to Mr. Ford, my colleague, Mr. Cornyn, is here.

Senator Cornyn, if you have any comments that you would like to make before we hear from Mr. Ford, we will be glad to hear that at this time.

STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Just briefly, Mr. Chairman, thank you very much, and thank you for convening this important hearing. I too am anxious to learn about the status of our visa issuance and information-sharing and enforcement post-9/11.

But there are other concerns beyond strictly the concerns about terrorist activity and terrorists coming into our country illegally, and whether we are doing the kinds of things that will allow us, in your words, to identify the bad guys and make sure they don't do us harm.

Yesterday, the Judiciary Committee had hearings on free trade agreements that have been proposed with Chile and Singapore, and some immigration-related provisions of those free trade agreements which would create another category of entrant into this country, temporary professional workers outside of our traditional immigration system.

As you and I have discussed, Mr. Chairman, on Thursday I filed a guest worker bill to hopefully begin to re-start the debate that had been put on the back burner for the last two years in the wake of 9/11 on how we deal with the huge number of people that we know are illegally in this country—we simply don't know who they are or for sure exactly why they are here—and a means to try to determine that, in addition to providing a lawful framework under which people who do want to come and work in this country can do so and provide the labor that frankly we need, and at the same time provide some protection against exploitation.

My point is that I am concerned that our administrative process for keeping track of immigration and issuance of visas and information-sharing may not be up to the current task. Therefore, it causes me concerns about additional burdens that may be placed on our State Department and Department of Homeland Security in doing the other things that we need to do on top of just the mandate we have in a post-9/11 environment. Obviously, we want to make sure that our enemies cannot thread the cracks in a system that is not functioning as it should and threaten our homeland.

So thank you for convening this important hearing and I look forward to hearing from this witnesses that you have asked to appear before the Subcommittee.

Chairman CHAMBLISS. Thank you, Senator Cornyn.

We are going to be joined by other of our colleagues off and on during the hearing and it may be that some of them will want to have opening statements, which they certainly will be allowed to make at that point in time.

Mr. Ford, we welcome you here today. We appreciate the work that you have done. We have read your report which has been very enlightening in any number of ways, and we look forward to hearing your testimony.

Before doing so, as I indicated, we are now joined by one of our colleagues.

Senator Durbin, if you have any opening statement you wish to make, we will certainly—

Senator DURBIN. I will waive it at this time.

Chairman CHAMBLISS. Okay.

Mr. Ford, again, thank you for being here. We look forward to your testimony and you may proceed.

STATEMENT OF JESS T. FORD, DIRECTOR, INTERNATIONAL AFFAIRS AND TRADE, GENERAL ACCOUNTING OFFICE, WASHINGTON, D.C.

Mr. FORD. Thank you, Mr. Chairman, Members of the Subcommittee. I would like to have my full statement submitted to the record. I plan to briefly summarize my comments.

Chairman CHAMBLISS. Without objection. It will be appreciated.

Mr. FORD. I am pleased to be here today to discuss our recent work on the visa process and some of the ways we believe this process could be strengthened as an important part of our country's border security strategy.

Mr. Chairman, citizens of other countries seeking to enter the United States temporarily for business, tourism, and other reasons generally must apply for and obtain a U.S. travel document called a non-immigrant visa at U.S. embassies or consulates abroad before arriving at U.S. ports of entry.

In deciding who should and should not receive a visa, the State Department and its consular officers must perform a risk assessment that balances the need to facilitate legitimate travel with the need to protect the United States against potential terrorists and to deter others whose entry is considered likely harmful to U.S. national interests.

Since September 11, visa operations have played an increasingly important role in ensuring the national security of the United States. The Department of State, the Department of Homeland Security, and the Department of Justice, as well as other agencies, are involved in the visa process, with each playing an important role in making security decisions.

My testimony today is based on two of our recent reports on the visa process that contained observations and recommendations on the ways in which national and border security could be strengthened through the visa process, implementation of clear visa policies and guidelines, and the sharing of information and data.

The first report we issued in October focuses on the effectiveness of the visa process as an antiterrorism tool and recommended ways that the process could be strengthened. The second report, issued in June of this year, provides examples of how weaknesses in policy and interagency coordination on the visa revocation process are affecting border security.

Our analysis of the visa process shows that the Departments of State, Homeland Security, and Justice could more effectively manage the visa function if they had clear and comprehensive policies and procedures and increased agency coordination and information-sharing.

Our October report addressed the need for a clear policy on how the State Department and its consular officers should balance national security concerns with a desire to facilitate legitimate travel when issuing visas. It also discussed the need for more coordination and information-sharing to realize the full potential of the visa process.

In addition, there is a need for more human resources and training for consular officers. We made several recommendations to the Department of State and the new Department of Homeland Security to improve this process, and the State Department has taken several actions to implement these recommendations.

Our June 2003 report also pointed out that the U.S. Government does not have a clear and comprehensive policy on the interagency visa revocation process. This process should be used more aggressively to alert Homeland Security and law enforcement agencies that individuals who entered the country before their visas were revoked might be security risks.

However, we found that the process broke down because information on visa revocations was not shared between the State Department and appropriate immigration and law enforcement offices. It broke down even further when individuals in question had already entered the United States prior to revocation.

In our review of 240 visa cases that were revoked by the State Department from September 11 to the end of calendar year 2002, we found numerous cases where notification of the revocation did not reach appropriate units within the former INS, now called the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement, and the FBI.

We also found evidence that individuals whose visas were revoked because of terrorism concerns entered the United States and may still be in the country. We found that a lack of formal written policies and procedures may have contributed to a lack of timely notifications, posting of lookouts, and investigations of persons who may have entered the country.

For example, INS said that it did not receive notification from the State Department in 43 of the 240 cases we analyzed. In another 47 cases, the INS lookout unit did not receive the information on a timely basis. We also identified at least 30 cases where persons had entered the United States before their visas had been revoked. INS investigators were not always informed of these cases and therefore did not follow up on all of the cases.

To remedy the weaknesses in the visa revocation process, we made recommendations to the Departments of Homeland Security, State, and Justice to develop specific policies and procedures to improve the interagency visa revocation process and to ensure prompt notification from the State Department to immigration and law enforcement agencies.

We also recommended that a specific policy be established on actions that the immigration and law enforcement agencies should take to investigate and locate individuals whose visas had been revoked because of terrorism concerns. The Department of Homeland Security agreed with the thrust of our recommendations.

Mr. Chairman, I would like to conclude my comments by reiterating the need that there must be clear, comprehensive policies and procedures governing U.S. visa processes to ensure that our borders are protected from potential terrorist threats.

This concludes my statement. I would be happy to answer any of your questions.

[The prepared statement of Mr. Ford appears as a submission for the record.]

Chairman CHAMBLISS. Mr. Ford, thank you very much. I want to start out by going back to your June 3 report, and on page 8 you state in here, Homeland Security officials said that the issue of whether a visa revocation after an individual is admitted on that visa has the effect of rendering the individual out of status is unresolved legally.

Can you tell me what was meant by that, and if that is unresolved legally, is there any action being taken to try to resolve that so that they will know what their power and authority is and can take action on that?

Mr. FORD. Mr. Chairman, the issue that you refer to had to do with discussions that we had with the Department of Homeland Security and the Justice Department regarding the difficulty of actually removing an individual who had already entered the United States on a legitimate visa and then subsequently had it revoked.

The discussion really focuses on whether or not there is enough legal basis to have that individual removed. The commentary that we had with the agencies essentially focused on the level of evidence that is required to have an individual potentially removed, and there is some disagreement between the State Department and DHS and, I believe, Justice over the level of evidence that is needed and whether or not they can easily remove an individual because they might have suspicions that he might be a threat to national security.

Chairman CHAMBLISS. At the June 18 hearing before the House Government Reform Committee, you testified that at the time neither the State Department nor Homeland Security had a specific policy on using visa revocations as an antiterrorism tool.

Since the release of your June GAO report and that House Committee hearing, are you aware of any action taken by the departments to formalize policies or establish procedures, and if so, in what ways do these actions meet or fall short of GAO recommendations?

Mr. FORD. Mr. Chairman, it is difficult for me to answer that question directly. The State Department did not comment on our recommendations in our report that we issued in June. At the hearing, you mentioned that they mentioned the new coding process that they put in place, and that had indicated that they had tested this process and based on those tests they indicated that the notifications were going to the appropriate authorities.

We have not independently had an opportunity to verify that and we do not know at this time what changes, if any, they have made in their procedures related to the revocation process. We would like to see a little more information about what actions they have actually taken.

Chairman CHAMBLISS. Are you scheduled to do any follow-up with them in an oversight capacity?

Mr. FORD. We have not been formally tasked with that by anyone in Congress. We are following up on some questions that the House asked us related to the chronology of events of our conversations with the Justice Department, but we have not to date been asked to follow up on that. We do routinely, however, follow up on our recommendations with agencies every 60 days.

Chairman CHAMBLISS. Well, after we hear testimony from the agencies today, we very well may want to give you a schedule to do that.

In your June report, you state that INS and the FBI did not routinely investigate, locate, or take any action on individuals who might have remained in the United States after their visas were revoked. INS and FBI officials cited a variety of legal and procedural challenges to their taking action in these cases.

What specifically were the legal and procedural challenges cited by the former INS, now Homeland Security, and have there been any efforts to overcome those?

Mr. FORD. I would like to answer that in two ways. First, with regard to the issue of routine investigations, we had some subsequent discussions with the former INS officials that investigated these cases. They indicated to us that in every case where they had been notified by the lookout unit within the former INS or by State, they did, in fact, investigate.

Our point was that many times those notifications were not reaching them, and as a consequence of that a number of the individuals that we had identified that may have entered the country they were not investigating because they hadn't been informed that these individuals were here or that they might be potential risks.

The other issue that you mentioned really focuses on a comment I made earlier regarding legalities of the difficulties involved in trying to investigate, collect evidence, and remove individuals that might be suspected terrorists in the country. The discussion there really focused on the difficulty that they felt that they would have to make those cases.

Chairman CHAMBLISS. Thank you.

Gentlemen, we have set the time at five minutes, but we are going to be liberal and we will go around as many times as you want to, but i thought we would just do it at five minutes so we can make sure everybody has an opportunity.

Senator Cornyn.

Senator CORNYN. Thank you, Mr. Chairman.

Mr. Ford, I appreciate the work you have done which you have outlined. I guess I am trying to put this in a larger context. Did your study primarily have to do, as I understand it, with visa issuance policies and the level of coordination and cooperation between the different Federal agencies that were responsible for this process?

Mr. FORD. Senator, we have two separate reports that I should make a distinction on. The report that we issued in October of 2002 was a more comprehensive review of the visa issuance process, primarily focused on the role of the State Department and its consular affairs officers overseas. That report really focused on a comparison of policies and practices prior to 9/11 and policies and practices after 9/11, and the differences in the way the department was focusing on the issuance of visas.

The report in June that we issued is more involved with the interagency process of identifying visas that have been revoked and making sure that the information was provided to the appropriate domestic authorities, in this case law enforcement and immigra-

tion. So the second report really focuses more on the interagency process.

Senator CORNYN. But your focus was on people who had actually applied for and received a visa, as opposed to people who have entered this country without even making any pretense at doing so through the legal process?

Mr. FORD. That is correct. Our analysis was based on all cases where there was an illegal visa that was either reviewed and/or issued and later revoked.

Senator CORNYN. I want to make sure I understand. Senator Chambliss asked you about, and I believe you addressed the question of what sort of evidence would be required to expel someone whose visa had been revoked, what that legal test might be or what they might have to prove in order to expel that individual. Is that correct?

Mr. FORD. That is correct, and the issue here is that we felt that there was some disagreement between the State Department and the Department of Justice and DHS with regard to what level of evidence or test might be required.

Senator CORNYN. Are you suggesting that the State Department or the United States of America or any of its agencies can't expel somebody whose visa has been revoked for any reason?

Mr. FORD. Well, Senator, I have to tell you that I am not a lawyer. I can't really answer that directly because I can't tell you the level of evidence that is required. What I can tell you is that there was some disagreement between the agencies with regard to that level of evidence.

In the case of the State Department, they felt that they needed a higher level of evidence in order to, for example, issue a visa. With regard to the Department of Justice, for example, in October when we reported on that issue, they felt that the level of evidence didn't need to be as high as the State Department. Now, we had recommended at that time that they get together and try to resolve that. I don't know what the current status of those discussions are.

Senator CORNYN. Whatever the standard is, though, after someone who has entered this country on a visa—after that visa has been revoked, is there any question about our legal ability to expel that individual?

Mr. FORD. Yes. My understanding is that the fact that the visa itself has been revoked is not a basis to have someone removed. That individual has due process and there has to be a process that they go through before they can be removed.

The difference is that when an individual has their visa revoked prior to entering the country, my understanding is the law is clear that they can unilaterally be put back on a plane without any due process. Once an individual comes into this country legally with a legal visa and then subsequently has it revoked, there is some due process that has to occur. They cannot just be removed unilaterally.

Senator CORNYN. Would it be different for somebody who has come to the country on a visa and then that visa is simply expired as opposed to being revoked? Do you know if there is any difference in the legal standard or what needs to be shown before they can be deported?

Mr. FORD. My understanding is if the visa is expired, they can be removed or deported from the country.

Senator CORNYN. Well, my understanding is that we have between 8 and 10 million people who have come to this country illegally and who are currently still in the country, most of whom have come to the country on some form of visa and have simply overstayed their visa. It has expired and they have stayed here.

While I applaud the efforts that are being undertaken to try to identify those for whom a visa should never be issued or those who represent threats to the United States and whose visas should be revoked, my hope is that we will look at the 8 to 10 million people who are here and try to figure out why they are here. Hopefully, they are all here for a good purpose and we can address that, but it seems like this is only scraping the surface of the true threat to our homeland security.

Thank you, Mr. Chairman.

Chairman CHAMBLISS. Senator Durbin.

Senator DURBIN. Thank you very much, Mr. Chairman, and I would like to ask that my statement and a statement by Senator Leahy be made part of the record.

Chairman CHAMBLISS. Without objection.

Senator DURBIN. I would like to thank you, Mr. Chairman, for announcing at the outset that this is going to be a much more liberal Subcommittee from this point forward.

[Laughter.]

Chairman CHAMBLISS. I have heard two judges for two days now.

Senator DURBIN. I also think that most Members of Congress, and certainly this Senator, should be given some opportunity to have several of my staffers on the Department of Homeland Security payroll, since 85 percent of my case work in Chicago is about immigration and visas. We spend more time on that than anything else. I don't profess expertise on it, but a lot of frustration, which is mirrored by my staff.

Let me ask you, Mr. Ford, if I can—I want to put this in context. At one point here in the GAO report, you say 500 million people enter the United States legally each year; 300 million are non-citizens. I assume that means that those coming in from Canada and such obviously don't need visas.

How many people come into the United States each year legally by visa?

Mr. FORD. I believe in our October report, I believe it was 10 million cases of non-immigrant visas, people that come in on non-immigrant visas.

Senator DURBIN. A temporary visa situation?

Mr. FORD. Correct.

Senator DURBIN. And how many visa applications are denied each year?

Mr. FORD. I don't have that information across the board. I can probably get it for you. I do know it varies by country, the denial rate.

Senator DURBIN. Incidentally, for my colleagues, if you get a chance, go to Mexico City and see how they handle it. They do at great job at our consulate there. I really want to salute them for

what I think is a very humane and professional way that they handle visas for the people that go through that process.

Let me ask you this. We asked 4 or 5 years ago for the INS and the Department of Justice to come up with some sort of a software or program that would keep track of people who have left the country, who were here on a legal visa and left, so we would have some sort of inventory at any given time about how many people were still here and their visas as far as we knew it had expired.

Has that ever been done?

Mr. FORD. I am not aware whether that has been done or not. Again, that is something I can check on and get back to you on, but I don't know the status of that.

Senator DURBIN. I think the answer is it has not been done, and I think it has been four years since we asked for it, to give you an idea that even before 9/11 this was something that seemed so obvious, so we would have some inventory of expired visas in the United States.

So as I understand what you have in your report here, in a span of 16 months, September 11, 2001, to December 31, 2002, there were 240 visas revoked for terrorism-related purposes. Is that correct?

Mr. FORD. That is correct.

Senator DURBIN. Which is about 15 a month, roughly?

Mr. FORD. Roughly.

Senator DURBIN. You say that no notice was given to the INS of these revocations in 43 of the cases. Is that correct?

Mr. FORD. That is correct.

Senator DURBIN. So the communications clearly broke down. The agencies that were supposed to be working together didn't work together in this instance.

Then you have this other reference that 47 notices or revocation were sent by cable. When you say cable, I think of Western Union. In the world of e-mail, what is the world of cable all about?

Mr. FORD. Essentially, the State Department has two ways they transmit the information that we are aware of. One is by fax. They fax the information to the appropriate lookout unit. The other option is cable or e-mail that they use to notify. In this particular case, they notified INS and the FBI.

Senator DURBIN. If I read your report correctly, they had better crank up their e-mail because it took 12 days to deliver it.

Mr. FORD. Yes. Actually, that was the average. For those cases that were late, the average was 12 days. Actually, a couple of them it was over a month.

Senator DURBIN. Explain that form of e-mail to me that would take a month for delivery.

Mr. FORD. I can't explain it. All I can tell you is that when we looked at the written record at INS and looked at the dates on it, the difference between the date that the visa had been revoked and the time they had received it was, on average, 12 days.

Senator DURBIN. Not exactly a confidence-booster.

I went through Dulles coming into the United States several months ago, and long lines waiting to go through. I suppose they are checking our names against a watch list. I suppose that is what it all about. Finally, when I got to my position in line, the lady

said, I am sorry, Senator, to tell you the computers have been down all day; we are just making it up; we want to see if anybody is going to admit to being a terrorist.

How often does that happen, that the computers break down so that the watch list can't be applied to the incoming people?

Mr. FORD. I really can't answer that. I would have to defer to the administration on that. I don't know how often it breaks down. I have heard that it has.

Senator DURBIN. The thing that strikes me about this system is we are talking about legitimate travelers who are applying for visas and whether they will be suspected to be terrorists and somehow denied a visa or have a visa revoked. My guess is that the likelihood of a terrorist applying for a visa is about as strong as the likelihood of a fugitive going to the police department to report a change of address. It strikes me that this may not be the best way to stop terrorists from coming into the United States, and we still spend a lot of money doing it and clearly don't do it very efficiently.

Thanks for your report. Thanks, Mr. Chairman.

Chairman CHAMBLISS. Just before we leave that on Senator Durbin's subject of communicating by cable or e-mail or whatever, are our computers not able to talk to each other between agencies?

Mr. FORD. It is my understanding that they should be able to. The basic lookout systems—at least as far as the former INS and State Department, they are supposed to be compatible and they should be able to easily transmit the information.

Chairman CHAMBLISS. But it is still taking this period of time. Twelve days, I assume, would be an extreme situation, but it still takes that long to get information in the right hands?

Mr. FORD. Well, our view is it shouldn't take that long. The cases where we said they weren't timely, those were the 47 that I referred to out of the 240. The rest of them all were received within 24 hours.

Chairman CHAMBLISS. Senator Sessions.

Senator SESSIONS. Thank you. I would like to pursue that general subject a little bit. As a prosecutor for a number of years, the burden of proof is a significant matter.

Let's say that in a country that is known to have terrorist connections a person comes to the embassy and asks to be able to get a visa to come to the United States. That is what they would normally do, is it not?

Mr. FORD. Yes. If they are required to have a visa, they have to go in and file and—

Senator SESSIONS. Come in and ask for it. Well, let's assume at that point that the embassy approves it and does not have any negative information about the individual. Let's say later something comes out that one of the organizations that that person had been involved in had terrorist connections and it raised a question about that person's possible connection to terrorist activities. Now, this person is already in the United States. So now we have got a burden of proof trial to get them out of the country. Is that correct?

Mr. FORD. That is my understanding, sir.

Senator SESSIONS. Whereas, in the beginning, the embassy can reject them for virtually any reason they deem fit, any reasonable

suspicion they may have. They have pretty much discretion, do they not?

Mr. FORD. That is pretty much true, that is correct.

Senator SESSIONS. And so to me that is a problem. I have thought about it for some time and thought it should have been in one of our terrorist bills, the PATRIOT Act that deals with this situation because as a matter of law—well, is this a statutory or a judicial decision that allows this person to have a presumption that they can stay in the country until it is overcome? Do you know if it statute or a court ruling or a regulation?

Mr. FORD. I have been informed it is statute.

Senator SESSIONS. I think, Mr. Chairman, we ought to look at that statute because, yes, you could say that. Before the world of terrorism, we could say that, perhaps, and it would work. But a person comes to America as a non-citizen by permission. They are here at the acceptance of the United States and they can stay here, and we allow more people to come to our country than any country in the history of the world has ever allowed to come to their country to visit and become citizens. But it is by our acceptance and it can be revoked, I think, at any time, but we have got this statute that is making it difficult.

I will just say this. It is not a matter of burden of proof beyond a reasonable doubt. We have got millions of people coming to this country and who want to come to this country. If there is a 1 in 50 chance that this individual may be a terrorist, this country does not have to let them stay here. But we get into a court trial and I don't know exactly what the burden level is, but the net result of all of this is it overwhelms the INS, the State Department people, the FBI, and whoever is involved in handling the case, and they don't have time to do it.

The problem with immigration law in America fundamentally, in my view, is we have the semblance of a legal system. We have a good group of law on the surface that appear to work, but in reality they are not working; they are just not working. We are getting overwhelmed and we are not able to act on the protections. For example, for terrorist activities, even if there is a marginal connection to terrorism, I think we ought to be able to ask that person to leave and terminate their tenure in the United States.

Let me ask you a little further about some of the questions that Senator Durbin was pursuing. I am glad he asked that about why it took 12 days. Are you saying that it took 12 days before they really got it entered and pushed the button to send the e-mail, in effect?

Mr. FORD. Our information is based on the lookout unit at the former INS. We compared that with the time that the revocation had been officially signed by the Department of State. When we say it took 12 days, that means that the INS lookout unit had not received the actual revocation, on average, 12 days from the time it had been revoked.

Now, what that means is that theoretically an individual could have entered the country during that 12-day time frame who had a visa revoked, but INS wouldn't have known about it because they hadn't entered it into their lookout system yet.

Senator SESSIONS. So a person that has a visa and then has it revoked—oftentimes, those people are not in the country and they will be coming into the country. Sometimes they are already here, are they not?

Mr. FORD. Well, we found cases where visas had been revoked. We then went to INS, and through a couple of their databases we were able to determine that the individual had entered the country. In our report, we cited 30 instances of this. We have subsequently done a little more analysis. We think the number could be as high as 50.

Senator SESSIONS. Out of 240 cases. Fifty out of 240 were entered, where if the system had worked properly they would not have been allowed to come in, or some may have already come in?

Mr. FORD. They may have been able to stop some. In our analysis, we did find that when INS did, in fact, receive the information on a timely basis, they did, in fact, stop a number of individuals from entering. We identified 14 cases of that in our report.

Senator SESSIONS. I am sorry, Mr. Chairman, if my time is up.

Chairman CHAMBLISS. We are being somewhat liberal, but not as liberal as Senator Durbin maybe would like for us to be. We are going to come back around, too, if you want.

Senator SESSIONS. All right. Just on that subject, then, the whole deal here is if the information is somewhere in the computer in the sky, it is of no value unless it is in the hands of the person at the border. And that is difficult to do, but not impossible. Businesses do it everyday. If you get in trouble with your credit card, it goes on there within minutes, probably, and no more approval of your credit card. We ought to be able to do that with regard to this.

I will yield—I won't yield back. I don't have anything to yield back, but I will stop.

Chairman CHAMBLISS. Mr. Ford, the fact of the matter is on those 47 cases where the average was 12 days for communication to take place, it probably just meant that the computers were talking to each other, but it sat in somebody's box for 11 days before they picked it up on the 12th day. Is that a fair assessment?

Mr. FORD. To be honest about it, we don't know the cause. We just know that when we talked to the lookout officials at INS, they indicated that they just hadn't received the notifications on a timely basis. We viewed all 240 cases and the 47 that we referred to were a match between the date that the revocation occurred and the time that the INS had put it in their system. The reason that it was put in late—we don't know the reason for that.

Chairman CHAMBLISS. You made a comment on page 6 of your report that there will always be some cases in which the information arrives after the visa has been issued. I am assuming from that that you are referring to the fact that State continues to look at—even though they may issue a visa, State continues to look at those individuals and if they come up with something after the fact, they still are communicating that. Am I interpreting that correctly?

Mr. FORD. That is correct, that is correct.

Chairman CHAMBLISS. With respect to the FBI's lack of concern about individuals whose visas were revoked because of terrorism concerns unless their names were on the TIPOFF, how significant

is that, the fact that weren't on the TIPOFF list, but the FBI has been notified that an individual may have some suspicion of terrorist activity in his background?

To me, again, that appears to be pretty significant. Am I wrong in that or am I correct?

Mr. FORD. This actually raises an interesting issue. At the time we began our assessment of the visas and the 240 names that were referred to, those names were provided to us by the Department of State, and we had asked them to provide names of individuals that had their visas revoked because of some information that would indicate there could be some connection to terrorism.

The FBI, when they testified in June, had indicated that their primary source of concern is a particular lookout list that they use, called TIPOFF, and that they felt that the 240 individuals that we had in our survey—according to them, only 47 of them were in the TIPOFF system, which is a system that is specifically designed to identify suspected terrorists.

So they felt that the other individuals apparently were not of as much concern because they hadn't been identified through the TIPOFF system as a potential terrorist. So the issue here really gets into the manner in which the Department of State makes a determination to revoke the visa in the first place.

We know that they did not always put those names into the TIPOFF system, and from the FBI's point of view if they are not in there, they are not of concern unless they get some other information from some other source.

Chairman CHAMBLISS. Senator Cornyn.

Senator CORNYN. Mr. Chairman, I don't have any more questions for Mr. Ford. I just want to say, though, the more I hear about our immigration system, the more concerned I get.

Chairman CHAMBLISS. Thanks for those comforting words.

Senator Durbin.

Senator DURBIN. Mr. Ford, one last question. Of the 240 visa revocations, was that out of a universe of about 13 million visas that were issued in that period?

Mr. FORD. Actually, we were unable to get the universe of revocations. We were told that—

Senator DURBIN. The universe of visas issued?

Mr. FORD. The number issued—I believe the number I cited was roughly 10 million, I believe, in 2002. I need to back up for a minute. These revocations were based on the screening process that the department had in place for particular individuals that they had a concern might have terrorist connections. So that 240 is—that is the reason they identified that number.

Senator DURBIN. Just so the record is clear, 10 million in 2002, but there was a period of 2001 that was also included. So it would have included, I assume, 2 or 3 million others.

Mr. FORD. The revocations covered from September 11 through the end of calendar year 2002.

Senator DURBIN. Okay, just roughly 10 or 12 million visas issued, 240 revoked because of terrorist concerns. Were there other visa revocations not for that particular purpose?

Mr. FORD. Yes. Apparently, they have other types of revocations due to immigration concerns, things like that.

Senator DURBIN. Any idea of the number that were generally—

Mr. FORD. We asked for a number. We were unable to receive a number. I don't think the department has a database that specifically captures all this information in one place. They have to pull it out of their overall universe.

Senator DURBIN. Mr. Chairman, if it is any encouragement to the Subcommittee, I think we have made fantastic strides at the FBI when it comes to computer capabilities. Director Mueller has done a fabulous job in a short period of time and I have every confidence that Director Ridge will, too. But we are still a long way from that interoperability that we need for these computer efforts to complement one another.

Thank you.

Chairman CHAMBLISS. Senator Sessions, anything further?

Senator SESSIONS. These 240 were all the revocations dealing with terrorism in that time period?

Mr. FORD. That is our understanding, sir.

Senator SESSIONS. And so, of those, in how many cases did the information promptly get to the border agents who would be in a position to make a stop if need be?

Mr. FORD. Forty-three times, it is our understanding that the INS did not receive the notification.

Senator SESSIONS. So the State Department—well, we don't know who dropped the ball?

Mr. FORD. Right. The other 47 times I mentioned, they were provided, but not on a timely basis. So if you add the two together, that comes out to about 90 cases.

Senator SESSIONS. And then the State Department did not enter 64 more into their—

Mr. FORD. No. The State Department as part of their process also notify their overseas embassies because if the individual had not yet left, the embassies can try to check to find out if the individual is still there and notify them that their visa has been revoked. They had indicated to us that they routinely do that.

Out of the 240, we had found that 64 of those were not in their lookout system, the State Department lookout system, called CLASS

Senator SESSIONS. And was this difference in the State Department list and the TIPOFF list—do you know if that was a failure of communication between State and the FBI or a systematic evaluation of the cases that caused the FBI to not put them in TIPOFF?

Mr. FORD. I believe it has to do with the amount of information that is available to the department to make the decision. They have indicated to us that they erred on the side of if there was any even limited information indicating there could be a potential problem that they were going to revoke the visa. I should add that the—

Senator SESSIONS. The State Department has decided to revoke the visa for possible connections to terrorism. Yet, the FBI decides not to put them in their system?

Mr. FORD. Well, actually, the TIPOFF system is a State Department. The State Department makes that decision.

Senator SESSIONS. Okay. Thank you, Mr. Chairman.

Chairman CHAMBLISS. Anything further from anyone?

Mr. Ford, thank you very much. Again, we appreciate your very diligent work and we look forward to staying in touch and following up on this down the road. Thank you very much.

[The prepared statement of Mr. Ford appears as a submission for the record.]

Chairman CHAMBLISS. We would ask our next panel, Mr. Janice Jacobs, Mr. Michael Dougherty, and Mr. Jayson Ahern, to come forward, please.

We welcome Ms. Janice Jacobs, Deputy Assistant Secretary, Visa Services, from the Department of State; Mr. Michael Dougherty, Director of Operations, Bureau of Immigration and Customs Enforcement, Department of Homeland Security; and Mr. Jayson Ahern, Assistant Commissioner, Bureau of Customs and Border Protection, Department of Homeland Security.

I would say to each of you we know and understand that your job is a very difficult one. It has been made more difficult since September 11. We appreciate your contribution to the national security of the United States. We look forward to your statements. If you want to submit a written statement and give us a brief oral statement, we would welcome that.

Ms. Jacobs, we will start with you. Thank you for being here.

STATEMENT OF JANICE L. JACOBS, DEPUTY ASSISTANT SECRETARY OF STATE FOR VISA SERVICES, DEPARTMENT OF STATE, WASHINGTON, D.C.

Ms. JACOBS. Thank you, Mr. Chairman, Members of the Subcommittee. I appreciate the opportunity to address you on a subject that all of us in the executive and legislative branch agree is crucial—the swift and proper exchange of information among relevant agencies controlling the security of our borders.

The Department of State's visa work abroad constitutes the forward-based defense of the United States against terrorists and criminals who seek to enter the country to harm us. We have no higher responsibility, and we are determined to do this work in the best and most comprehensive manner possible.

The General Accounting Office has issued a number of reports touching upon this subject, and the three that we have just heard GAO speak to are very familiar to us at State. We have found them to be thoughtful studies of a complex subject and we have learned from them and put many of their recommendations into effect.

I have appended to my written statement a substantial list of actions taken since September 11 to strengthen the visa process along the lines suggested by GAO. Let me summarize them quickly here.

We have doubled our database holdings on individuals who should not be issued visas, increased our training efforts to better apprise consular officers of counterterrorism concerns, set up special programs to more fully vet visa applicants of particular interest, and moved to increase staffing for visa positions abroad.

Our training efforts have focused on needed counterterrorism expertise, and we have devoted much more time in senior training for ambassadors and deputy chiefs of mission to consular work and its responsibilities for senior managers. We have thoroughly reviewed

consular procedures on visa work and begun a series of standard operating procedures cables to the field to codify the way in which we expect visa work to be consistently performed abroad.

While you never achieve perfection in this area, I am confident that we have a much stronger visa process in place at our posts overseas than we had just one year ago and the country is safer for it.

While security is our primary focus, we also realize that the U.S. economy counts on the billions of dollars spent each year by international tourists, our universities reap the economic benefits of preeminence among destination countries for international students, our scientific establishment flourishes in a climate of open exchange across borders, and our entire society is accustomed to living in a free and open manner that counts upon an ease of movement across international borders. We are determined to preserve these crucial benefits to the United States even as we work to strengthen the visa process' security.

The GAO speaks of cultural differences as being among the chief reasons for variation in the sharing of watch lists among the Federal agencies. While I would not deny that cultures unique to a particular Federal agency or service do condition its work, I think that what the GAO really means is that the mission of each Federal agency is distinct and the need for and ability to use certain information is different among them.

A consular officer abroad who has as much time as he or she needs to look over a visa applicant is in a much different situation than a port of entry inspector who has a few minutes to decide whether or not to admit an alien to the United States. Our consular officer can use information that is much less precise than the inspector would require, and a law enforcement officer in the United States will have somewhat different requirements than either of those two officials.

While it is obviously right to err on the side of caution when dealing with potentially lethal security risks, we cannot eliminate every element of risk from our operations, and saddling certain officials with information that experience tells us they cannot use effectively either because of legal or operational requirements will not enhance our border security. These are questions without easy answers, but we believe that DHS is best placed to consider them and broker intelligent solutions based on the contributions of the interested agencies.

The GAO correctly identified a problem in our failure to rapidly and certainly apprise our immigration and law enforcement agencies of prudential revocations that we had made based on intelligence and other source identifications of potential security threats. Our procedures were not sufficiently systematic and our notifications did not make use of the best our technology can deliver.

We fixed this problem last year by creating a revocation code that is shared with the relevant agencies through the Interagency Border Inspection System, or IBIS, when a visa is prudentially revoked. Though it should have been fully operational in August of 2002 when we designed the code, it was put into place in December of that year and we have verified that each and every revocation

for calendar year 2003 was properly coded and entered into CLASS and IBIS and was available in near real-time to our law enforcement and border inspection colleagues.

A prudential revocation of a visa is a safety precaution that in security cases we undertake with a relatively low threshold of information to ensure that all relevant or potentially relevant facts about an alien are thoroughly explored before we admit that alien to the United States.

It is a signal to the consular officer abroad to readjudicate the case with the new information at hand. In many such instances, we find that the information does not pertain to the alien whose visa was revoked, a mistaken identity due to incomplete identifying data, or that the information can be explained in a way that clarifies the question at hand and eliminates the potential threat. In these cases, we reissue the visa and purge the alien's name from the lookout system.

The Department of State has advised the Department of Homeland Security that it is prepared to begin revoking visas effective immediately in cases of aliens who present a valid visa to an immigration inspector at a port of entry, but who DHS nevertheless stops for more in-depth inspection because of a potential security concern.

We will institute this practice on a routine basis once we have developed implementation procedures with DHS. Meanwhile, we can consider cases on an individual basis. Making a revocation effective immediately when the alien is still undergoing port of entry inspection will allow DHS to use expedited exclusion procedures appropriate to the nature of the potential threat.

A third situation arises if the alien has already been admitted to the United States. In this context, there is no legal precedent indicating that if a visa were revoked effective immediately, it would facilitate DHS' ability to remove the alien from the United States. For example, it is unclear what removal charges could be filed against the alien. We intend to discuss this matter further with DHS, as well as with the Department of Justice.

I can assure the Subcommittee that in all of these areas we work hand-in-glove with our colleagues in law enforcement and Homeland Security. There are no cultural differences in each of our determination to make the United States safe from terrorists and criminals both for Americans and our foreign guests. We have made great strides in information-sharing and cooperation toward this end, but we clearly have a ways to go.

I will be happy to answer any questions that you have. Thank you.

[The prepared statement of Ms. Jacobs appears as a submission for the record.]

Chairman CHAMBLISS. Thank you very much.

Mr. Dougherty.

STATEMENT OF MICHAEL T. DOUGHERTY, DIRECTOR OF OPERATIONS, BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Mr. DOUGHERTY. Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to address you today and update you on the Bureau of Immigration and Customs Enforcement's efforts to combat terrorism, and explain our role in the visa revocation process, as well as our efforts to improve information-sharing within the Department of Homeland Security and with the Department of State on visa revocations and related national security information.

No mission of the U.S. Government is more important than protecting the Nation and the American people against future attacks. That mission is the paramount responsibility of the newly created Department of Homeland Security, and the work of ICE is an indispensable part of fulfilling that mission.

A very important, necessary requirement of fulfilling that mission is understanding in real time when the Department of State or another Government agency has developed information about or has taken action, including visa revocation, with respect to an individual who has entered the United States, but has not departed.

Since September 11, the law enforcement community has risen to the challenge of increasing communications and following through on national security information-gathering, intelligence-sharing and dissemination. I am pleased to be here today to discuss one important part of ICE's role in safeguarding the homeland, and that is its role in investigating all referred visa revocation matters.

Since this is the first time for ICE to have the opportunity to testify before the Subcommittee, I would like to take a brief moment to provide an overview of our mission.

The Homeland Security Act of 2002 abolished the Immigration and Naturalization Service, and the President's reorganization plan established ICE. ICE combines the investigative and intelligence functions of the INS and the U.S. Customs Service with that of the Federal Protective Service. In addition, the President's plan merged the Air and Marine Division of the former Customs Service and moved the detention and removal program of the INS into ICE. The agency brings together 14,000 new employees, including some 5,500 special agents.

ICE has the broadest investigative authority in the Federal Government. Examples of our authority include investigating immigration violations, migrant and contraband smuggling, human trafficking, money laundering, trade fraud, export violations, and document fraud.

Controlling the flow of goods and people within our country, verifying the authenticity of travel and identity documents, and monitoring illegal transfer of funds are functions critical to reducing our vulnerability to terrorist attacks. Meeting ICE's critical responsibility requires robust intelligence capability, air and marine ability, and the ability to apprehend, detain, prosecute, and remove illegal aliens.

ICE today is poised to bring its new authorities and its new structure to bear in combatting terrorism, and in particular has a

key role in the visa revocation process. The focus of this hearing today is on visa revocation and I would like to talk about how ICE is addressing this issue today and on a going-forward basis.

On June 18, 2003, the GAO issued a report entitled "Border Security: New Policies and Procedures Needed to Fill In the Visa Revocation Process." ICE appreciates the review and the comments made by GAO, while we disagree with some of its findings.

We agree with the GAO that the Secretary of Homeland Security should work with the Secretary of State and the Attorney General to strengthen the visa revocation process as an antiterrorism tool and establish specific procedures and policies that ensure timely and direct notification of visa revocations to both the Bureau of Customs and Border Protection and ICE.

ICE considers timely notification of DOS visa revocations to be an important element in protecting the United States against the entry of inadmissible aliens, including possible terrorists. DHS and ICE have begun a dialogue with the Department of State to modify existing procedures to strengthen the Government's ability to take timely action against those who have had visas revoked and should be removed from the United States. Specifically, the Department of State has agreed and is providing ICE with notice of visa revocations.

The part of the GAO recommendations in its report that is particularly relevant to ICE is the one regarding determining if any persons with a revoked visa on terrorism grounds are in the United States, and if so whether they pose a security threat.

In making these determinations, ICE relies on information from the Bureau of Customs and Border Protection to determine if these individuals have, in fact, entered and have, in fact, departed. DHS will work closely with the Department of State to implement new procedures which we expect will be agreed on related to management of visa revocations. One of the initiatives we are looking forward to is a secure electronic environment to share specific information about visa revocations, and in some cases including the specific basis of the visa revocation.

Investigations of aliens who have been admitted to the United States but have had their visas revoked are handled from the ICE National Security Unit. ICE has well over 200 agents conducting thousands of national security investigations today. When information is received by the National Security Unit, it is handled in the same manner, whether it is a visa revocation matter or specific information regarding a terrorist threat.

All of these matters are taken seriously and are fully investigated, and I would like to take a moment to make the record clear with respect to one aspect of the GAO report. ICE's records indicate that during the time period studied in the GAO report, the National Security Unit, in fact, received information on ten leads involving visa revocations. In all ten cases, the National Security Unit followed standard operating procedures for such referrals and found no derogatory information related to terrorism information. Four of those individuals were found to have been outside of the United States. Four were, in fact, in status. Two were not located, but it is the belief that they have departed the United States.

Despite these facts, the GAO in its initial report erroneously reported that ICE did not routinely locate, investigate, or take any action on individuals with revoked visas. To the contrary, ICE has taken actions and investigates the cases it receives through the referral process.

As highlighted in Appendix II of the GAO draft report, the different standards of proof required for revocation and removal proceedings do pose significant difficulties in resolving these matters. In this context, it is important to note that the information to revoke a visa is not necessarily a sufficient ground for ICE to initiate removal proceedings against an alien who has been admitted to the United States and is otherwise maintaining his or her visa.

When an alien is admitted to the United States, there are certain legal rights and procedures which apply and are attached pursuant to the admission. These legal rights require ICE to present clear and convincing evidence to demonstrate that the alien is a national security threat or is removable from the United States on other statutory grounds. These hearings occur before an immigration judge.

Another factor in prosecuting these revocation cases is the current language used on the revocation certificate. It provides that if an alien is present in the United States and the visa is revoked subsequent to admission that the revocation takes effect after the alien departs from the United States. Consequently, the visa remains valid and the alien maintains lawful status while in the United States absent any other conduct which would make the alien otherwise removable. DHS and DOS will work together to review the varying legal standards with respect to admission at the port of entry and for those aliens who have subsequently been admitted to the United States.

In conclusion, I would just like to say that deterring illegal immigration and combatting immigration-related crime has never been more critical to our national security. We take this issue very seriously, and our mandate as part of the Department of Homeland Security very seriously as well. We are going to apply all of our resources and capabilities to the issue of looking at the visa revocation issue.

Thank you.

[The prepared statement of Mr. Dougherty appears as a submission for the record.]

Chairman CHAMBLISS. Thank you, Mr. Dougherty.

Mr. Ahern.

STATEMENT OF JAYSON P. AHERN, ASSISTANT COMMISSIONER, OFFICE OF FIELD OPERATIONS, BUREAU OF CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Mr. AHERN. Mr. Chairman and Members of the Subcommittee, it is a pleasure to appear before you this afternoon.

As you know, on March 1 immigration inspectors and the Border Patrol from the legacy Immigration and Naturalization Service, as well as inspectors from USDA, as well as inspectors from the United States Customs Service, merged to form the Bureau of Cus-

toms and Border Protection, which I will refer to as CBP, within the new Department of Homeland Security.

Now, for the first time in our country's history, all agencies of the United States Government with significant border responsibilities have been brought under one roof. The primary mission of CBP is to prevent terrorists and terrorist weapons from entering the United States. This extraordinarily important priority mission means improving security at our physical borders and ports of entry, but it also means expanding our zone of security beyond our physical borders so that America's borders are the last line of defense, not the first line of defense.

In sum, CBP's missions include apprehending individuals attempting to enter the United States illegally, stemming the flow of illegal drugs and other contraband, protecting our agricultural and economic interests from harmful pests and diseases, protecting American business from theft of their intellectual property rights, and regulating and facilitating legitimate trade. We must perform all of our important security missions without stifling the flow of legitimate trade and travel that are so important to this Nation's economy.

As the single, unified border agency of the United States, CBP's mission is vitally important to the protection of America and the American people. In the aftermath of the terrorists attacks of September 11, numerous initiatives were developed to meet our twin goals of improving security and facilitating the flow of legitimate trade and travel.

Our strategy in implementing these initiatives and accomplishing our twin goals involves a number of factors. I would like to list some of those. They include improving the targeting systems and expanding the advanced information regarding people and goods coming into this country; pushing our zone of security outward by partnering with some other countries, as we have done with our Container Security Initiative; again, pushing our zone of security outward by partnering with the private sector under an initiative known as the Customs-Trade Partnership Against Terrorism; and deploying advanced inspection technology and equipment at our ports of entry.

While we have also increased the staffing at our border security ports of entry, we also want to continue to work very extensively with our partner agencies and we want to continue to find ways to integrate systems to improve business processes and information-sharing at the borders.

CBP has an important role in the visa process in terms of information-sharing and enforcement. Identifying and preventing the entry of persons, whether they are using fraudulent documents or concealing their true intentions about the purpose of their visit, or because they have had their visa revoked, is a key responsibility of CBP at the ports of entry.

CBP has reviewed the GAO report and its recommendations on the visa revocation process. This process is an extremely important element of protecting our country and we take the GAO recommendations very seriously. One recommendation of significant relevance to CBP is to ensure that we develop specific policies and procedures for the interagency visa revocation process to ensure

that there are notifications for visa revocations for suspected terrorists and relevant supporting information transmitted from the Department of State to immigration and law enforcement agencies in a timely manner.

Also of relevance in the GAO recommendations is to determine if persons with revoked visas on terrorism grounds are in the United States, and if so whether they pose a security threat. CBP provides the information regarding the entry or revoked visa-holders into the United States to immigration and customs enforcement investigators to assist in their investigation of the security risk that may be posed by such individuals.

CBP has begun to work with the Department of State, with the Bureau of Citizenship and Immigration Services, and Immigration and Customs Enforcement to address the concerns raised by the GAO report. Since DHS now has a role in setting visa policy, CBP, ICE, and BCIS will work together to develop specific policies addressing the visa revocation process.

DHS will work closely with DOS to implement these policies. Together, we will make sure that the procedures are in place to ensure timely agency notification so that revocations get into the lookout systems. We believe the electronic interface between the Department of State's CLASS system and our interagency border system, known as IBIS, provides the best solution and a transparent, verifiable record of actions.

CBP has taken the initiative to work with DOS to find ways to improve this electronic interface to ensure visa revocation records are placed in the system for access by our CBP inspectors at the ports of entry in the United States.

Again, CBP is committed to improving this process and we will continue to work with BICE, BCIS, DOS, and any other relevant agency to ensure better security for the American public. Protection of the Nation is our highest priority and we actively seek improvement in our own practices and we will work with other agencies to fulfill our mission. We know that our new agency faces great challenges in merging the border agencies and fulfilling both our priority and traditional missions.

But now that the Federal inspection services, as well as the Border Patrol, have been unified within Customs and Border Protection under the Department of Homeland Security, we are in a far better position to meet these challenges and accomplish those goals. We will be far more effective working together than we were as separate agencies working in different departments, and we will learn all we can from our legacy agencies and we will bring new innovation to border management.

Thank you for the opportunity to testify today and I will be happy to answer any questions you might have later.

[The prepared statement of Mr. Ahern appears as a submission for the record.]

Chairman CHAMBLISS. Thanks to each one of you.

Let me start with you, Ms. Jacobs. You mention that our consular officers are on the front lines, which we obviously all agree with, and that new guidelines have been issued to them since September 11.

Have you also gone through significant retraining procedures relative to how to spot terrorists or potential terrorists? Also, in that same vein, I am curious about how those particular officers determine that an individual who walks into that door and says I am Joe Smith from whatever country they are in is, in fact, Joe Smith.

Ms. JACOBS. In fact, we have done a lot of changes to the training that we give to consular officers, with a new focus on trying to give them a certain lever of counterterrorism expertise. The basic course that all consular officers go through before they go to the field is being extended from 26 days to 31, beginning this October.

Our Foreign Service Institute has already added a number of classes where they bring in experts on terrorism who can talk to the consular officers about current trends, things that they should look for, how to do analysis looking at passports, where they were issued, the dates they were issued. We have people from our own diplomatic security also coming in to talk about counterterrorism, but also fraud, in general, to try to raise awareness about those issues.

We also have devoted a lot more time, and will have even more time spent on teaching our consular officers how to do better interviews. We are asking them to do more interviews now of visa applicants and we want to give them the training that they need to do an effective interview, and so we have contracted out with a company that is going to come in and really teach officers how to detect deception, how to really do an effective interview.

We have developed new forms that certain applicants have to fill out. They give the consular officers more information about those particular applicants. If there are certain things that ring bells or raise flags, then the consular officer can follow up and look at that in more detail.

We have also increased the number of security checks, the actual checks that we do on applicants. Everyone who comes in for a visa is run through our automated lookout system at the time of application. So if there is anything in that lookout system, which by the way has doubled in size since 9/11, that would either make the applicant ineligible or cause the consular officer any level of concern, then that case is sent back to Washington for an interagency review.

We have other checks that have been put in place after September 11 that do the same thing. So we are checking more applicants. We have given consular officers more training, additional tools. We still are going to do more in the months to come.

Chairman CHAMBLISS. In checking those individuals' backgrounds, do you ask for fingerprints or any other way of identifying those individuals?

Ms. JACOBS. For certain types of applicants, after 9/11 we have the FBI NCIC entries on foreign-born individuals who are in the NCIC system. If there is someone who is a direct or a close match, yes, we do fingerprints on those people and send the prints back here to be checked by the FBI to see if it is the same person who is in the lookout system. On the immigrant visa side, we do more fingerprinting of people. We will actually start collecting two fingerprints from all visa applicants beginning October 2004, as required in the Enhanced Border Security Act.

Chairman CHAMBLISS. What about biometrics? Are we using any technology in the area of biometrics?

Ms. JACOBS. We have a few pilot posts where we are testing facial recognition. We have had some success with that. Our plan is to use the program that we have used in Mexico for the past few years to issue border-crossing cards, where we actually collected two fingerprints and a digitized photo on each applicant. That is the system that we are going to deploy worldwide by October 26, 2004. So at that point, we will definitely be able to confirm the identity of the people coming in.

Chairman CHAMBLISS. At a House subcommittee hearing on June 18, one of your employees, Katherine Berry, testified with respect to the revocation of visas that the Bureau of Consular Affairs was, quote, "engaged in an effort to formulate standard operating procedures that has been going on for more than 15 months and it should be wrapped up within a month," close quote.

According to that timetable, you have about run out of that month. Can you tell me where you stand with respect to any sort of formal memorandum of understanding between State and the Department of Homeland Security?

Ms. JACOBS. For our own purposes, within State we have taken the rather informal procedures that existed at the time of the GAO report and put in place standard operating procedures. Those procedures are now going into our foreign affairs manual. I think the note has gone over to get that into our manual either yesterday or it went today.

I can run through sort of step-by-step what we are doing today on revocations, if that helps. Basically, whenever we get information from—and this information usually comes from other agencies. Whenever we get information on any individual that suggests that the person is ineligible for a visa for terrorism or any other type of reason, we take action to revoke the visa.

When we make that decision, we immediately put the revocation code into our lookout system, which is then shared with IBIS, which is the system that is available at the ports of entry. A certification of revocation is prepared which I sign. As soon as it is signed, it is faxed now to BCBP, to the National Targeting Center. At the same time, a telegram goes out to the posts, but it also includes DHS and FBI as addresses so that they know of the action that has been taken. If we know that someone is in the U.S. after a visa has been issued, then we also notice the Foreign Terrorist Tracking Force, the FTTF.

As far as setting up standards or an MOU with the other agencies, I think we are all still talking about that. We haven't done a formal MOU. We are, of course, talking about an MOU with DHS on Section 428 of the Homeland Security Act that talks about how we are going to share the visa function.

Chairman CHAMBLISS. Well, I would just say that it sounds like you are making progress, but I mean here we are in the middle of July, in 2003, and I happen to agree with the comments in the GAO report that the lack of a formal process and procedure and memorandum of understanding between State and the Department of Homeland Security creates a systemic problem with respect to visa revocation.

I think you need that written memorandum and I hope you will proceed to do it immediately so that everybody is on the same wave length and everybody in every single office knows exactly what is going to happen as soon as a revocation takes place. If we are going to give the people in this country the security they are demanding, that has got to happen.

Senator Cornyn.

Senator CORNYN. I just want to try to understand in the context of what happened on September 11 in terms of the revocation process and its implications for our national security today.

In the case of two of the 9/11 hijackers, they were identified as possible terrorists. What you are saying is that if a visa has already been issued, it can be revoked, but those people can still lawfully stay in the country.

Can you address that, Mr. Dougherty? I believe you were talking a little bit about that.

Mr. DOUGHERTY. Yes, Senator. When someone has been admitted to the United States, in the initial instance the Bureau of Customs and Border Protection will make a determination at the port of entry regarding admissibility. If they do not have the information available to them with respect to whether the person is inadmissible, perhaps, they are, of course, admitted.

If information is subsequently brought to light that would cause the revocation of the visa, it matters entirely what the basis of that revocation was with respect to the options of ICE to remove the person. If the ground for revocation was specific information regarding membership in a terrorist organization or having engaged in terrorism or provided material support for terrorism, that may provide a legal basis for removal.

If the ground was for some other reason—for example, in the context of the group of revoked visas that I believe were under review in the GAO report, those were prudentially revoked. In other words, to my knowledge and understanding, they were not necessarily revoked because of specific information with respect to a criminal act or a ground of inadmissibility, but in many or all cases were revoked because there was not sufficient information received back by the Department of State with respect to whether these people were, in fact, inadmissible. So they were prudentially revoked.

For that population, for ICE to not understand the basis of the prudential revocation or not be provided with the specific ground for the revocation, we would have no legal standard.

Senator CORNYN. So if it is revoked on the basis of a suspected terrorist connection, you used the word "may" be revoked. Why isn't it a certainty as opposed to "may," and if it is "may," how long does that legal proceeding take before you can expel them from the country?

Mr. DOUGHERTY. There are a number of factors. I said "may" with respect to providing a legal ground to pursue removal. The "may" stems from the strength of the information, the level of classification of the information, and in some cases whether we have the ability to present witnesses to support the information and whether we have the ability to declassify, working with our partners in the intelligence community, that information for use in the proceeding.

If you satisfy several conditions in the context of an alien who has been admitted, you may, in fact, be able to prove a terrorism charge against that person.

Senator CORNYN. So how long does all of this take?

Mr. DOUGHERTY. There is no time line. It is a legal process. There are confrontation rights. There are administrative proceedings. There is the presentation of fact witnesses, the presentation of documentary information. So these things can take a significant amount of time.

Senator CORNYN. Are there any watch lists that are not shared with State and local law enforcement authorities? I will throw that out to any one of you. You can start, Mr. Dougherty.

Mr. DOUGHERTY. Senator, your question is are there watch lists that are not provided to State and local law enforcement?

Senator CORNYN. Exactly.

Mr. DOUGHERTY. Speaking on behalf of ICE, I do not believe we maintain any watch lists that would not be shared. There may be other lists available in the U.S. Government and I just don't know how they are shared or not shared.

Senator CORNYN. Ms. Jacobs, you were talking about the lookout watch list. Is that shared with State and local law enforcement authorities?

Ms. JACOBS. We don't share the lookout information that we have because it is to help consular officers and others try to identify visa applicants who might be ineligible for visas. There has been discussion from time to time in trying to get the TIPOFF, the terrorist-related information that is in our lookout system into the hands of people who might be able to share that with local law enforcement agencies, and I think that discussion is ongoing. But certainly for our part, the State Department—we don't have any direct sharing with local law enforcement.

Senator CORNYN. Well, I think Mr. Dougherty talked about the difficulties of expelling someone whose visa has been revoked either prudentially or based on concerns of connection with terrorism.

If someone is on the TIPOFF list and comes into the U.S. and subsequent intelligence information makes it look like they are a significant security concern, are there other steps that are taken with regard to providing information to law enforcement other than revocation of that person's visa?

Ms. JACOBS. Talking about TIPOFF specifically, any lookouts based on information received from other agencies that is part of the TIPOFF program goes into both our lookout system and into IBIS. So that information is automatically shared with the ports of entry.

The revocation issue, I think, sometimes becomes a little bit complicated because we revoke visas for different reasons. I think part of the issue that was addressed in the GAO report has to do with prudential revocations, and perhaps if I could just describe sort of what a prudential revocation is, that might address some of the questions.

Senator CORNYN. Let me try to rephrase the question and get to the point of my concern. The State Department, the Department of Homeland Security, and other Federal agencies, the FBI, generate important information and I want to know how much of that,

whether it is the lookout list which you said is just mainly for consular use in determining whether a visa is actually issued—if somebody is on the TIPOFF system, whether that is made available to a police officer in Austin, Texas, who may come in contact with this person, or the Dallas County Sheriff. Is that information shared with local law enforcement officials like that?

Ms. JACOBS. I think at this point in time, there is no mechanism in place to share that information. I think there are discussions going on about a more centralized system where, in fact, that information would be shared with local law enforcement agencies.

Senator CORNYN. So we have got a suspected terrorist. You can revoke their visa if they are already in the country, but you may not be able to expel them unless you have got the evidence sufficient to actually prove it before an immigration judge. And we don't share the information currently with local or State law enforcement officials. Is that correct?

Ms. JACOBS. To the best of my knowledge, that is correct.

Mr. DOUGHERTY. Senator, I could amplify on one procedural area which may address your concern. I understand there are discussions about providing the TIPOFF information to State and local law enforcement.

However, today, through the Law Enforcement Support Center within ICE, State and local law enforcement officials who encounter aliens have a mechanism to inquire with respect to their alienage and deportability, whether they have a prior conviction, for example, and whether they have an order of deportation.

Part of the procedures performed at the Law Enforcement Support Center would be to check all available databases. If there were, in fact, a lookout, it is my understanding that that lookout would be surfaced by the review done by the LESC and then appropriate action would be taken.

Senator CORNYN. I am not sure I understood all that, Mr. Chairman, but I will certainly follow up at a later time. My concern is that there may be other law enforcement resources available either to observe the activities of someone who represents a national security threat and who, under current procedures, as you describe it, if that is correct, that we can't address beyond revocation of their visa but they still remain in this country pending further legal action and a substantial burden of proof that has to be made before an immigration judge.

Thank you, Mr. Chairman.

Chairman CHAMBLISS. Well, I will tell you, Senator, I share that frustration.

Folks, I know you all are working hard and you are doing a better job than what we were doing on September 10, but there is a mechanism to share that information. When I hear that we are not sharing information with respect to suspected terrorists whom we know are in the United States with State and local law enforcement officials, I don't mind telling you it infuriates me.

There is a system in place through the FBI, through the NLETS system, where we can get that information in the hands of 15,000 law enforcement agencies across this country immediately. For us to not be doing that today is not giving the best protection to the

citizens of the United States. It just infuriates me that we are still not doing that.

Senator Durbin.

Senator DURBIN. I concur with you completely, Mr. Chairman. I think all of our talk about homeland security means little or nothing unless State and local law enforcement is involved in it. If there is a problem in Illinois, they are going to call 911, not Senator Durbin. If local law enforcement doesn't have the right information and resources, then it can't very well respond. I feel the same way you do about it.

I would just ask the panel, and anybody can answer this, at any given time how many people are in the United States illegally? A rough guess, anybody, anybody?

[No response.]

Senator DURBIN. Okay. How many are in the United States on expired or revoked visas at any given time?

Mr. Ahern, isn't that your area of responsibility?

Mr. AHERN. Not exactly. We are actually responsible for the admissibility determinations at the ports of entry, and once they have been entered into the United States, then that becomes—

Senator DURBIN. Ms. Jacobs, is that yours?

Ms. JACOBS. Once someone has come into the States, we have no way to track their whereabouts. That usually is DHS' responsibility.

Senator DURBIN. Well, Mr. Dougherty, you are the last one in line here, so can you answer the question?

Mr. DOUGHERTY. I can answer with respect to what our responsibilities are.

Senator DURBIN. Numbers? Do you have any idea how many people in the United States at any given time are here on expired or revoked visas?

Mr. DOUGHERTY. I do not have the specific information with respect to that. There are, I believe, estimates out there which we would be happy to supply.

Senator DURBIN. If you want to ask your staff, this is not the final exam. so you can ask your staff. If anybody does know, I would like to put it on the record, if they do know. Maybe you can get back to me with that.

Mr. DOUGHERTY. We would be happy to get back to you, but I would also like to point out that there are significant organizational efforts ongoing within the Department of Homeland Security with respect to tracking the sorts of things that you are concerned about and that you raised in the prior panel.

Specifically, you mentioned the area of entry/exit. We now have the U.S. VISIT system which has many components. ICE does not have responsibility for all of its components. CBP and others have responsibility as well, but it is an effort to understand who has been admitted lawfully, understand what they are doing here while they are here, and understand when they leave and tracking those who do not leave in a lawful manner. So I hope that some of your concerns are addressed in that respect.

Senator DURBIN. And I hope someone on the panel or all of you will get back to me with that information, because I think this really gets down to the heart of it as to what we are dealing with

here—how many people are in the United States at any given time illegally, undocumented, and how many people are here on expired or revoked visas—so we have some kind of idea of the universe we are dealing with here.

We know how many visas we issue each year, do we not, Ms. Jacobs?

Ms. JACOBS. Yes.

Senator DURBIN. And that would be in the range of 10 million?

Ms. JACOBS. This year, around 6 million.

Senator DURBIN. Six million this year, okay, six million. So if we know how many other people are here either on expired or revoked visas or without any documentation, we at least have an idea of the nature of our challenge.

The administration decided some months ago to start asking people from certain countries, visa-holders, to come in and register, and they chose as their profile those who were from Muslim Middle Eastern countries. As I understand it, all of the visa-holders from those countries were asked to come in and register—I am sorry—adult male visa-holders were asked to come in and register.

How many did come in and register under that program? Ms. Jacobs, do you know?

Ms. JACOBS. I don't have the exact numbers. I believe that over 100 nationalities were registered, but I think either Justice or DHS might have the actual numbers.

Senator DURBIN. Does anyone from DHS know the answer to that?

Mr. AHERN. I don't have the particular numbers as far as far as those who were involved as far as the NSEERS program, I believe you are referring to. But I would be happy to get some numbers and submit them to the record after, sir.

Senator DURBIN. Okay. Well, I am going to give you some numbers that I have heard, just speculative numbers, that some 80,000 people registered and some 13,000 were deported as a result of it. It raises some important questions because if these Senators had the same experience I did, they got a lot of phone calls from people who said, my son was at college; he applied for an extension on his visa and he didn't get it and now he has been deported; what are you going to do about that?

It is a good question and it is a question that has been asked of my office many times. It goes to the heart of the point made by the Chairman and by Senator Cornyn, too, the heart of their question and their statement about cooperation with State and local law enforcement.

This is a little tricky because if the purpose of our endeavor here is to gather intelligence to try to forestall or thwart terrorism, we need the cooperation of a lot of people, including visa-holders who could be friendly to us and helpful to us. But if registering with our Government means being deported tomorrow, the likelihood that they will register and cooperate is diminished.

I have run into this problem talking to people from the FBI. They know how to gather intelligence, but they can't do it by fly-specking every potential immigration violation and visa violation, and telling people they are going to be thrown out of the country. I think that is part of our challenge, is to try to strike that balance

here where we get good intelligence, good information to thwart terrorism and try not to go too far toward Franz Kafka in the way we enforce it.

Thank you, Mr. Chairman.

Chairman CHAMBLISS. Senator Sessions.

Senator SESSIONS. Thank you. I think I have got a handle on this issue from the grass roots, having been involved in it personally, and I would have to say that the ICE group has been very supportive.

Traveling around my State and talking to local law enforcement, like I have done for many, many years, I learned that they have no ability to participate in immigration enforcement at all. It may be shocking to most Americans to know that a police officer who catches a group of people that he has every reason to believe are here illegally basically does nothing. He lets them go.

I ask, well, don't you call INS, the old INS? I guess it is now ICE. They said, no, they don't even bother. They told us if we have 18 or more to call them; otherwise, let them go. So you ask what about people who have been identified and connected with terrorism? Is this getting out to locals? And the answer is, no, it is not getting out there.

We have got this list of databases; the consular lookout and support system not shared, according to this chart, with State or local agencies; TIPOFF not shared with State or local agencies. IBIS, Interagency Border and Inspections—is that IBIS?

Ms. JACOBS. Yes.

Senator SESSIONS. Not shared with local and State agencies, nor is the automated biometric identification. The truth is that our immigration agencies keep it a secret. You say, oh, they can access it. A local law enforcement officer in his automobile who makes a stop does not know how to access any of the immigration agencies. He knows how to access NCIC.

So my first question, Mr. Dougherty, is could not you put in NCIC the names of the people that you think are wanted as terrorists, have revocations, who have skipped bond on immigration charges, or are otherwise illegally here? Could you not do that? And if you can't, why not?

Mr. DOUGHERTY. That is not a yes or no answer, Senator, so I would appreciate—

Senator SESSIONS. Well, we only have 30 minutes. My time is running. First of all, it is not in there, is it?

Mr. DOUGHERTY. There are a variety of different types of individuals you have referenced.

Senator SESSIONS. Well, let me ask you this one. Let's say a person has had his immigration revoked. He has had a hearing. He was released on bail and he skipped. Is that in the NCIC routinely if it is not a terrorist act?

Mr. DOUGHERTY. Today, someone who is in the middle of their proceedings who does not have a final order of removal or a warrant of deportation is not in NCIC.

Senator SESSIONS. What about after the warrant has been issued?

Mr. DOUGHERTY. We are working to input all warrants of deportation for people who have not been removed into NCIC.

Senator SESSIONS. When did you start that?

Mr. DOUGHERTY. I don't have the exact date. I know we have been working on it for some time.

Senator SESSIONS. Well, it wasn't true September 10, was it?

Mr. DOUGHERTY. Senator, it may have been. I don't know.

Senator SESSIONS. Let me get this straight because you are on the record and I would like a good answer about it. Are you telling me that you have a plan to put in the NCIC system every person that is in this country illegally for whom a warrant has been issued for their arrest for immigration violations?

Mr. DOUGHERTY. For warrants of deportation because they were here illegally or violated their status, that is correct.

Senator SESSIONS. Is there any other kind of warrants other than warrants for deportation?

Mr. DOUGHERTY. For the administrative part of the Immigration Act, no. This is a warrant of deportation or removal.

Senator SESSIONS. So how far along are you in doing that? What percentage do you have in there?

Mr. DOUGHERTY. I don't have the specific figures. I would be happy to supply them.

Senator SESSIONS. You are here testifying at this Subcommittee. Don't you know how close you have gotten to achieving this event?

Mr. DOUGHERTY. I don't have the figures available to me.

Senator SESSIONS. Ten percent, 90 percent?

Mr. DOUGHERTY. Sir, I don't have the figures. I will tell you, though, that I have testified before other bodies in Congress about various issues related to this subject, one of which is that—and the truth is out there on this subject—there are 300,000 people or so in this country who have final orders of removal who have not been removed.

Senator SESSIONS. All right. How many people are in the NCIC now?

Mr. DOUGHERTY. As I said, I don't have those figures.

Senator SESSIONS. A lot of them.

Mr. DOUGHERTY. We certainly have a project in line to get them entered.

Senator SESSIONS. But they are going into NCIC today?

Mr. DOUGHERTY. Yes, a sub-file within NCIC, that is correct.

Senator SESSIONS. And is that not a critical connection for local law enforcement so they can be participants actively in apprehending people who violate immigration laws?

Mr. DOUGHERTY. Absolutely, I agree with that, as well as, as I did mention before, the Law Enforcement Support Center where the patrol officer in his car, if he is aware of it, can contact ICE now through the Law Enforcement Support Center and get specific information about the immigration status of the person they have encountered, whether it is pursuant to an arrest or an encounter on the side of the road.

Senator SESSIONS. And he has to access a separate system, and how does he do that?

Mr. DOUGHERTY. Well, in fact, I don't think he does have to have access through a separate system. I think it is through NLETS that there is a connectivity to the Law Enforcement Support Cen-

ter, and I would be happy to provide the specifics of the connectivity back to this Subcommittee.

Senator SESSIONS. It has got to be simple for an officer out there. With all the things he has got to worry about, it has got to be simple for them to be able to access this. Otherwise, you might as well not have it.

What we found, Mr. Chairman, is that Florida went from doing four checks on your basic system—what is your basic system, the ICE system now?

Mr. DOUGHERTY. You are probably referring to the central index system.

Senator SESSIONS. I think so.

After Florida began to study this system and train people, they went from 3 inquiries into that system to 89,000—3, which is basically zero, to 89,000, in one year. In Alabama, they are training our State troopers, not our State police and sheriffs, for which there is a hundred for every State trooper. We are training our State troopers to access the system.

We have created a system that has the appearance of working, but doesn't really work because for every ICE agent in America, there are at least 1,000 State and local agents. They are the ones out there on the streets and if they are not empowered to energize like you have said, Mr. Chairman, and connect to this system, we are not getting anywhere. I know you would like to do that because of the experience we have had with Alabama, and you would like to see that expanded, but it takes a lot of time and work.

Mr. DOUGHERTY. Senator, it is my understanding that last year there were in excess of 400,000 queries from State and local law enforcement to the Law Enforcement Support Center. It is central to our role.

Senator SESSIONS. But 100,000 came from Florida, so you could have 4 million if everybody was working the system. Wouldn't you agree?

Mr. DOUGHERTY. There would be a large number, and we are committed to working with State and local law enforcement on that issue.

Senator SESSIONS. Would you submit in writing to us how far along you have gotten in entering this information in NCIC?

Mr. DOUGHERTY. Yes, Senator.

Senator SESSIONS. Thank you, Mr. Chairman.

Chairman CHAMBLISS. Mr. Dougherty, you mentioned in your response to Senator Cornyn earlier that there were 10 cases that you had investigated where revocation had taken place, where 4 of them you knew had left the country, 4 of them there were not sufficient violations, I believe you said to expel them, and 2 of them you didn't know whether or not they were in the country. That, too, is very troubling.

I know, with six million last year—and I assume that is down, Ms. Jacobs, following September 11—it is difficult. As Senator Sessions says, it is a lot of work, but the 2 individuals that Senator Cornyn referred to out of the 19 September 11 hijackers, Alhazmi and Almidhar, who were put on the watch list, should have been on the watch list before they ever got in the country. They were put on in August of 2001 and we were unable to locate them, just

as you have been unable to determine whether or not 2 of those 10, or 20 percent of those 10 were located in the United States.

I don't know what the answer is to that and I am not criticizing you or the system at this point, but we have got to be working toward a system that will allow us to keep up with those folks and to know where they are while they are here.

The one visa system that we have that does allow us to do that, even though there are other abuses involved in it, but H1–B allows us to track them and we do track them, and we are very, very successful in tracking those folks under that program.

Mr. Dougherty, the GAO report shows that BICE is hamstrung. The agency doesn't have the authority to remove a person based on a revoked visa alone even if the visa is revoked for serious security concerns.

Are you confident that none of the 240 individuals that were identified in the GAO report are still in the United States?

Mr. DOUGHERTY. First, I would not agree with the characterization of the GAO, and I can expound on that later. With respect to the 240, as I have mentioned, we received notification of 10 and pursued those investigations.

With respect to the two that you have mentioned that we have not been able to locate, we continue to look for them through a variety of means. It is not the case that initial inquiry was conducted and they were not located and we stopped looking. We continue to look for those individuals.

We have received a continuing population of information with respect to revoked visas from the Department of State and determined that some subsection of those may have, in fact, been admitted to the United States and we are in the process of verifying whether they are, in fact, still here.

I do not have available to me at this moment the breakdown of the progress on that. What I can tell you is we have a system in place to do it. We have a lot of organizational focus to do it, to find them and locate them. We view that all 5,500 of our special agents are available to find people whom we want to find, particularly those who have had their visas revoked where there is some concern about a national security issue.

When those people are encountered, there needs to be a case-by-case determination with respect to what legal authority ICE might have to remove them. I summarized some of the issues.

Again, if the sole basis was on either classified information or a mix of classified and unclassified information with respect to terrorist activity, there are numerous procedures that must be gone through and certain legal standards which may be met.

There are other instances where you may be able to establish some other ground of removal for a person who has been found to be here, like they did not comply with the terms of the visa. There may be derogatory information with respect to security concerns, but the person may not have followed the provisions of the visa and the purpose for which they were admitted to the United States. A good example of that might be a student who is out of status, a student who did not follow the course of study they said they would follow.

Chairman CHAMBLISS. Senator Grassley could not be here with us today, but he is the one who requested that the GAO report be done and he sent me a memo and has asked a couple of questions here. I want to take a minute just to go through that memo and to ask these two questions. The two questions are directed to Ms. Jacobs and Mr. Dougherty with respect to a visa revocation loophole that should be a security concern.

Senator Grassley states that he remains frustrated and concerned about the lack of willingness to change the language on the revocation certificate. As the revocation certificate is currently written, Homeland Security officials do not have the authority to deport aliens whose visas have been revoked on terrorism grounds. This defies common sense.

The certificate says that the revocation is effective immediately, quote, "unless the alien is present in the United States at that time," close quote. Once here, they are untouchable unless there is a separate admissibility grounds.

Last week, the State Department briefed Subcommittee staff and asserted that they have now decided to make no changes to the language. State Department officials said they have consulted with Homeland Security and have agreed to keep the certificate as is.

Today, Senator Grassley received an official response from the State Department that gives, in his words, a weak justification for the current language. State says if an alien has been admitted to the United States, there is no legal precedent indicating that if a visa were revoked effective immediately, it would facilitate Homeland Security's ability to remove the alien from the United States. For example, it is unclear what removal charges could be filed against the alien.

As an initial question, Senator Grassley would like to ask the Bureau of Immigration and Customs Enforcement to state whether they are either okay with the current language or whether they would like to see it changed.

Second, Senator Grassley would like the State Department to explain its rationale for not needing a change to the language in the post-9/11 environment, particularly if Homeland Security is saying that the change would help its enforcement mission.

Mr. Dougherty, we will refer you to the first question.

Mr. DOUGHERTY. Senator, clearly it is a challenge to ICE to have a visa revoked for someone who has been already admitted to the United States and have to react to it. The clear language on the revocation provides for the fact that the visa will not be revoked until the person departs.

The challenge for ICE for people who have been inspected at the border and admitted is that they are in a different legal posture than if they are knocking on the door at the port of entry. There is law, regulation, and significant case law with respect to the legal procedures that have to be followed and the rights that those people have.

That being said, it does pose a complication for our enforcement operations. Today, as I have said, we have to pursue removal proceedings if there is a legal basis to do it based on national security information, information that they are tied to a terrorist organization, that they have committed a crime they didn't disclose prior

to entry, or committed a crime subsequent to entry, or a variety of other things that would have made them subject to removal.

If there were an environment in which the visas were revoked retrospectively such that they would have been inadmissible at the time of entry, then we believe from a legal point of view that it would improve our ability to remove these people. This is highly subject to legal interpretation and it will require legal judgments.

But again, to reiterate, if there were a situation where the revocations could be made retroactively, effective as if they had been revoked at the time the alien was admitted, we believe it would improve our enforcement posture.

Chairman CHAMBLISS. Do you have any authority to incarcerate individuals who are suspected of terrorist activity after they are admitted, when you find out that information subject to them being admitted?

Mr. DOUGHERTY. Yes, sir. I mean, there is broad authority within the Immigration Act that provides that.

Chairman CHAMBLISS. Is that PATRIOT Act authority or is it pre-PATRIOT Act?

Mr. DOUGHERTY. Pre-PATRIOT Act. It has resided in the Immigration Act for some time.

Chairman CHAMBLISS. Ms. Jacobs, I believe the second question is directed to you.

Ms. JACOBS. Regarding the language used in the certificate, we are talking to DHS about different types of scenarios or situations that can happen. For example, if someone shows up at a port of entry and we have issued a visa and we didn't have any derogatory information at the time the visa was issued, but now that the person is at the port of entry knocking on the door to come in, suddenly the inspectors are aware of information that we didn't have before, we are willing to consider revoking that visa right at the port of entry to make it effective immediately in order to make it easier to have the person excluded from the United States. We, in fact, would change the language of the certificate at that time.

We have talked to DHS about this. We want to set up standard operating procedures for doing it. In the meantime, we are willing to do it on a case-by-case basis. My understanding is we don't have a case yet where we have been asked to do that. As soon as we get one, we are going to be looking at that and we will be looking at the language used in the certificate.

For people already in the U.S., the reason that we haven't changed the language in the certificate at this point is because of the legal issues involved about whether revoking a visa of someone already here in the U.S. is a ground for DHS to remove the person from the U.S. The lawyers are talking about that, and I think until we address some of the legal issues that there really wouldn't be a point in changing the language in the certificate.

Chairman CHAMBLISS. Well, thank you very much to each of you, and let me say, as I said earlier, you all have a tough job. You are on the front lines of fighting the war on terrorism and we are winning, and we are winning because you and your people are working hard. I hope you will convey to all of your staff and your employees how much we appreciate their dedication and the hard work they are doing.

But at the same time, I hope you understand that there is a high level of frustration on the Hill with respect to a number of issues regarding homeland security, and in particular visas, and particularly with respect to the lack of information-sharing among our Federal agencies.

I have a personal goal when I leave this place of making sure that when somebody walks into a Delta Airlines counter in any part of the world and buys an airline ticket that information automatically flashes up if there is any question about that individual. That information has got to come from your sources.

We are long way away from ever getting to that point, but if we are going to give the people of this country the protection they demand and deserve, we have simply got to continue to work harder than ever to make sure that we are moving in the direction of gathering the necessary information and disseminating that information to the right people, including all the way down to the State and local level.

Ms. Jacobs, you are exactly right. Your consular folks are on the front lines when it comes to letting people in this country. Once they get here, those folks at the State and local level are on the front lines and they need that information in order to be able to protect folks.

So, again, thank you for the great work you are doing. This has been a very informative hearing. We appreciate you and we look forward to continuing to dialogue with you on all of the issues we talked about today.

The hearing will be adjourned.

[Whereupon, at 4:35 p.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Chairman Saxby Chambliss (#1)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

Question:

a) Does the code sent to Homeland Security for visa revocations distinguish between revocations due to TIPOFF or other watchlist information and prudential revocations?

b) Are there cases where a visa is revoked but individual's name is not put into TIPOFF, and if so, why?

Answer:

a) The code that is entered into the Consular Lookout and Support System (CLASS) and transmitted to DHS for aliens whose visas have been revoked does not convey why the visa was revoked. It does not distinguish between visas revoked based on TIPOFF entries or other information. As a legal matter, a visa revocation has the same effect regardless of the reasons for the revocation - DHS can deny entry because the alien does not have a valid visa.

Separately from the visa revocation code the Department of State maintains codes in its own lookout system indicating cases in which a person may be potentially ineligible for a visa, as well as codes indicating that a person has been formally found to be ineligible. These will include cases in which a visa has been revoked because of a potential ineligibility. The Department of State has offered to share its potential ineligibility code entries with DHS; doing so would allow

it to know the potential nature of the ineligibility behind a revocation. DHS does not yet accept lookout codes for potential ineligibilities.

b) Yes. There are cases when a visa is revoked but the person's name is not in TIPOFF and not put into TIPOFF. TIPOFF is a repository for name-retrievable intelligence information related primarily to terrorists and persons who may be a security threat to the United States. We do not put names into TIPOFF based on visa actions, as such; rather intelligence is collected and reviewed and, when appropriate, TIPOFF puts names into our visa lookout system, which may trigger a visa revocation. On occasion, however, the Visa Office receives information directly from other agencies, normally the FBI, concerning individuals of concern. This notification may be sufficient to warrant a prudential revocation, but be based on information that the FBI has not put into TIPOFF. In addition, there are many cases in which visas are revoked for reasons unrelated to the kind of information TIPOFF stores. For example, consular officers may request that the Department revoke visas involving non-security grounds of inadmissibility, or we may revoke a visa for foreign policy reasons. Such revocations are executed independent of the decision of the Bureau of Intelligence and Research as to whether or not to

enter the subject in the TIPOFF database. The back-up information for the revocation in such cases will generally be kept by the Visa Office or the consular post, and the lookout entries will be in the visa lookout system but not in the TIPOFF system.

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Chairman Saxby Chambliss (#2)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

Question:

a) A person who is placed on State's TIPOFF watchlist is a possible security concern, but I understand not every person in TIPOFF has his visa revoked. How do you rationalize that someone is enough of a risk to be on a watchlist, but not enough of a concern to enter and freely travel the U.S.?

b) Also, if someone in TIPOFF comes to the U.S. and subsequently intelligence information makes him enough of a security concern to revoke this visa, what steps must the Department of Homeland Security take to find out the reasons why the visa was revoked and obtain the intelligence information on the individual?

Answer:

a) The TIPOFF watch list contains over 100,000 names (and partial names) of individuals known or suspected in even the slightest way of having some connection with terrorist activities. However, many of the individuals in the TIPOFF database may have only peripheral connection to any act (either committed or conceived) of terrorism. These individuals may be relatives, neighbors, or casual acquaintances of other subjects who may be linked however distantly to some terrorist activity. It may be in the interests of US counter-terrorism policy to maintain a

record of these individuals in case further information is developed at a future date which, when combined with an existing piece of intelligence, might indicate some nefarious act or intent. These individuals may appear in the TIPOFF database for this reason. In other words, the presence of the name in TIPOFF or other watch list can sometimes be considered a flag indicating that the case warrants further attention rather than specific indication of negative information. When an individual applies for a visa who appears to be the subject of a TIPOFF entry, the Department of State does not issue the visa until all issues arising from the entry are resolved.

It should be understood that the overwhelming number of names in TIPOFF involve aliens who have never applied for visas. When information is received on an individual, the Consular Consolidated Data-base is checked to see if a visa had already been issued. If so, then revocation procedures are implemented.

b) As an essential part of the revocation procedures, the Department of State provides DHS a copy of the certificate of the visa revocation. DHS receives the appropriate intelligence report(s) from the originating intelligence or law enforcement agency.

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Chairman Saxby Chambliss (#3)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

Question:

In addition to a proper downstream flow of information, is the Department of Homeland Security adding intelligence it gathers in the field so that information is also shared upstream to State?

Answer:

Yes. If DHS develops information through its own immigration and enforcement work, it makes lookout entries in its own systems that become available to the Department of State through the Consular Lookout and Support System (CLASS).

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Senator John Cornyn (#1)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

Question:

(a) To date, what has DOS and DHS done to respond to the GAO's recommendations?

(b) What further actions do DOS and DHS plan to share in real-time, immigration and terrorist risk information to state and local law enforcement.

Answer:

The Department of State is participating in interagency working groups to continue to improve the sharing of watchlist information. Discussions are also taking place to relocate TIPOFF at the Terrorist Threat Integration Center. TIPOFF data was shared with that entity shortly after its inception and will be used in the national watchlist.

Given that the Department of State is not a domestic agency, we are not in a position to share information with state and local officials. I would refer you to DHS for further information.

b) The Department of State is not a domestic agency. DHS and DOJ are working with state and local law enforcement officials. We are supporting those efforts through our datashare with those two agencies.

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Senator John Cornyn (#3)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

Question:

(a) Please review available data from the former INS, Census Bureau and any other government databases and provide the Committee with the government's best estimate of the illegal aliens currently in the US.

(b) In conjunction with the above question, please provide the Committee with the government's best estimate of individuals in the US on expired visas.

Answer:

(a) The Department of State has no jurisdiction over illegal aliens in the US and thus has no information to assist in making a judgment about their numbers. The question falls within the jurisdiction of DHS.

b) This question falls within the competency of DHS, not the DOS. It is important to note, however, that an alien may remain in the United States even after his visa has expired in a wide variety of circumstances. For example, we may issue a single-entry, 30 day visa to an alien, meaning that he may apply to DHS once within 30 days

of visa issuance for entry to the United States. That alien can travel to the United States and be admitted by DHS on the 29th day after visa issuance; at the time of admission, DHS could authorize that alien to enter for a period of six months.

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Senator John Cornyn (#4)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

Question:

What are your departments doing to locate and deport the estimated 300,000 aliens who are subject to final deportation orders?

Answer:

This question falls within the jurisdiction of DHS, not DOS.

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Senator Charles Grassley (#1)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

Question:

Before her confirmation last year, Maura Harty promised my staff she would work to implement the recommendations of the GAO and others to improve the visa process at Consular Affairs. In addition to the recommendations in the recent GAO report, the GAO and State Department Inspector General made numerous calls for improvements in reports last year. The October 2002 GAO report about the hijackers' visa forms made at least eight recommendations to improve and secure the visa process. The Inspector General report had 19 recommendations. Many of these called for Consular Affairs to issue uniform and standard polices and procedures for the scatter-shot visa process that had major security loopholes. Can you tell me where you are in implementing these, especially on agreeing with other agencies on the level of evidence needed to deny a visa on terrorism grounds?

Answer:

An extensive list of improvements made to the visa process since the events of September 11, 2001, including steps taken to address each of the recommendations made by GAO and the State Department Inspector General is attached. As Assistant Secretary Harty has stated, we appreciated the constructive suggestions made by both the GAO and State Inspector General in all of the studies they have

undertaken and have taken their recommendations as a road map for improvements in the visa process. The attached list shows that a lot of work has gone into improving these processes and the security of our borders and we are pleased with these accomplishments. I must stress, however, that we do not believe that the job of improving our national security can ever be completed. We have no intention of calling a time out in the war on terrorism.

Since January 2003 we have generated 33 separate messages to the field outlining specific standard operating procedures for visa and other consular processes. We have undertaken a comprehensive review of guidance provided to the field in all areas to ensure that consular personnel are given clear and consistent guidance applicable worldwide. This is an ongoing effort that we look forward to continuing in partnership with the Department of Homeland Security as further opportunities to improve our visa and border security processes are identified. As of August 15 we have dispatched Consular Management Assistance Teams including senior consular managers to 16 consular posts to review their operations and assist them in implementing standard operating procedures.

In your question you raise specifically the GAO recommendation that "the Assistant to the President for

Homeland Security coordinate with appropriate agencies to establish government-wide guidelines on the level of evidence needed to deny a visa on terrorism grounds under INA Section 212(a)(3)(B)." No visa is issued in a case in which an agency requests a "hold" on the visa. The number of cases subject to holds has decreased as we have introduced more efficient ways to clear cases interagency. If a case presents an issue of the level of evidence needed to deny a visa on terrorism grounds, we would expect that issue to be resolved by the Secretary of Homeland Security after consultation with State and Justice, which retains responsibility for deciding questions of law under the INA.

Question for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs by
Senator Grassely (#2)
Senate Judiciary Immigration, Border Security, and
Citizenship Subcommittee
July 15, 2003

Question: Congress gave the Department of Homeland Security authority to set visa policies and procedures for the State Department to carry out. I would like each of you to describe what new policies and procedures have been put in place, and how both agencies will conduct oversight to make sure they are followed. After the hearing, I would like a copy of the agreement between the two agencies that governs this process, as well as copies of any new visa policies and procedures from Homeland Security, and State Department memos outlining the implementation of those policies and procedures.

Answer: The Homeland Security Act of 2002 provides that the provision of section 428, which gives the Secretary of Homeland Security authority to issue regulations with respect to, administer, and enforce the provisions of the Immigration and Nationality Act, and of all other immigration and nationality laws, relating to the functions of consular officers in connection with the granting or refusal of visas, will go into effect either on the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary of Homeland Security and the Secretary of State or one year after enactment of the Homeland Security Act, whichever is earlier. The

Department of State and the Department of Homeland Security have reached agreement on a memorandum of understanding governing implementation of Section 428, and that memorandum is currently being reviewed by the Office of Management and Budget. I anticipate the document will be finalized and signed very shortly.

As the Department of Homeland Security has not yet assumed its responsibilities under section 428, it has not issued any instructions to the Department of State governing visa policies or procedures. The Department of State, however, has worked very closely with DHS in revising numerous visa policies and procedures. All major directives to our embassies and consulates on visa policies and procedures have been coordinated with DHS. The attached document entitled "Changes to the Visa Application Process since September 11, 2001" (Tab A) provides a comprehensive list of changes made by the Department of State to the visa process during the past two years as well as planed changes. Tab B provides copies of telegrams from this year informing our embassies and consulates of major changes to the visa process.

Tab A

CHANGES TO THE VISA APPLICATION PROCESS SINCE SEPTEMBER 11, 2001

The Department of State has made significant changes to the visa process and entry screening requirements since September 11, 2001, to provide better security in light of the revised threat assessment to our national security. The steps outlined below are some of our more important efforts to improve the security of U.S. borders, which also include our ongoing participation in interagency efforts to implement the provisions of the USA Patriot Act, the Enhanced Border Security Act, and the National Security Entry Exit Registration System (NSEERS).

Improvements Made in Visa Processing

Application Processing

- Greatly increased percentage of nonimmigrant applicants interviewed worldwide. On August 1, 2003 new regulations were implemented which limit waiver of personal appearance for nonimmigrant visa applicants to only a few categories of exceptions, such as diplomats, children, and the elderly.
- In coordination with the Department of Justice, added more interagency security checks for certain groups of visa applicants from certain countries.
- Provided access to the Consular Consolidated Database (CCD) to INS inspectors at ports of entry. The CCD provides detailed information on all visas issued, including photographs of nonimmigrant visa applicants. (The CCD had earlier been made available to consular officers worldwide in May 2001.)
- Expanded intranet resources for consular adjudicators to assist them in reading and verifying entry/exit cachets in Arabic or Persian script.

- Concurred with Department of Justice in removal of Argentina and Uruguay from the Visa Waiver Program and imposition of limitations on Belgium's participation.
- Centralized flow of fiancée visa petitions from BCIS to the National Visa Center (NVC) in New Hampshire. NVC will compile FBI and security advisory checks before sending the files to overseas posts.

Namechecks

- Incorporated approximately eight million records from the FBI's National Crime Information Center (NCIC) into our Consular Lookout and Support System (CLASS) namecheck database. This more than doubled the records on file. (This was authorized by the Patriot Act.)
- Received into CLASS a threefold increase in namecheck records from the intelligence community (through TIPOFF, a clearinghouse for sensitive intelligence and watchlist entries).
- Started automated cross-checking of new derogatory information concerning terrorists or suspected terrorists (including TIPOFF entries) against records of previously issued visas in order to revoke existing valid visas in the hands of those who may be a threat.
- Implemented alternative/backup facility for our namecheck system (CLASS). Located in our Kentucky Consular Center, several hundred miles from Washington, DC. The backup improves CLASS survivability.
- Discontinued use of a CD-ROM based back-up namecheck system. Replaced this system at several posts with the Backup Namecheck System (BNS), which uses an Oracle server to update post's namecheck database. Namechecks at all non-BNS posts must now be done via the CLASS online database, which is updated in real-time.

Enhanced Data Collection

- Included 25 additional data elements in the automated nonimmigrant visa processing system. These fields are viewable worldwide through the Consular Consolidated Database. This data includes information on the U.S. sponsors and U.S. destination of the visa applicant.
- Created two new forms for nonimmigrant visa applicants: the DS-157 (November 2001), required of all men aged 16 to 45 from every country in the world; and the DS-158

(July 2002), required of all applicants for student visas. The DS-157 is used to identify applicants who require a security advisory opinion from Washington agencies.

- Provided all posts with software and scanners to allow scanning of supporting evidence in serious refusals. This evidence is thus available in its electronic format to all consular operations and DHS border inspection offices. This is part of the effort to replace paper files with image-storage and retrieval and to improve the access to information by consular officers making adjudication decisions.
- Began requiring photo-capture for refused nonimmigrant visa applicants.
- Revised photo standards for nonimmigrant applicants to improve quality of data for facial recognition and other purposes.
- Included several additional data elements in the automated immigrant visa processing system to support datasharing with the Social Security Administration.

Expanded Information Sharing

- A new staff office, VO/I, was created in the Visa Office to coordinate information management and liaison activities. We expect this office to continue to grow and to play a key role in interagency discussions. (August 2002)
- The Border Biometric Program office in the Visa Office has been reorganized as the Office of Border and International Programs to allow for expanded efforts at information sharing and coordination with like-minded nations and multilateral organizations.
- Piloted datashare with the Social Security Administration to facilitate enumeration of new immigrants.
- Began storing serious refusal files for posts at risk (or with space problems) at the Kentucky Consular Center (KCC). KCC has begun scanning old files, making these files available to all CCD users. This process will be expanded to include serious refusal files from all posts worldwide, thereby making them available to all posts worldwide and to domestic offices.
- Expanded distribution of electronic Intelligence Alerts on lost/stolen blank documents, making them available to federal, state, and local agencies and to foreign governments.

- Implemented technology support in visa lookout system to support DHS's National Security Entry Exit Registration System (NSEERS).
- Successfully launched the Interim Student and Exchange Authentication System (ISEAS) (September 2002), which provided electronic verification of the acceptance of foreign students and exchange visitors who apply to enter the United States on student ("F," "M") and exchange visitor ("J") visas. ISEAS was created to satisfy the mandates of Section 501(c) of the Enhanced Border Security and Visa Entry Reform Act of 2002 and remained active until February 2003 when DHS's Student and Exchange Visitor Information System (SEVIS) was implemented.
- Worked with DHS on the implementation of the SEVIS student tracking system. All student visas are now verified and registered in SEVIS. Over one million records from SEVIS have been downloaded to CA's Consolidated Consular Database where the information is available for the electronic verification, adjudication, and reporting of student and exchange visitor visas.

Internal Controls

- Removed direct Foreign Service National access to namecheck information in NIV at six pilot posts in August 2002.
- Reviewed the visa referral system and reminded post/consular managers of controls needed. Referral form was revised and its use was made mandatory worldwide. The form now requires written certification by the referring officer that the visa applicant does not pose a threat to the United States.
- Installed new management tools to monitor user accounts on consular automated systems.
- Mandated a special worldwide review of management controls in September 2002 and again in August 2003. This is now being made a required annual report from all consular sections.
- Implemented system of Consular management review teams to visit posts to review management controls and procedures. First such visits were made in February 2003.
- Began the process of formalizing and disseminating Standard Operating Procedures for visa processing,

including the creation of online processing manuals to better index operating instructions.

Fraud Prevention Efforts

- In March 2002, pilot tested the new, tamper-resistant Lincoln nonimmigrant visa foil with worldwide deployment completed by Fall 2003.
- Developed a more secure way of canceling machine-readable visas to deter malefactors from "washing" the cancellation stamp from the visa.
- Established a Vulnerability Assessment Unit (VAU) staffed by personnel from Consular Affairs and Diplomatic Security. VAU personnel employ data-mining and other techniques to identify baseline trends and patterns and detect variations which could indicate possible malfeasance. The unit analyzes data anomalies and makes recommendations for action. The unit also participates in State Department training efforts to ensure consular employees are well informed about issues related to malfeasance.
- Established a fraud prevention unit at the National Visa Center in Portsmouth, New Hampshire (NVC). The unit focuses initially on data validation/fraud screening for employment-based cases using automated search tools. After experience has been gained at NVC, we will expand the program to the Kentucky Consular Center (KCC).
- Based on success with Diversity Visa lottery (DV) program, anti-fraud efforts using Facial Recognition technology have been expanded on a test basis to thirteen NIV applicant pools, with a focus on countering both visa fraud and terrorism.
- Created e-form for easy reporting of lost/stolen/missing visaed passports, with automatic forwarding to DHS.
- Continue to update our database of foreign lost and stolen passports. We currently have over 680,000 entries of blank and individually issued lost and stolen passports in the database.

Training

- Initiated an Advanced Namechecking Techniques course at the Foreign Service Institute. Hundreds of consular officers have now received this training.
- Changed the basic consular training course to add material on fraud, malfeasance, ethics, and terrorism in addition to new material on interviewing techniques, accountability and management issues, and computer systems security. The time devoted to interviewing skills training in the Basic Consular Course has increased significantly, from the pre-9/11 6 ½ hours to 16 hours.
- Increased training for Ambassadors, DCMs and POs on their supervisory role in the visa function.
- Incorporated CIA module on terrorist travel patterns into the basic consular course, which will be expanded in October 2003.

Security Improvements

- Proposed elimination of crew list visas and establishment of a requirement that seamen obtain individual visas. (Crew list visas do not allow for the same verification of identity and bona fides as do individual applications.) Proposed regulation was published for public comment in December 2002; final rule is awaiting DHS clearance.
- Eliminated waiver of visa for permanent residents of Canada and Bermuda.
- Amended regulations to close loophole and limit the ability of persons with expired visas to reenter the U.S. from contiguous territory (i.e. Mexico, Canada, the Caribbean). The change removed from the automatic revalidation provision those persons who apply for a new visa and are refused in Canada or Mexico and for all nationals of countries designated as state sponsors of terrorism regardless of whether they apply for a visa.
- Supported implementation of the Aviation Security Bill.
- Reiterated standing guidance on interview requirements for applicants subject to security advisory opinion requirements.
- Started discussions with Mexico and Canada about greater cooperation on immigration, security, and visa issues.

- Approved an Entry-Exit Project Charter (now the "U.S. Visit" program), drafted jointly with INS, Customs, and DOT, which sets the parameters for an automated system to record the arrivals, departures, and stay activities of individuals coming to and leaving the U.S. Continue to work closely with DHS on development of U.S. Visit.

FUTURE IMPROVEMENTS TO THE VISA PROCESS AND TIMETABLES

The Department continues to implement requirements set forth in the USA PATRIOT Act, the Enhanced Border Security and Visa Entry Reform Act, and the Homeland Security Act. Major initiatives not outlined above that are currently planned include:

Application Processing

- Initiate investigation of "rules based process" as a tool for visa screening.
- Implement an internet-based NIV application form that allows the applicant to fill in the form, which when printed contains a bar code readable at post for automatic input into our visa system.
- Revamp the visa processing sections of the Foreign Affairs Manuals, including a complete reexamination of all existing guidance to overseas posts. Existing standard operating procedures are being redrafted and reissued, and new SOPs are being developed.

Namechecks

- Improve capacity of CLASS to handle additional information such as Interpol and deportation lookout information, the Hispanic algorithm, and lost and stolen passport data.
- Implement the Hispanic algorithm on a worldwide basis.
- Develop and implement an algorithm to improve performance on namechecking of Asian names. This algorithm will be piloted in FY 2004, with worldwide rollout projected for FY 2005.
- Implement our BNS (Backup Namecheck System) with real time update. This system has already been piloted.
- Continue to load data from the FBI, in a priority order.

- Upgrade the central namecheck processing facility to increase computer power and provide system scalability.

Enhanced Data Collection

- The Patriot Act requires that U.S. visas use biometric identifiers by October 26, 2004. The Department plans to begin phased implementation of biometric (fingerprint) collection in September 2003. We anticipate that all posts will be collecting biometrics by October 2004.
- The Department will work with countries that are eligible for the Visa Waiver Program (VWP) and with ICAO to meet the requirement that those countries incorporate biometric identifiers in their passports by October 2004, as required by the Patriot Act.
- ***Software improvements to help consular officers make all case notes online. This would support a legislative mandate to require electronic notes providing rationale for all visa refusals and for any subsequent issuance to a previously refused applicant.***

Expanded Information Sharing

- Continue to expand datashare opportunities with federal agencies, maximizing the value of consular data to the USG while developing procedures to ensure proper use of this information.
- Make Consular Data available via the interagency OSIS (Open Sources Information System) network. Work with agencies concerned with Border Security (DHS, FBI, etc.) to develop an MOU that will allow this access.
- Continue working on a number of programs with Canada and Mexico as part of our U.S.-Canada Smart Border Action Plan (30 point plan) and U.S.-Mexico Border Partnership (22 point plan). As concerns the movement of people, we are working on agreements that would allow us to share Advance Passenger Information/Passenger Name Records for airline passengers entering the U.S., Canada, or Mexico. We are also working with both these countries (NEXUS with Canada and SENTRI with Mexico) to expand frequent travelers programs to allow faster crossings for bona fide travelers.

Training

- The Foreign Service Institute is in the process of lengthening the Basic Consular Course, also known as ConGen, from 26 to 31 days. This change is the result of the added emphasis that we are giving to visa security, counter-terrorism awareness and interviewing techniques. Among the new modules is a two-day interviewing "mini-course" that will focus students on ways to identify lying/deception by applicants. The new, longer ConGen training schedule will begin in October 2003.

Internal Controls

- Restrict further the access of foreign service national employees to namecheck information.
- Provide additional guidance to the field on supervisory officer review of visa issuances and refusals.
- Accelerate schedule of visits by consular management assistance teams to posts to review management controls and procedures.
- Provide information to the field on lessons learned from cases of consular malfeasance.
- Provide written guidance to chiefs of mission and their deputies to assist them in their oversight of consular sections.

Fraud Prevention Programs

- Review facial recognition results from initial test deployment at visa posts to determine how it may benefit screening in the operational environment.
- Complete deployment of the new, tamper-resistant Lincoln nonimmigrant visa foil.
- Introduce new, tamper-resistant and machine readable immigrant visa foil.

Security Improvements

- Move to on-line electronic registration for the Diversity visa program. Registration for the DV-2005 "lottery" will be conducted exclusively through a dedicated web site. This will enable us to better identify duplicate entries, including, through extensive use of facial recognition technology, those submitted under fraudulent identities.

- Re-engineer the interagency visa clearance process with other agencies.
- Eliminate crew-list visas and require all seamen to obtain individual visas.

Tab B

List of Telegrams Regarding Major Changes in Visa Policies and Procedures Issued in 2003

1. Canadian Landed Immigrants, Feb. 1, 2003
2. Consular Standard Operating Procedures: Definition and Goals, Feb. 12
3. Standard Operating Procedures: Section 113: Aviation Security Bill Update: Consular Processing Simplified, March 19
4. Standard Operating Procedures: Student and Exchange Visitor Visa Processing Update, March 21
5. Visa Provisions in the USA Patriot Act Series: #8, April 16
6. Consular Standard Operating Procedures # 10: Access to Consular Namecheck Systems, April 17
7. Preventing Consular Malfeasance, April 22
8. Senior Managers and the Consular Section, May 2
9. Visas and Non-Compliance with National Security Entry Exit Registration System (NSEERS), May 10
10. Standard Operating Procedures No. 14: Electronic Annotation of NIV Refusals, May 10
11. Border Security - Waiver of Personal Appearance for Nonimmigrant Visa Applicants - Revision to the Regulations, May 21
12. Priority for Student and Exchange Visitor Visa Processing, June 18
13. Crew List Visas, Waiver of Personal Appearance, and Facilitation of Individual C-1/D applications, June 18
14. Standard Operating Procedures No. 28: NIV Intake Procedures, July 29
15. Standard Operating Procedure No. 31: Visa Referral Program, Aug. 1
16. Annual Certification of Consular Management Controls, Aug. 27
17. Latest on Biometric Deployment, Sep. 4
18. Completion of Lincoln Visa Deployment, Aug 21

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Senator Edward Kennedy (#1)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

Question:

Both the intelligence and immigration enforcement communities took great strides since September 11th. Unfortunately, I remain concerned about the lack of inter-agency coordination among the myriad of agencies working to prevent another September 11th attack on our nation's soil.

(a) First, I remain greatly disturbed at reports that the FBI is still failing to provide clear but critical terrorism information to the State Department. Specifically, an important FBI terrorist watch list going by the pseudonym VIGTOFF, apparently still combines intelligence on suspected terrorism with that of other criminals thereby rendering useless any intelligence information it contains. Both the FBI and the CIA must share intelligence information to ensure that no terrorist slips through the cracks. Has the State Department requested that the FBI consolidate this watch list to only include information on suspected terrorists?

(b) To help foster greater coordination among State and the Department of Homeland Security, the "Border Security and Visa Reform Act" directed the President to develop a plan to improve inter-agency access to security information during visa, admission, or deportation proceedings. Furthermore, the Act created a data system with sophisticated name recognition to give those responsible for evaluating visas or screening people entering the United States important information in real-time. How is the State Department incorporating this new tool to ensure our nation is as secure as it can be? Has the President developed any recommendations in response to the Border Security Act's call for improving inter-agency coordination.

(c) The October 2002 GAO report makes a number of findings and recommendations regarding the need to strengthen the visa process as an antiterrorism tool. What is

the State Department's assessment of these findings and recommendations? What steps has the State Department taken to implement the GAO's recommendations?

Answer:

a) Yes. The Department of State has asked the FBI to separate the information in the VGTOF database so that the entries that relate to actual or suspected terrorists is placed in TIPOFF.

b) We assume that the Senator is referring to section 202 of the Enhanced Border Security and Visa Entry Reform Act of 2002. The Chimera system outlined in section 202 is not yet operable. The Department of State is participating in inter-agency meetings on information-sharing chaired by DHS.

In the meantime, interagency data-sharing efforts between the Department of State and other agencies, specifically the FBI, DEA, Interpol, U.S. Marshals, HHS, and DOJ have added significant records to our lookout system. The visa lookout system (CLASS) contains more data records sourced from other agencies than from the Department of State itself.

c) We welcome the many constructive recommendations made by the GAO, our own Inspector General's office and

other observers for improvements in the visa process. A list of actions we have taken since September 11, 2001 to enhance the integrity and security of the visa process and U.S. border security is attached. Many of these actions were taken in response to the 2002 GAO report entitled "Border Security: Visa Process Should Be Strengthened as an Antiterrorism Tool," a report that we have made the foundation of our roadmap for improving US national security. This is an ongoing effort and not one where we can ever step back and label our efforts "good enough." We look forward to continuing to improve the visa process in coordination with the Department of Homeland Security. The attachment lists many accomplishments in this area, but the following comments highlight specific GAO recommendations.

The GAO recommended that the Department coordinate with other USG agencies to develop a clear policy on the need to balance national security with a desire to facilitate legitimate travel in the visa process. As the Secretary has stated on more than one occasion, our goal is secure borders with open doors, a visa process that gives the highest priority to our national security while ensuring that the United States remains open to the international trade, cultural and educational exchange and visits that help make this country great. We believe that

this recommendation is not met with a single policy statement, but by constant efforts in all that we do to maximize both security and openness and we are committed to continuing those efforts.

Comprehensive standards and guidelines were the subject of the second GAO recommendation and I am pleased to say that we have made significant progress in consolidating and clarifying guidance provided to our consular officers worldwide. Since January 2003, we have transmitted 33 separate standard operating procedures to the field, in addition to making substantial changes to the Foreign Affairs Manual to make guidance more straightforward. Of particular significance, in May 2003 we transmitted new guidelines concerning interview requirements and recently we published a regulation that will require consular officers to personally interview almost all visa applicants in the 17-59 age range unless exceptions are granted centrally by the Department. These guidelines became effective on August 1, 2003. As of August 15, 2003 we have dispatched 16 Consular Management Assistance Teams to consular posts with senior officers reviewing post operations to ensure that effective management controls are in place, resources are effectively utilized and standard procedures are being followed.

The GAO recommended a fundamental reassessment of consular staffing and language training overseas. This is also an ongoing exercise, but based on changes to the visa process to date, we are adding 39 overseas consular officer positions during the current fiscal year and plan for 80 additional officers in FY-2004, 40 of which are for initial implementation of the biometrics program. Forty additional officer positions are planned for FY-2005. Over a three-year period we are removing routine visa and passport adjudicatory authority from consular associates to additional new consular officer positions. We plan additional increases as biometric collection begins to ensure that visa processing remains timely and secure. Language training requirements are under review.

Consular training, particular training on terrorism and the namecheck system, was the subject of a further GAO recommendation. The consular training division of the Department of State's Foreign Service Institute currently trains over 2000 students each year in a range of consular skills. Significant changes since September 11, 2001 include the addition of four security and counter-terrorism segments and expanded interview training to the basic consular training course. We have also launched a new 4-day course on advanced name check techniques. This course

is designed to give students an advanced understanding of name-checking theory and practice. Among other topics, students learn about the language algorithms used in the Consular Lookout and Support System. We plan to train 288 students in advanced name check techniques in fiscal years 03 and 04.

Further changes are underway. We have contracted with outside interviewing experts (the Institute of Analytic Interviewing) to bring expertise on interviewing and deception detection to our students. By mid-July 2003, we will introduce a short summary of analytic interviewing techniques in the basic course, and then we will insert the full 2-day interviewing training module into the new curriculum on October 17th. We are re-working the basic consular course to make room for the "add-on" sessions and the additional training on interviewing. Finally, we plan to unveil a completed revamped and expanded 31-day basic consular training curriculum on October 17, 2003.

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Senator Edward Kennedy (#2)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

Question:

Recently, Secretary Powell, described this nation's immigration policy as one of "Secure Borders, Open Doors." That said, my office has received a flood of criticism directed towards State's newly adopted regulations that will require that all visa applicants be interviewed. The claim is that the State Department does not have the staff, resources, and facilities to conduct more visa interviews, therefore implementing these regulations without additional resources will hinder international commerce, travel, and immigration. Our economy counts on billions of dollars spent by consumers from abroad. To bog down legitimate applications or discourage tourists would be a wrong-headed policy. (a) Are the newly adopted regulations posing an undue burden on our consular offices and hindering legitimate international commerce? b) Does the State Department currently have the staff, resources, and facilities to implement these regulations without causing tremendous delays and backlogs?

Answer:

a) No. We do not believe that the revised visa interview policy is hindering legitimate applicants. Our effort, consistent with the GAO report, was to establish a uniform visa interview policy and to centralize decision-making authority regarding any exceptions at headquarters.

b) We believe we do have the resources. In FY03, the Department established 39 new overseas consular positions to meet increased workload demands. For Fiscal 2004, we

are requesting 80 additional overseas positions to meet both increased workload (40 positions) and overseas biometrics requirements (40 positions).

In addition, over a three-year period that began last fiscal year, we are establishing 186 new positions that will assume adjudicatory responsibilities currently performed by consular associates.

So far, posts have been able to absorb well the increased interviewing requirements brought about by the August 1, 2003, changes to the Personal Appearance Waiver (PAW) Program. Consular Management Assistance Teams (CMATs) have proven a valuable management tool for CA and stand ready to assist posts in effectively utilizing resources and follow standard operating procedures, both in existence and in development. Visa demand continues to be down following 9/11. Should demand return to pre-9/11 levels, the resource requirements will need to be reassessed. The Department is closely monitoring the situation.

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Senator Edward Kennedy (#3)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

Question:

Besides implementation of the Border Security Act, Congress continues to actively protect our nation from future terrorist attacks. We have authorized the use of force against terrorists and those who harbor them in other lands. We have enacted legislation to strengthen airport security, to improve the security of our borders, and to give law enforcement and intelligence officials enhanced powers to investigate and prevent terrorism. All of these efforts are aimed to ensure our domestic security. However, all of these efforts are for naught if government agencies continue to refuse to work hand in glove. (a) Why is it that almost two years after September 11, the General Accounting Office's report finds that to date the federal watch list environment has been characterized by a proliferation of systems, among which information sharing is occurring in some cases but not in others. (b) While, at the hearing, you recognized cultural differences between the agencies, why would these "cultural and technological barriers" stand in the way of a more integrated, normalized set of watch lists?

Answer:

a) There has been no proliferation of systems at the Department of State. We continue to use only two data bases for lookout purposes: the CLASS system, which is unclassified and available to all consular posts on a real-time basis, and the TIPOFF system, which is a classified system that is linked to CLASS in a way that ensures that we access TIPOFF's intelligence information when necessary

for visa purposes. We also have the Consolidated Consular Database that contains basic information on each visa application. We continue to ask other agencies to share with us, through links or otherwise, information that can be reflected in these two data bases.

b) Every federal agency has a distinct mission and different needs that must be considered as we work toward integrating watch lists. Each federal agency must also comply with privacy laws. For example, not all agencies are interested or permitted to track records of US citizens. The kind of information needed to deny a visa is different than the information needed to make an arrest. The legal standards for finding someone to be a terrorist for visa purposes are different than the legal standards for prosecuting persons for acts of terrorism. The Department of State does not regard these differences as a limitation on sharing of data, but they do mean that we need to integrate our systems intelligently. Technicians can easily overcome the differences once policy is set in place and resources allocated. For example, we worked successfully with the FBI to identify the data in the FBI's NCIC III that related to foreign nationals and added that portion to the visa lookout system, while trying not to include data on U.S. citizens, which we don't need for visa purposes.

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Senator Jeff Sessions (#1)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

GENERAL QUESTIONS ON THE GAO REPORT

Question:

What steps have you taken since the June GAO report was issued to form a clear and comprehensive policy on the interagency visa revocation process so that the visa revocation process can be used as an aggressive homeland security tool?

Answer:

The Department of State took three steps in response to the GAO's recommendations.

--The Department created a special lookout code "VRVK" to denote visa revocations and verified with DHS that this code would be added to the IBIS lookout database through datashare.

--The Visa Office retrained the staff that handles visas revoked for national security concerns.

--The Visa Office formalized its procedures for visas revoked by the Deputy Assistant Secretary for Visa Services and added this standard operating procedure to the Foreign Affairs Manual.

In addition, we are engaged in interagency discussions to establish clear policies for when revocations will become effective and be used by DHS to remove persons from the United States.

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Senator Jeff Sessions (#2)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

Question:

What are your plans for locating the 30 individuals that the GAO report indicates entered the US before their visas were revoked on terrorism grounds? When they are located, what steps will be taken - will they at least be brought into a consular office for additional interview?

Answer:

The Department of State has no jurisdiction over foreign nationals who are in the US. DHS has jurisdiction over such individuals. DHS also would be the appropriate agency to interview any foreign national who is in the US.

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Senator Jeff Sessions (#3)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

GENERAL QUESTIONS ON THE GAO REPORT

Question:

What role did the "terrorism grounds" revocation code play in the failure of the notification process? Have you rectified the insufficient use of the code so the IBIS database, which is used by the immigration bureaus in DHS, can automatically recognize the visa revocation after it is entered in the CLASS system, the database that you use at the State Department? Do you feel that this automatic recognition of a visa revocation based on terrorism grounds is sufficient to serve as the primary notification tool?

Answer:

Prior to the introduction of the revocation "VRVK" code in CLASS and IBIS for subjects whose visas had been revoked, the Visa Office typically entered bearers of revoked visas whose visas were revoked because of possible terrorism concerns under the code P3B, which indicates a possible (but not established) terrorism ineligibility. The Department's Bureau of Intelligence and Research (INR) entered subjects in the TIPOFF database about whom they held derogatory information into CLASS under the code "00". The 00 hits entered by INR were shared with IBIS. However,

the INS (now DHS) decided that it would not include our P3B codes in the IBIS database.

The "VRVK" code used in CLASS and IBIS has addressed an aspect of the problems this may cause by ensuring that DHS officers are aware of all visa revocations, including those based on possible terrorism concerns. This code now clearly notifies DHS agents at all ports of entry that an alien's visa has been revoked.

Given that all DHS immigration inspectors at ports of entry check the lookout for all individuals seeking entry in the US, the use of automatic sharing of lookout data in a real-time environment is sufficient and reliable to serve as the primary notification tool of a revoked visa.

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Senator Jeff Sessions (#1)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

SHARING INFORMATION WITH STATE AND LOCALS

Question:

Five specific watch lists have no mechanism for sharing information with state and local law enforcement agencies, four of which are currently within the State Department or DHS: 1) Consular Lookout and Support; 2) TIPOFF; 3) Interagency Border and Inspection; and 4) Automated Biometric Identification. Why, this long after 9-11 is there no mechanism for sharing information with state and local law enforcement? If the answer is a privacy concern—what specifically is the legal authority that prevents sharing?

Answer:

There is no mechanism for the Department of State to share information directly with state and local officials. We are not a domestic agency. Our lookout information is available directly to DHS, however, which does work with state and local officials. It is also important to remember that our codes and entries are geared toward resolution of visa issues. They would not necessarily be meaningful or useful for state and local law enforcement purposes. To the extent that they flag the availability of law enforcement information, that information can be made available to state and local officials directly by the law enforcement agencies involved, if appropriate.

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Senator Jeff Sessions (#2)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

SHARING INFORMATION WITH STATE AND LOCALS

Question:

There appears to be a higher evidentiary standard to remove an alien than to issue that alien a visa. Part of this is caused by language on the visa revocation certificate. Why does the certificate of revocation form, the form that is issued to an alien whose visa has been revoked, contain language that states that if the alien is currently in the country, the revocation does not become effective until the alien departs the US and attempts to reenter? What prevents the State Department from removing this language? Shouldn't the revocation certificate become effective upon issuance? Isn't it true that the higher standard of proof that is required to remove an alien that is a potential threat once they are inside the U.S. would be more easily met if the State Department shared the full information they have on such individuals with all levels of law enforcement?

Answer:

The INA gives DHS a wide range of grounds on which it can remove an alien from the United States. We have invited DHS to advise us, however, whether its existing removal authorities could be enhanced by use of our visa revocation authority and, if so, to alert us to specific cases warranting action. (To date we have not received a request to revoke a visa for this purpose.) The State Department stands ready to assist DHS in any way possible to facilitate the deportation of aliens deemed a threat to national security or otherwise ineligible to remain in the U.S.

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Senator Jeff Sessions (#3)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

SHARING INFORMATION WITH STATE AND LOCALS

Question:

If state and local law enforcement assist in enforcing immigration laws, they are likely to encounter aliens who have security concerns but who have not violated their immigration status. How will law enforcement be aware that these aliens who may be security concerns and should be watched unless they have access to watch list information?

Answer:

The Department of State is not responsible for the national watch list, and does not maintain "armed and dangerous" codes in its lookout system such as those used by DHS. I would refer you to DHS for an update on the national watch list.

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Senator Charles Schumer (#1)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

Question:

Why were DHS and FBI not immediately notified of the revocations? What are the Department's current procedures for providing notice to DHS and FBI when the Department revokes a visa?

Answer:

The Department's records indicate that the Visa Office had notified INS and subsequently DHS/BCBP of the majority of the revocation cases by fax and/or telegram. Of the 240 cases that GAO reviewed, our records were incomplete in 34 instances. For all the cases where our records are complete, we can substantiate that the FBI also received a copy of the telegram.

Our procedures for providing notice to DHS and FBI have been put in writing as suggested by GAO and included in the Foreign Affairs Manual. To notify DHS, we fax a copy of the certificate of revocation to the national security unit of DHS/BCBP. We prepare a telegram on the case and provide that to DHS/BCBP, DHS/BICE, and the FBI.

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Senator Charles Schumer (#2)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

Question:

a) Please describe the databases your Department uses to track visas, visa revocation, and the terrorist watch lists. b) Also please describe if and how these technologies operate with the relevant technologies at the DHS and the Department of Justice. c) Does information travel both intra-agency and inter-agency in real time? If not, why not?

Answer:

a) The Department of State employs our modernized visa systems and the Consular Consolidated Database (CCD) to record basic information on each visa application. We track visa revocations in the Consular Lookout and Support System (CLASS) and we track the terrorist watch lists in TIPOFF records passed to CLASS.

b) Information from the CCD and CLASS is available to DHS. We are in discussions with the FBI aimed at electronically expanding datashare with them. The FBI now has access to TIPOFF data.

c) Our datashare with DHS is in real-time. We expect to achieve the same result with the FBI by using the Open Source Information System (OSIS). Datashare between the Department of State's Washington office and all overseas posts is in real-time.

Questions for the Record Submitted to
Deputy Assistant Secretary Janice Jacobs
Senator Charles Schumer (#3)
Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security
July 15, 2003

Question:

Do you believe that implementing a deadline would facilitate the inter-agency visa processing system?

Answer:

No. The Department of State does not believe that implementing processing deadlines for special clearance procedures would be in the best interest of U.S. national security. With continuing improvements in automation and processing, the majority of cases subject to special clearance requirements are being processed to completion rapidly. However, in those cases when other agencies require additional time in order to properly review a case, it is important that this time be available.

Senator Edward Kennedy
Questions to Hearing Witnesses at
Senate Judiciary Committee Hearing on
"Visa Issuance, Information Sharing and Enforcement in a Post 9-11 Environment: Are We Ready Yet?"
July 15, 2003

Questions for Mr. Michael Dougherty,
Bureau of Immigration and Customs Enforcement

1. Both the intelligence and immigration enforcement communities took great strides since September 11th. Unfortunately, I remain concerned about the lack of inter-agency coordination among the myriad of agencies working to prevent another September 11th attack on our nation's soil.

    1. How successful is State's new revocation code in keeping DHS updated on the issuance of a visa revocation on terrorism grounds? What other steps can State take to help DHS track down those whose visas were revoked?

RESPONSE: Prior to January 2003, DHS did experience problems with receiving notice of visa revocations from the Department of State (DOS), in part due to a miscommunication about which codes should be accepted as revocation codes and to an incorrect interface between IBIS and CLASS. These problems have been corrected and since the June 2003 report, ICE has requested and received immediate notification from DOS of all visa revocations, including revocations based on national security grounds. DOS is now transmitting cables of all visa revocations to the ICE Intelligence Unit and, as a result, ICE is kept up-to-date on all visa revocations on terrorism grounds. ICE also is working with BTS Office of Policy and Planning to determine what, if any, additional steps DOS can take to assist ICE with locating and aiding ICE in the removing of individuals from the United States who have had their visas revoked after admission.

    2. As you are aware, to help foster greater coordination among the Department of Homeland Security and State, the "Border Security and Visa Reform Act" directed the President to develop a plan to improve inter-agency access to security information during visa, admissibility, or deportation proceedings. Has the President developed any recommendations in response to the Border Security Act's call for improving inter-agency coordination?

RESPONSE: Based upon direction from the White House, the Department of Homeland Security in coordination with the Department of State, the Homeland Security Council, Department of Justice, and the Central Intelligence Agency has developed three important, and soon to be integrated, initiatives that improve interagency access to security information during visa admissibility. The President announced his decision to create the Terrorist Threat Integration Center (TTIC) during his State of the Union address and the Center began operations

on May 1, 2003. The TTIC consolidates all international terrorist-related information from the FBI, CIA and other Federal agencies into a Terrorist Identities Database. On September 16, 2003, by President Bush signed Homeland Security Presidential Directive-6 establishing the Terrorist Screening Center (TSC). The TSC will develop, integrate, and maintain accurate and current identity information about individuals known or suspected to be engaged in terrorist activities using the TTIC's Terrorist Identities Database for its supporting International Terrorist information and using the FBI's database for its supporting domestic terrorist information. The TSC will provide the information to appropriate federal, state, and local law enforcement and other components to assist in the screening process. Complementing both of these initiatives is a Memorandum of Understanding implemented between the Departments of Homeland Security and State that governs the implementation of Section 428 of the Homeland Security Act and ultimately creates a visa security process. The MOU ensures that DHS is able to establish visa policy, review implementation of that policy, and ensures that homeland security requirements are fully reflected in the visa process. DHS/BTS has designated the Office of International Enforcement (OIE) with responsibility for the implementation of the Visa Security Program. OIE is developing a visa vetting protocol that fully ensures that capabilities of both the TTIC and TSC are integrated into the visa vetting process.

2. In GAO's June 2003 report on visa revocations, they indicate that "the appropriate units of the INS and the FBI did not routinely investigate, locate, or take any action on individuals who might have remained in the United States after their visas were revoked."

    1. When CBP receives notice of a visa revocation, does BICE routinely investigate, locate, or take any action on individuals who might have remained in the United States after their visas were revoked?

RESPONSE: Yes. Previously, the Department of State (DOS) would send a notification of a visa revocation to CBP, then CBP would determine whether or not the individual had entered the United States. If no departure information existed, CBP would then refer the case to ICE for further follow-up and field investigation. In such cases, ICE always followed standard operating procedures and took appropriate action to investigate 100% of the referred cases. Since the June 2003 report, ICE has requested and received immediate notification from DOS of <u>all</u> visa revocations, including revocations based on national security grounds. DOS is now transmitting cables of all visa revocations to the ICE Intelligence Unit. As before, ICE follows standard operating procedures and takes appropriate action to investigate all revocation cases.

    2. If so, what steps does the agency take in response?

RESPONSE: When ICE is notified of a visa revocation the Intelligence Unit conducts records checks, obtains all derogatory information relating to the subject of the visa revocation, and forwards it to the appropriate ICE Investigations Division for a full field investigation.

ICE has determined that there is no need to create additional policies to address actions that law enforcement and immigration agencies should take to investigate and locate individuals whose visa have been revoked because such policies are already in place. ICE Office of Investigations

has jurisdiction over investigating persons who are in the United States in violation of immigration law and, and is an active member of the Federal Bureau of Investigation's (FBI) nation-wide Joint Terrorism Task Forces (JTTF). It is ICE policy to conduct a full field investigation of any foreign national that is believed to be in the United States and whose visa was revoked on national security grounds.

In cases where an individual has a revoked visa based on national security grounds, but is present in the United States, ICE has in the past and will continue to attempt to locate the individual and verify his/her immigration status and ensure that the person is complying with the terms of admission. ICE further investigates all immigration violations that would make the person amenable to removal proceedings (violations such as unauthorized employment, failure to depart the United States as required, etc.).

The ICE, upon receipt of notification of a visa revocation, queries ICE databases to determine if any of the individuals who have had their visas revoked have entered the U.S. and still have not departed. Upon confirmation that individuals who have had their visas revoked for national security grounds have entered the U.S. and not departed, ICE Office of Investigations in coordination with the FBI will make every attempt to locate the individual and investigate all possible avenues to remove the individual from the U.S. thereby minimizing the threat they may pose to the homeland.

3. I remain concerned that despite our best efforts, homeland security remains threatened by a lack of agency coordination. Nine federal agencies currently maintain twelve distinct watch lists for terrorists. These watch lists include overlapping but not identical sets of data. It is critical that all nine federal agencies immediately share information about suspected terrorists but GAO reports that the agencies continue to work off different pages.

    1. Will the Secretary of the Department of Homeland Security follow the GAO's recommendations and, in collaboration with the heads of other departments, lead an effort to, wherever possible, consolidate and standardize the federal government's watch list structures and policies?

RESPONSE: Yes. The Information Analysis and Infrastructure Protection Directorate (IAIP) has been designated as the lead in DHS's role in the Terrorist Screening Center (TSC). The TSC was created pursuant to Homeland Security Presidential Directive 6 on September 16, 2003, and was operational on December 1, 2003. The TSC is administered by the FBI in partnership with DHS, the Department of State, the Central Intelligence Agency, and the Justice Department. DHS's CBP and ICE participate at the TSC; in fact, the Principal Deputy Director at the TSC is from IAIP. TSC not only consolidate the Government's approach to terrorist screening, but provides for the appropriate and lawful use of terrorist information in the screening process.

    2. The General Accounting Office recently reported that two of the nine federal agencies did not have any policies and procedures on watch list sharing. Please detail the impact this lack of information sharing has on the ground for BICE?

RESPONSE: As indicated below, ICE does not know which federal agencies GAO was referencing when it indicated that the agencies lacked specific policies and procedures for information sharing. ICE, therefore, cannot comment on the impact, if any, those agencies' failure to have specific policies and procedures on watch list and information sharing on ICE operations. However, the ICE receives a number of national security leads and referrals from various sources and agencies, including visa revocations from the Department of State. The ICE has a clearly defined role in respect to visa revocation: to investigate those cases involving aliens who may have had their visa revoked after admission or were admitted despite the revocation of their visa. Pursuant to NSU standard operating policy, visa revocation cases are investigated and coordinated in the same manner as all other types of cases handled by the unit including, but not limited to, the gathering and exploitation of intelligence information to generate leads; creating a target folder for referral to Special Agents in the field; full field investigation of all leads; determination on possible violations; and if applicable, arrest.

The Department of Homeland Security (DHS) and DOS are still in the process of developing specific procedures for sharing of derogatory information in visa revocation matters.

3. Do you know which federal agencies reported to not have any policies in place on sharing information?

RESPONSE: No.

4. Do you agree with Ms. Jacobs that cultural differences between the agencies exist?

RESPONSE: Yes.

5. If so, what are they and why would these "cultural and technological barriers stand in the way of a more integrated, normalized set of watch lists?"

RESPONSE: There are certain cultural differences that exist between both Departments, but they are attributable to the different missions of each agency. DOS's core mission is to develop and implement U.S. foreign policy, while DHS's core mission is to protect the nation against future threats. However, we believe that DHS and DOS compliment each other in carrying out the basic missions of our respective Departments because we have a unified goal – a desire to insure the flow of legitimate people and goods back and forth across our international borders, while protecting the nation and the American people against future terrorist attacks and enforcing our laws. As for potential cultural barriers to watch list integration, we believe that our cultural differences should not stand in the way of efforts to develop a more integrated watch list. Any technological barriers, including those stemming from the use of different databases, systems and automation standards, will be addressed as part of the overall effort, lead by the Information Analysis and Infrastructure Protection Directorate (IA/IP) to resolve problems related to the existence of multiple terrorists watch lists and integration of such lists. ICE does not maintain a separate watch list for terrorists. IA/IP has worked closely with BTS, the Central Intelligence Agency, the Justice Department and the State Department to create the Terrorist Screening Center (TSC), an effort that consolidates the many disparate watch lists identified in GAO's April 2003 Report. The TSC not only consolidates the Government's approach to terrorist screening but also provides the appropriate and lawful use of terrorist information in the screening process.

Written Questions Submitted by Senator Jeff Sessions
Judiciary Immigration, Border Security, and Citizenship Subcommittee Hearing
July 15, 2003, at 2:30 p.m

"Visa Issuance, Information Sharing and Enforcement in a Post 9-11 Environment: Are we ready yet?"

Mr. Michael T. Dougherty, Director of Operations,
Bureau of Immigration and Customs Enforcement,
Department of Homeland Security:

GENERAL QUESTIONS ON THE GAO REPORT:

1) What steps have you taken since the June GAO was issued to form a clear and comprehensive policy on the interagency visa revocation process so that the visa revocation process can be used as an aggressive homeland security tool?

RESPONSE: A key aspect of an effective interagency revocation process and policy is ensuring that all relevant DHS components receive notification of visa revocations. Since the June 2003 report, ICE has requested and received immediate notification from the Department of State (DOS) of all visa revocations, including revocations based on national security grounds. DOS is now transmitting cables of all visa revocations to the ICE Intelligence Unit.

Customs and Border Protection (CBP) has initiated a working group with DOS's Visa Office to clarify the existing process and jointly implement procedures that enhance the timeliness and accountability of posting revocation lookouts into the Interagency Border Inspection System (IBIS). CBP has internally relocated the receipt and posting of visa revocations to the CBP Office of Intelligence, which is best placed to act immediately upon revocations. Further, as an interim step, CBP is performing queries upon all newly issued visa revocations to determine whether or not the alien has already made entry into the United States. In cases where the subject has already entered the United States, CBP immediately informs ICE.

The Department of Homeland Security (DHS) and DOS are still in the process of developing specific procedures for sharing of derogatory information in visa revocation matters.

2) What are your plans for locating the 30 individuals that the GAO report indicates entered the US before their visas were revoked on terrorism grounds? When they are located, what steps will be taken? Will they at least be brought into a consular office for an additional interview?

RESPONSE: As indicated, prior to June 2003, legacy INS NSU received only 10 referrals of individuals who had their visas revoked based on national security grounds and were believed to be in the United States. ICE has repeatedly requested information on the GAO claim of 20 additional leads and has been told by CBP and DOS that they are not aware of any such additional leads. During the July 15 hearing, GAO testified that there are as many as 50 "terrorists" in the U.S. who have had their visas revoked. The ICE Director of Operations sent a

letter on September 11 to GAO formally requesting all information they have on these 50 individuals. We are awaiting a response to that letter.

If GAO provides information on additional individuals who may be in the United States and who have had there visas revoked on national security grounds, ICE will follow current standard operating procedures for all national security referrals, conduct appropriate record checks, obtain all derogatory information relating to the subject of the visa revocation, and forward the case to the appropriate ICE Investigations Division for a full field investigation (and, if necessary, additional interview).

3) What role did the "terrorism grounds" revocation code play in the failure of the notification process? Have you rectified the insufficient use of the code so the IBIS database, which is used by the immigration bureaus in DHS, can automatically recognize the visa revocation after it is entered in the CLASS system, the database that you use at the State Department? Do you feel that this automatic recognition of a visa revocation based on terrorism grounds is sufficient to serve as the primary notification tool?

RESPONSE: Prior to January 2003, DHS did experience problems with receiving notice of visa revocations from the Department of State, in part due to a miscommunication about which codes should be accepted as revocation codes and to an incorrect interface between IBIS and CLASS. These problems have been corrected and since the June 2003 report, ICE has requested and received immediate notification from DOS of all visa revocations, including revocations based on national security grounds. We agree that automatic electronic interface between IBIS and CLASS is the best method for primary notification of visa revocations. However, it is equally important to have a back-up notification process for visa revocations. DOS is now transmitting cables of all visa revocations to both CBP and the ICE Intelligence Unit and, as a result, both components are kept up-to-date on all visa revocations on terrorism grounds.

4) In your written testimony, you clarify that while you agree with the overall recommendations of the June GAO report, BICE does not agree with some of the reports findings. Can you tell me which findings, specifically, you disagree with and why?

RESPONSE: Specifically, ICE disagrees with statements on pages 5 and 24 of the GAO report. The GAO report states that the Immigration and Naturalization Service (INS), specifically investigators within the National Security Unit (NSU) who are now operating under the Bureau of Immigration and Customs Enforcement (ICE), do not routinely take action to investigate, locate, or resolve cases of individuals who remained in the United States after their visas were revoked. This statement is not accurate. When the Customs and Border Protection Lookout Unit notifies ICE that Department of State (DOS) has issued a visa revocation and the alien may be in the United States, ICE has, and continues to refer the matter to NSU to investigate the matter and take the appropriate actions. The NSU always investigated and took appropriate action on all cases referred to it by ICE.

Pursuant to NSU standard operating policy, visa revocation cases are investigated and coordinated in the same manner as all other types of cases handled by the unit. The NSU

submitted documentation to GAO proving that 100% of all visa revocation cases referred to the NSU were investigated. In all of the referred visa revocation cases where the alien was located, or had not departed, the United States, investigators determined that insufficient evidence was present linking the aliens to terrorism or any other applicable basis for removal from the United States. Therefore no action could be taken on these individuals after having their visa revoked.

SHARING OF INFORMATION WITH STATE AND LOCALS:

5) Please explain the current procedure for state and local law enforcement to access immigration-related information from ICE databases. Is it true that accessing the full immigration related information on any individual requires inquiry into two distinct databases, NCIC and the separate database kept by ICE - the database to which state and local law enforcement officers are given access through the Law Enforcement Support Center?

RESPONSE: ICE will remain committed to maximizing the entry of eligible and appropriate cases into NCIC, however, state and local law enforcement officers may also obtain immigration information from the ICE LESC about aliens not in NCIC, who are suspected, arrested or under investigation for criminal activity.

Access to the ICE LESC for such information is by an Immigration Alien Query (IAQ) through the National Law Enforcement Telecommunication System (NLETS.) NLETS has been the ICE LESC's primary method of communication with the entire criminal justice community and is a method of electronic law enforcement communication throughout the United States and Canada. There are over 430,000 law enforcement terminals which connect to state or federal systems, and from there connect to CJIS or NLETS depending on the function to be performed for each specific transaction. The terminals have menus for NCIC and NLETS functions, as well as for state of federal agency-specific functions. LEAs gain access to the 18 NCIC files via a NLETS menu on their individual state systems. The ICE LESC, working in partnership with each state NLETS representative, has placed the ICE LESC's IAQ on that menu. The criminal justice community has access not only to alien records placed into NCIC, but also to every alien file on record with BTS and USCIS. That access is available 24 hours a day, 7 days per week.

The IAQ was developed in response to a congressional mandate to provide around the clock assistance to the entire criminal justice community. The ICE LESC has successfully accomplished that mission and is continuing to seek to expand use of the IAQ. The IAQ clearly complements NCIC as a force multiplier. Every alien record is now available to law enforcement through the IAQ rather than the smaller subsets of those records in NCIC. The method of communication is seamless to the law enforcement community with only a small learning curve for marketing to those few agencies not currently using the ICE LESC.

The fundamental mission of the ICE LESC is to provide investigative assistance to the entire criminal justice community. The primary user for the past 7 years has been the street officer with an alien detained along the road. Recently, the IAQ has been modified for use by selected holding facilities. The ICE LESC responded to nearly 427,000 LEA queries in 2002 and is

projected to respond to over 600,000 this year. These numbers unequivocally demonstrate that every facet of the law enforcement community is using the IAQ.

There are only a select number of "hot files" that law enforcement officers can access with a single transaction. Every officer must run individual drivers license checks, missing persons, gun records, etc. The IAQ completely mirrors and complies with the methodology devised by NLETS and NCIC and used by law enforcement officers for over 3 decades.

The ICE LESC is establishing an Office of Law Enforcement Liaison that will have primary responsibility for increasing even further the awareness of the IAQ and encouraging its use. Recent training of all State Police officers in Alabama in ICE LESC procedures is a recent example of the type of outreach contemplated.

6) When a state or local law enforcement officer has someone pulled over on the side of the road for a suspected state law violation and suspects that the individual may be in the country illegally, what procedure can the officer use to determine if the individual is out of status or here illegally?

RESPONSE: Please see response to Question 5.

7) It is widely acknowledged that over 400,000 alien absconders are at large within our borders. At the hearing, you stated that some of these absconders were currently being listed in NCIC. Please tell us the exact number of these individuals that have already been listed in NCIC. When can we expect all 400,000 individuals to be listed? Please explain what legal authority required the listing of these individuals.

RESPONSE: The 400,000 figure is an estimation of the alien absconder population. ICE is continually working to refine that number through alien file reviews, data base checks and other means using all of the informational resources at our disposal from Federal, state, local and other entities. As a result of this process, ICE will be better able to predict the final number of absconder records that will be entered into NCIC and how long it will take.

ICE is committed to including all eligible immigration violators in NCIC and as of November 13, 2003 has already placed 125,682 records in NCIC. At the present time, the majority of those records are deported felons, but they also include persons with outstanding ICE criminal warrants, a small number of NSEERS violators and a rapidly growing number of absconders. As of November 13, 2003, there are nearly 16,642 ICE absconder records in NCIC, nearly triple the number just four months ago. In fiscal year 2002, there were nearly 3,400 positive hit confirmations on ICE NCIC entries; approximately 10% of those were absconders. As of November 13, 2003 there have been a total of 595 absconder apprehensions as a result of ICE NCIC entries.

On August 25, 2003, the Criminal Justice Information Services (CJIS) division of the FBI completed programming the new Immigration Violator File (IVF) in NCIC. The IVF now contains three functioning categories; a Deported Felon File (DFF), an Absconder category and

an NSEERS violator category. The vast majority of ICE records now go directly into those separate categories in the IVF.

The ICE Law Enforcement Support Center (ICE LESC) in Vermont has a permanent NCIC unit that is dedicated solely to receiving, resolving, entering and maintaining every record deemed eligible for entry into NCIC. The ICE LESC is also responsible for hit confirmation 24 hours a day, 7 days a week, 365 days a year.

The ICE LESC enters every eligible absconder case into NCIC as soon as it is received in the NCIC unit. To be eligible for entry, minimum documentary standards - original source documents, such as a warrant of arrest or removal, fingerprints, and photographs - must be available. Many absconder cases do not initially meet the minimum standards or are ineligible for NCIC entry for other reasons. Those cases must be resolved before they can be entered into NCIC or it is determined they are ineligible for entry. As soon as they are resolved, the ICE LESC enters them into NCIC. Resolving absconder cases to determine their eligibility can be a labor intensive, time-consuming task.

A complete review of NCIC entry procedures at the ICE LESC produced timesaving changes within the context of NCIC rules that have resulted in a substantial increase in the number of NCIC entries in all categories, including absconders. There are a total of 70 Law Enforcement Technicians (LETs) assigned to the ICE LESC NCIC Unit. The ICE LESC has significantly increased the number of case reviews and entries into NCIC. The LESC is presently adding absconder records to the NCIC at the rate of 3,500 to 4,000 each month. At the end of calendar year 2003, ICE anticipates there will be nearly 20,000 absconder records in NCIC. That number is expected to continue to grow throughout 2004.

Under NCIC rules, each record entered must be revalidated 90 days after entry and then annually thereafter as long as the warrant is active. During the month of November 2003, the LESC will be required to revalidate 25,000 records.

ICE access to NCIC is based upon specific user agreements signed with the National Law Enforcement Telecommunications Network (NLETS), the Justice Telecommunication System (JUST) and the NCIC Federal Bureau of Investigation (FBI) Criminal Justice Information Services. Those agreements require ICE to comply with all applicable policies and procedures relating to NCIC entry, modification, validation, hit confirmation and removal. The policies and procedures governing NCIC are extensive. The FBI CJIS Advisory Policy Board makes recommendations, for the review and approval of the FBI Director, regarding use, maintenance, policy, and procedures concerning NCIC files and records. The ICE LESC has structured the ICE national NCIC program to adhere to each policy and procedure governing entry, modification, validation, hit confirmation and removal. The LESC has established standard-operating procedures (SOPs) based upon NCIC policies and procedures.

No legal authority requires or mandates the listing of absconder or other immigration violators in NCIC. But NCIC is the "wanted list" widely-accessible by law enforcement nationwide, and using this mechanism to identify persons wanted for immigration violations is good public

policy. The use of NCIC to include not only criminal but also civil violators was the subject of review within the Department of Justice in 2002, and such use was determined to be appropriate.

Even as ICE works toward the inclusion of more immigration information in NCIC, the primary and most comprehensive avenue for the dissemination of immigration information to the law enforcement community remains the Immigration Alien Query (IAQ) through NLETS. Such an inquiry not only provides access to alien information that has been entered into NCIC but also provides access to every alien file on record with BTS and BCIS. That access is available 24 hours a day, 7 days per week, 365 days a year. The IAQ was developed in response to a congressional mandate to provide around the clock assistance to the entire criminal justice community. The ICE LESC successfully accomplished that mission and is continuing to seek to expand use of the IAQ. The IAQ clearly complements NCIC as a force multiplier. Every alien record is now available to law enforcement through the IAQ rather than the smaller subsets of those records in NCIC.

8) Please list all immigration related information currently being listed in the NCIC database. Please list all immigration related information that ICE plans on listing in NCIC. Please state the projected time-frame for the listing of such information?

RESPONSE: The following immigration related information is currently being listed in the NCIC database:

- Deported Felons
- Absconders
- National Security Entry Exit Registration System (NSEERS) Violators
- Wanted Persons – Individuals with outstanding ICE criminal warrants

In recognition of the Alien Absconder Initiative (AAI,) and the complex nature of aliens who have violated the criminal and administrative provisions of the Immigration and Nationality Act, ICE successfully lobbied the NCIC Advisory Policy Board (APB) to allow creation of a new NCIC file. This new Immigration Violators File (IVF) will now encompass Deported Felons, Absconders, National Security Entry Exit Registration System (NSEERS) violators and potentially other alien violators wanted by the federal government. The IVF will consolidate all alien violators within a single NCIC file that will then be differentiated by unique offense codes. The IVF, however, is still bound by all the NCIC policies and regulations governing suitability for entry, data integrity and full field response to every hit confirmation. Although consolidated under one file, the underlying information must still be reviewed and determined to be accurate before entry into NCIC.

As of August 2003, the IVF program is functional and FBI CJIS is now programming the initial phase of the IVF. The Deported Felon, Absconder and NSEERS files will be transferred to the IVF and new entries will go directly to the IVF.

Creation of additional violator categories in the NCIC IVF such as for SEVIS violators or other categories of deported aliens will require consultation with FBI CJIS and the APB.

Hearing before the Senate Committee on the Judiciary
Subcommittee on Immigration and Border Security

"Visa Issuance, Information Sharing and Enforcement in a Post-911 Environment: Are We Ready Yet?"

Questions for Michael T. Dougherty
Director of Operations, Bureau of Immigration and Customs Enforcement
Department of Homeland Security

Submitted by Senator Richard J. Durbin

I have supported the creation of an automated entry/exit system that will ensure that we can identify and track the arrival and departure of visitors to our country. However, serious logistical concerns loom as DHS moves forward with implementation of US-VISIT.

A. Please explain in detail ICE's role in administering US-VISIT, including enforcement and any other activities.

RESPONSE: The role of ICE is to investigate and take appropriate action against those who fail to comply with the requirements of US-VISIT. The expectation is that the protocols presently associated with the enforcement of NSEERS and SEVIS violators would be expanded to other US-VISIT violators.

B. Collecting detailed information, including fingerprints and photographs, from all foreign visitors will pose significant challenges. Numerous studies have concluded that such a data collection effort will create significant delays at the border, harming our economy. What steps is ICE taking to ensure that data collection will not greatly slow the flow of traffic at the border?

RESPONSE: The Department of Homeland Security (DHS) and the US-VISIT program are aware of concerns that the collection of data will cause unnecessary delays at air, land, and sea borders. To address these concerns, DHS has been approaching the implementation of US-VISIT to minimize or eliminate any delays. Some of the approaches include the upgrade of facilities where needed to speed the processing of visitors, replacement or installation of high-speed data lines to increase computer system communication and performance speed, and optimizing computer searching routines to ensure a swift entrance into the U.S. while protecting national security. In addition, working groups have been created to examine the inspections process itself, with the goal of re-inventing the process to reduce the amount of time needed to conduct an inspection without compromising on efficiency or security.

C. It is important that US-VISIT not infringe upon civil liberties or discriminate on the basis of race, religion, or national origin. What steps will DHS take to ensure that US-VISIT will not infringe upon civil liberties or discriminate on the basis of race, religion, or national origin?

RESPONSE: The US-VISIT program will focus upon non-immigrants with visas from all the countries of the world, and thus does not discriminate on the basis of race, religion, or national origin. As I have stated publicly, the more we are able to identify people and assess them based on their individual traits, the less dependent we are on broad, general categories such as national origin. That makes the system fair for everyone.

The US-VISIT Program will be applied fairly to all who come under its aegis. DHS is in the process of creating procedures to ensure that as US-VISIT is applied in the field by officers it will not infringe upon civil liberties or discriminate on the basis of race, religion, or national origin.

2. US-VISIT has absorbed the National Security Entry-Exit Registration System (NSEERS). I have expressed concerns about NSEERS' discriminatory nature, utility, and implementation.

A. DHS officials have claimed that NSEERS does not discriminate on the basis of race or religion. However, the NSEERS "call-in" program (also known as domestic registration) explicitly targeted only visitors from Arab and Muslim countries, requiring them to register with local INS offices. Isn't this discrimination on the basis of national origin and religion? Why or why not?

RESPONSE: ICE does not discriminate against particular communities based on race, religion, or national origin. As part of the NSEERS program, information was used in order to identify areas from which terrorist groups and their recruits were most likely to originate. Those countries with known al-Qaeda activity, other terrorist activity, and/or state-sponsored terrorism or other law enforcement concerns formed the basis for creating the list of countries covered under the NSEERS program. The State Department has identified certain countries –including North Korea -- as state sponsors of terrorism. Citizens of those countries must also register under NSEERS. Thus, the decision as to which countries fell under the NSEERS program was not made on the basis of ethnic origin or religion, but instead upon information designed to identify potential threats to the national security of the United States. In fact, since the implementation of NSEERS last September, individuals from more than 150 countries have registered.

B. In response to criticism that the "call-in" program was discriminatory, Justice Department officials said that it would eventually be expanded to include visitors from all countries. Subsequent media reports indicated that it would not be expanded to additional countries. Will the "call-in" program be expanded to include visitors from other countries? Why or why not? If so, which countries will be added? If not, why did the initial plans to expand the program to other countries change?

RESPONSE: DHS has no plans to add any other countries to the call-in program, and the previous "call-in" programs have all concluded.

> C. Administration officials have discussed the outreach work that the INS and DHS did to publicize NSEERS. Please describe the nature and timing of this outreach work. Many INS field offices had dedicated community relations officers who played an important role in working with immigrant communities. What is the status of these community relations officers now that they are DHS employees? Will they continue to work full-time on community outreach? Why or why not?

RESPONSE: Beginning in September 2002, INS community relations officers both in the field and at Headquarters conducted thousands of presentations, forums, training sessions, and town hall meetings for a multitude of community-based organizations and foreign embassies/ consulates whose constituents were impacted by NSEERS.

Many of the presentations, forums, training sessions, and town hall meetings were conducted during evening hours and our community relations officers worked long hours each day to ensure that all potential registrants complied with NSEERS requirements.

Additionally, legacy INS community relations officers carefully cultivated relationships within the Arab and Muslim communities. For, example, officers worked closely with the Arab American Institute and the American-Arab Anti-Discrimination Committee as well as different embassies to explain NSEERS and to minimize misinformation and build credibility.

ICE recognizes the critical need for community relations officers. Community Relations officer ultimately enhance the level of homeland security by building goodwill and trust within immigrant communities. The community relations program will continue and the current community relations officers will be equitably distributed among the three bureaus. (ICE, CBP, CIS) It is expected that this distribution will provide opportunities for the expansion of the community relations program in each of the new DHS divisions.

> D. According to a recent article in The New York Times, more than 82,000 people registered pursuant to the NSEERS "call-in," more than 13,000 of whom have been placed in deportation proceedings. How many people have actually registered pursuant to the NSEERS "call-in"? How many people have actually been placed in deportation proceedings after registering through the "call-in"? How many of these people have been deported? Does deporting those who comply with NSEERS deter other immigrants and visitors from complying with NSSERS and/or cooperating with law enforcement? Why or why not? If a goal of NSEERS is to track possible terrorists, does deporting those who comply with the program undermine the goal of the program, particularly if it reduces future compliance? Why or why not?

RESPONSE: As of October 28, 184,004 individuals have registered pursuant to the NSEERS "call-in." As of October 28, 13,847 individuals had been placed in removal proceedings as a result of NSEERS.

These individuals were placed in removal proceedings not because they complied with NSEERS, but because they were in the United States in violation of law. Some of these people were convicted criminal felons, while others had overstayed their permitted time and others had committed fraud. As of November 5, the total number of aliens registered in NSEERS who were removed is 77.

The results of NSEERS show that apprehension of violators has not deterred compliance. In fact, our records indicate that large numbers of people continue to appear for registration. Since the apprehension of violators apparently has not deterred program compliance, it has not undermined the goal of NSEERS to identify potential terrorists.

> E. I understand that many who were required to register in the "call-in" program were technically "out of status" due to delays in processing adjustment of status applications. How many such individuals have been placed in deportation proceedings? How many have been deported? If so, will those who are out of status due to INS processing delays be granted relief from deportation pending processing of their applications? Why or why not?

RESPONSE: Of the individuals who were out of status, some may have pending applications with the Bureau of Citizenship and Immigration Services (BCIS). In reaching a determination whether or not to place an out of status individual into removal proceedings, one factor considered by officers in the field was whether or not an application was pending for the adjustment of status of that individual. Because of the individual nature of each case, it is not possible to provide a number of people who may be eligible for adjustment of status. Indeed, some seek adjustment after the commencement of their removal proceedings.

In situations where an out of status alien may have a pending adjustment application, it is important to understand that having a pending application is not the same as having been granted a legal status to live in the United States. It is also important to note that in many adjustment cases, a needed visa number may not be available until years in the future and thus, no adjustment or relief is immediately available for the alien present in the U.S. in violation of law. This backlog of visa numbers is not caused by BCIS, but instead from the intense demand of people seeking to immigrate to the United States.

Some of the factors considered in reaching a custody decision include the likelihood that the adjustment application is legitimate, that the application will be approved, the availability of a visa number if needed, any past criminal history, and how likely the alien is to appear for a removal hearing. In many cases, aliens who are charged with having violated their status are released on their own recognizance or on low bonds. In some instances, it may take a few days for an alien to post a bond, and the alien will be detained until the bond is posted. In other cases, an alien with a serious criminal history may be subject to mandatory detention, regardless of any pending adjustment application.

Those placed into deportation proceedings retain all applicable rights afforded under the law.

F. Did the INS and DHS adequately publicize the "call-in" program? Please describe the efforts to publicize the program. Did the INS or DHS disseminate inaccurate and/or mistranslated information regarding the program? Please explain. As a result of inadequate publicity and inaccurate and/or mistranslated information, did individuals who were required to register not do so or register late? Please explain. How many individuals who registered late have been placed in deportation proceedings? How many have been deported? How many individuals who did not register have been placed in deportation proceedings? How many have been deported? In light of NSEERS implementation problems, will those who did not register or registered late be granted relief from deportation proceedings and/or given another opportunity to register? Why or why not? What will DHS do to avoid such implementation problems in the future?

RESPONSE: It is my understanding that within the time constraints imposed by the implementation schedule, legacy INS made every effort to disseminate "call-in" information to affected communities as quickly as possible.

Notices in English to the impacted communities containing "call-in" information were published on the legacy INS website often within 48 hours of being published in the Federal Register. The "call-in" notices were translated to a number of languages (Bengali, Bahasa, Pashto, Arabic, Farsi, Urdu) and the translated notices were published on the INS website, often within 3-5 days of the Federal Register notification. Although every effort was made to ensure accuracy, I have been informed that in one instance an inaccurate date was given in a translation. Additional safeguards were put in place to ensure accurate translation.

Once the notices were translated, they were also disseminated to the press serving the affected communities and to different embassies for publication on their websites.

NSEERS policy allows for late registration with good cause. The individuals who have been placed in removal proceedings as a result of NSEERS were criminals, violated their immigration status, or otherwise remained in the U.S. in violation of law. As noted above, 13,780 individuals have been placed into removal proceedings. However, an estimate on the number who failed to register is unknown.

Please also see response to Question 2(D) above.

Written Questions Submitted by Senator Charles Schumer
Judiciary Immigration, Border Security, and Citizenship Subcommittee Hearing
July 15, 2003, at 2:30 p.m

"Visa Issuance, Information Sharing and Enforcement in a Post 9-11 Environment: Are we ready yet?"

Michael T. Dougherty
Bureau of Immigration and Customs Enforcement
Department of Homeland Security

1. Cooperation between federal, state, and local law enforcement has only increased in importance since the September 11th attacks. Please describe the degree to which information on visa revocations and watch lists are shared between the federal, state, and local law enforcement organizations.

RESPONSE: The statutory and jurisdictional authority for investigating and apprehending those individuals who have had their visas revoked by Department of State (DOS) on terrorism/national security grounds and have been admitted and are present in the United States, lies within the federal immigration enforcement authority of the Department of Homeland Security, specifically ICE, Office of Investigation (OI). When the OI receives information regarding an individual whose visa has been revoked on such grounds, an investigation to locate, interview and determine the immigration status of the individual is initiated at the ICE Special Agent in Charge (SAC) office. This ICE SAC office investigation is usually conducted by ICE Special Agents assigned to the FBI-led Joint Terrorism Task Force (JTTF), which include State and local law enforcement officers. State and local law enforcement officers, and the resources they bring to the task force, are utilized by ICE JTTF agents in the investigation. Furthermore, the Visa Revocation notices are uploaded electronically into the Inter-Agency Border Information System (IBIS), which can be accessed by State and local law enforcement officers via NCIC searches to ICE's Law Enforcement Support Center (LESC). In addition, numerous absconders have been located through the participation of ICE agents and analysts in the FTTTF.

As for watch list integration and information sharing, the Information Analysis and Infrastructure Protection Directorate (IA/IP) has been designated as the DHS lead, with CIA and State Department participation, in FBI-led efforts to resolve the problems identified by GAO with regard to the existence of multiple terrorist watch lists. The Terrorist Screening Center (TSC), which was created pursuant to Homeland Security Presidential Directive 6, is administered by the FBI in partnership with DHS, the Department of State, the Central Intelligence Agency, and the Justice Department. DHS's CBP and ICE participate at the TSC; in fact, the Principal Deputy Director at the TSC is from IA/IP. TSC not only consolidates the Government's approach to terrorist screening, but provides for the appropriate and lawful use of terrorist information in the screening process.

Written Questions for the Record
Senate Judiciary Immigration, Border Security, and Citizenship Subcommittee Hearing
July 15, 2003, at 2:30 p.m

"Visa Issuance, Information Sharing and Enforcement in a Post 9-11 Environment: Are we ready yet?"

Senator Charles Grassley

Question 2: For All 3 Witnesses:
- Janice Jacobs, Deputy Assistant Secretary, Visa Service - State Department;
- Michael T. Dougherty, Director of Operations, Bureau of Immigration and Customs Enforcement - Department of Homeland Security
- Jayson P. Ahern, Assistant Commissioner, Bureau of Customs and Border Protection - Department of Homeland Security

Congress gave the Department of Homeland Security authority to set visa policies and procedures for the State Department to carry out. I would like each of you to describe what new policies and procedures have been put in place, and how both agencies will conduct oversight to make sure they are followed. After the hearing, I would like a copy of the agreement between the two agencies that governs this process, as well as copies of any new visa policies and procedures from Homeland Security, and State Department memos outlining the implementation of those policies and procedures.

RESPONSE: We are pleased to report that the Memorandum of Understanding between the Department of States and Homeland Security was signed on September 26, 2003 and became effective on publication in the Federal Register on September 30, 2003. Attached for your reference is a copy of the MOU. In addition, please find attached a memorandum from Under secretary Asa Hutchinson to BTS components heads addressing implementation of the visa MOU and Q&As that will provide you with a brief overview of steps DHS is taking to implement this historic agreement. Under the MOU, DHS now has authority to establish visa policy, review implementation of the policy, and ensure that homeland security requirements are fully reflected in the visa process. Visa policy includes not only policy decisions that affect the visa process as a whole, but also visa guidance that may affect individual visa determinations. DHS visa guidance will include federal regulations, Foreign Affairs Manual provisions (including all interpretive and procedural notes), and State Department cables to diplomatic and consular posts.

BTS and the Bureau of Citizenship and Immigration Services will be working closely to develop new visa policies and procedures. In addition, the BTS Office of Policy and Planning is chairing a DHS Visa Policy Working Group that will develop short and long-term policy initiatives related to DHS' assumption of visa issuance responsibilities under the MOU and make recommendations to the Secretary Ridge on how DHS should alter or improve the visa issuance process. We will gladly update the committee on DHS's progress in this area and on any new visa policies and procedures that are adopted by DHS in the near future.

Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship
Questions for the Record
Hearing on 7/15/03
"Visa Issuance, Information Sharing and Enforcement in a Post-911 Environment: Are We Ready Yet?"

Senator John Cornyn

1. Ms. Jacobs and Mr. Dougherty. In response to questions, you indicated essentially no immigration status information or immigrants who pose terrorist security risks is provided to state and local law enforcement. In April of this year, the GAO found that DOS, DHS, DOD, DOJ, DOT and Treasury all maintain watch lists of varying size. In many cases, these lists contain overlapping data. The GAO recommended consolidating and standardizing all government watch list structures as well as sharing appropriate information to state and local law enforcement.

- To date, what has DOS and DHS done to respond to the GAO's recommendations?

RESPONSE: The Information Analysis and Infrastructure Protection Directorate (IA/IP) has been designated as the lead in DHS' role in the Terrorist Screening Center (TSC). The TSC was created pursuant to Homeland Security Presidential Directive 6 on September 16, 2003, and was operational on December 1, 2003. The TSC is administered by the FBI in partnership with DHS, the Department of State, the Central Intelligence Agency, and the Justice Department. DHS's CBP and ICE participate at the TSC; in fact, the Principal Deputy Director at the TSC is from IA/IP. TSC not only consolidates the Government's approach to terrorist screening, but provides for the appropriate and lawful use of terrorist information in the screening process.

- What further actions do DOS and DHS plan to share, in real-time, immigration and terrorist risk information to state and local law enforcement?

RESPONSE: ICE will remain committed to maximizing the entry of eligible and appropriate cases into NCIC, however, state and local law enforcement officers may also obtain immigration information from the ICE LESC about aliens not in NCIC, who are suspected, arrested or under investigation for criminal activity.

Access to the ICE LESC for such information is by an Immigration Alien Query (IAQ) through the National Law Enforcement Telecommunication System (NLETS.) NLETS has been the ICE LESC's primary method of communication with the entire criminal justice community and is a method of electronic law enforcement communication throughout the United States and Canada. There are over 430,000 law enforcement terminals connecting which connect to state or federal systems, and from there connect to CJIS or NLETS depending on the function to be performed for each specific transaction. The terminals have menus for NCIC and NLETS functions, as well as for state or federal agency-specific functions. LEAs gain access to the 18 NCIC files via a NLETS menu on their individual state systems. The ICE LESC, working in partnership with each state NLETS representative, has placed the ICE LESC's IAQ on that menu. The criminal

justice community has access not only to alien records placed into NCIC, but also to every alien file on record with BTS and BCIS. That access is available 24 hours a day, 7 days per week. The IAQ was developed in response to a congressional mandate to provide around the clock assistance to the entire criminal justice community. The ICE LESC has successfully accomplished that mission and is continuing to seek to expand use of the IAQ. The IAQ clearly complements NCIC as a force multiplier. Every alien record is now available to law enforcement through the IAQ rather than the smaller subsets of those records in NCIC. The method of communication is seamless to the law enforcement community with only a small learning curve for marketing to those few agencies not currently using the ICE LESC.

The fundamental mission of the ICE LESC is to provide investigative assistance to the entire criminal justice community. The primary user for the past 7 years has been the street officer with an alien detained along the road. Recently, the IAQ has been modified for use by selected holding facilities. The ICE LESC responded to nearly 427,000 LEA queries in 2002 and is projected to respond to over 600,000 this year. These numbers unequivocally demonstrate that every facet of the law enforcement community is using the IAQ.

There are only a select number of "hot files" that law enforcement officers can access with a single transaction. Every officer must run individual drivers license checks, missing persons, gun records, etc. The IAQ completely mirrors and complies with the methodology devised by NLETS and NCIC and used by law enforcement officers for over 3 decades.

The ICE LESC is establishing an Office of Law Enforcement Liaison that will have primary responsibility for increasing even further the awareness of the IAQ and encouraging its use. Recent training of all State Police officers in Alabama in ICE LESC procedures is a recent example of the type of outreach contemplated.

2. Mr. Dougherty. In your answers to questions, you mentioned that visa revocation itself is not grounds for removal. It seems odd that your agency can without question remove a person on the Visa Waiver Program – presumably someone who is a friend of the U.S. – but you can't remove a person who might be a suspected terrorist.

- Please detail the burden of proof required for your agency to execute removal orders.

RESPONSE: In the case of an alien who has been admitted to the United States and thereafter becomes subject to removal, the Immigration and Customs Enforcement (ICE), may initiate removal proceedings to remove the alien from the United States pursuant to section 240 of the Immigration and Nationality Act (INA). Such proceedings are initiated upon the issuance of a Notice to Appear, charging the alien with the applicable ground of removal under INA section 237. See INA sections 239 and 240. In these removal proceedings, ICE has the burden of establishing by clear and convincing evidence that the alien is removable as charged. See INA section 240(c)(3)(A). Pursuant to section 240 of the INA, an alien is afforded a removal hearing before an Immigration Judge, who conducts the removal proceeding and determines whether the alien is deportable as charged from the United States. See INA section 240(a)(1). In these removal proceedings, the alien has the privilege of being represented by counsel, at no expense

to the Government. Further, the alien has the right to have a reasonable opportunity to examine the evidence against him or her, and to present evidence on his or her own behalf as well as cross-examine Government witnesses. See INA section 240(b)(4).

[Note: This standard of proof is different from the standard applied to aliens seeking admission to the United States. Aliens applying for admission to the United States bear the burden of establishing by clear and convincing evidence that they are clearly and beyond a doubt entitled to be admitted to the United States and that they are not inadmissible under section 212 of the INA. See INA section 240(c)(2)]

There are several steps to removing an alien from the United States, and each have differing burdens on the agency. In removal proceedings, depending upon the nature of the charge against the alien, there can also be differing burdens of proof.

An alien who attempts entry into the United States, but does not actually enter, one who has previously been paroled, or one who is present after having avoided inspection may be subject either to expedited removal, pursuant to section 235 of the Immigration and Nationality Act, or may be placed in removal proceedings, pursuant to section 240 of the Immigration and Nationality Act. An alien who has been admitted into the United States, but is deportable, is placed in removal proceedings under section 240 of the INA.

The burden of proof in removal proceedings varies based upon the individual circumstances of the alien. In the case of an alien who was is attempting entry into the United States, or who has been previously paroled and the parole has been revoked, it is the alien's burden to establish he is clearly and beyond a doubt entitled to be admitted to the United States and is not inadmissible as charged. *See* 8 C.F.R. § 240.8(b). Where an alien has evaded inspection into the United States and is charged in removal proceedings as not having been admitted or paroled, ICE bears the burden of proof in establishing alienage. Once alien has been established, the burden shifts to the alien, who must prove either that he is by clear and convincing evidence lawfully in the United States pursuant to a prior admission, or that he is clearly and beyond a doubt entitled to be admitted to the United States and not inadmissible as charged. *See* 8 C.F.R. § 240.8(c). Where an alien has been admitted to the United States, but is deportable, the burden is on ICE to prove by clear and convincing evidence that the alien is deportable. *See* 8 C.F.R. § 240.8(a). If the alien is requesting relief from removal, he bears the burden of establishing entitlement to relief as a matter of discretion and, where applicable, proving by a preponderance of the evidence that there is no bar to the relief. *See* 8 C.F.R. § 240.8(d).

Once a removal order has been issued by an Immigration Judge and, if appropriate, affirmed by the Board of Immigration Appeals, ICE takes the necessary steps to remove the alien, including locating the alien, verifying identity, working with the appropriate consulate to obtain travel documents, detaining or supervising the alien pending removal, making removal arrangements, and in some cases accompanying the alien during the removal flight.

- Also, explain under what conditions are visa revocations grounds for removal.

RESPONSE: Visa revocation is not a specifically stated ground for removal under section 237 of the INA. The issue of whether a visa revocation has the effect of rendering an alien out-of-status and removable, after he or she has been admitted to the United States, is unresolved. The language used by DOS in the revocation certificate states that the revocation shall become effective immediately on the date the certificate is signed. However, the certificate further states that if the alien is present in the United States on that date, the revocation will become effective only upon the alien's departure. Some have suggested that the certificate language needs to be changed so that ICE need not wait for the alien to depart.

The underlying reason for the revocation may provide a basis for ICE to initiate removal proceedings. For example, if DOS revokes a visa based on evidence that the alien provided false information to DOS to obtain his or her visa, ICE may initiate removal proceedings under section 237(a)(1)(A), charging him or her removable from the United States as an alien who was inadmissible at the time of admission for having misrepresented a material fact to procure a visa to gain admission to the United States. In those proceedings, ICE bears the burden of establishing by clear and convincing evidence that the alien is removable as charged.

3. Ms. Jacobs, Mr. Dougherty and Mr. Ahern. In answers to questions posed by members of the subcommittee, none of the panelists had any estimates on the number of illegal individuals currently in the U.S.

- Please review available data from the former INS, Census Bureau and any other government databases and provide the Committee with the government's best estimate of the illegal aliens currently in the U.S.

RESPONSE: Based on the estimates from the 2000 Census on the foreign-born population and annual legacy INS statistics (immigrants admitted, deportable aliens removed, and nonimmigrant residents admitted), the former INS estimated that 7.0 million unauthorized immigrants resided in the United States in January 2000. The total population estimate is somewhat higher than legacy INS' previous estimate. In its last set of estimates, legacy INS estimated the population to be 5.0 million in October 1996; the new estimates produced a total of about 5.8 million for the same date. Estimated annual population growth was variable in the 1990s; on average, however, the population grew by about 350,000 per year from 1990 to 1999, about 75,000 higher than the former INS' previous annual estimate of 275,000 for the 1990s.
DHS is currently working on developing annual estimations on the illegal immigrant population based on the new Census American Community Survey (ACS). However, the estimations made in the above answer, based on the numbers from the 2000 Decennial Census, are the latest figures available right now.

- In conjunction with the above question, please provide the Committee with the government's best estimate of individuals in the U.S. on expired visas.

RESPONSE: The previous estimates distinguished between the share of the unauthorized resident population that enters the United States by crossing the border without inspection (EWIs) from those who enter legally with a temporary visa and stay beyond the valid time limits (nonimmigrant overstays). In the new estimates derived from the 2000 Census, it was no longer possible to distinguish between EWIs and overstays for each country. However, based on the percentage breakdowns of EWIs and overstays for each country in the previous report, an estimated 2.3 million, or 33 percent, of the 7.0 million unauthorized immigrants residing in the United States in January 2000 were nonimmigrant overstays.

4. Ms. Jacobs, Mr. Dougherty and Mr. Ahern.

- What are your departments doing to locate and deport the estimated 300,000 aliens who are subject to final deportation orders?

RESPONSE: ICE fugitive operations program is being designed to address the problem of locating, apprehending, prosecuting and/or removing (deporting) aliens who have final orders of removal and have absconded. Our goal is to eliminate this backlog of fugitives and ensure that the number of aliens deported equals the number of final orders issued by the immigration courts in any given fiscal year.

As part of the supplemental funding of the PATRIOT ACT legislation, the former INS was authorized an enhancement of forty positions solely for the purpose of apprehending fugitive aliens. Those positions were distributed to seven specific district offices based on the location of the highest concentration of "special interest" cases. Single teams were deployed to Newark, Detroit, Miami, Chicago, Los Angeles, San Francisco and two teams were assigned to New York.

A FY '03 enhancement will establish additional fugitive teams to be placed in Baltimore, Richmond, VA, Boston, Houston, Rock Island, IL, the Pacific Northwest (Seattle/Portland), and Southern California (SND/LOS). Additional resources will also be assigned to the Law Enforcement Support Center as the permanent core of the current Resolution Unit tasked with the case management of the thousands of criminal aliens being placed into NCIC.

In order to effectively enhance the process of locating fugitive aliens, ICE has developed several tools and initiatives. First and foremost, ICE has developed a new training program to provide the fugitive officers the expertise in locating fugitives by way of computer-based searches, through the use of other high technology surveillance equipment, as well as standard investigative techniques.

ICE has also prioritized absconders posing the greatest public safety concerns and especially sexual offenders who prey on children. To increase awareness, ICE has developed its Most

Wanted list of fugitive criminal aliens. It is maintained at www.bice.immigration.gov (click on the Most Wanted list icon). Law Enforcement Officers can click on the alien number on the poster for an individual wanted poster of the subject. Contacts with these individuals may be reported to the number on the poster (800-Be Alert or 800-232-5378). Fugitive officers are on call 24/7 to respond to these encounters. I am happy to report that we have since located and taken into custody 9 of the initial Top 10 and we have confirmed that the 10th individual is outside of the U.S. On July 9, ICE launched Operation Predator to protect children world-wide, and to date we have arrested more than 1,000 predators. We will continue to prioritize our efforts by targeting aliens convicted of crimes of violence and sexual predators who prey on children.

In addition, ICE has taken steps to participate in existing and developing new fugitive task forces. For this reason, ICE has developed an expansion program to include locating new teams in areas with existing and future US Marshals Service fugitive task forces. Each team supervisor is encouraged to reach out to local law enforcement entities for the purpose of creating a fugitive task force in their areas of operation as a mutual support tool. Several ICE offices nationwide have already incorporated this concept and have found it to be effective. It is anticipated that by the end of 2005, ICE will cover every major metropolitan area in the United States with a fugitive team.

Questions for Jayson P. Ahern, Bureau of Customs and Border Protection, Department of Homeland Security

Written Questions for the Record
Senate Judiciary Immigration, Border Security, and Citizenship Subcommittee Hearing
July 15, 2003, at 2:30 p.m
"Visa Issuance, Information Sharing and Enforcement in a Post 9-11 Environment: Are we ready yet?"

Chairman Saxby Chambliss

1) I understand there are a number of legal issues surrounding the authority to revoke a visa and the legal status of a person already in the U.S. What is the status of your bureau, and the Department of Homeland Security as a whole, working with State on a new policy to revoke a visa at the border?

Response:
Customs and Border Protection (CBP) has worked with the Department of State (DOS) and the Bureau of Immigration and Customs Enforcement (ICE) to put procedures into place that strengthen the visa revocation process. Both CBP and DOS agree that the optimal solution for ensuring revoked visa information is transmitted timely is the automated interface that links the Consular Lookout and Support System (CLASS) with the Treasury Enforcement Communication System (TECS) and the Interagency Border Inspection System (IBIS). CBP and DOS have established a single code for posting of visa revocations into TECS/IBIS. Visa revocations are effectuated by a certificate of revocation issued by DOS. The current language on the visa revocation certificate is adequate for CBP to take action to prevent the holder of a revoked visa from entering the United States.

2) You mentioned at a House hearing on June 18, 2003 that you had ideas for formulating and standardizing procedures within the bureau. What are some of those ideas?

Response:
The visa revocation process in U.S. Customs and Border Protection (CBP) has been assigned to the Director of Intelligence. The Department of State (DOS) has now included CBP Intelligence on the cable distribution for visa revocations. Once CBP receives notification of a visa revocation from DOS, CBP takes the following steps: 1) Determines if there is a lookout on the subject, and if not, immediately creates a lookout on that subject; 2) Determines, to the extent possible, if the subject has entered the United States, and if so, immediately provides that information to the ICE Office of Intelligence for appropriate

investigative follow up; and 3) Maintains detailed records on the steps taken for each visa revocation.

Questions for Jayson P. Ahern, Bureau of Customs and Border Protection, Department of Homeland Security

Written Questions for the Record
Senate Judiciary Immigration, Border Security, and Citizenship Subcommittee Hearing
July 15, 2003, at 2:30 p.m
"Visa Issuance, Information Sharing and Enforcement in a Post 9-11 Environment: Are we ready yet?"

Senator Charles Grassley

Question 2: For All 3 Witnesses:
– Janice Jacobs, Deputy Assistant Secretary, Visa Service – State Department;
– Michael T. Dougherty, Director of Operations, Bureau of Immigration and Customs Enforcement – Department of Homeland Security
– Jayson P. Ahern, Assistant Commissioner, Bureau of Customs and Border Protection – Department of Homeland Security

Congress gave the Department of Homeland Security authority to set visa policies and procedures for the State Department to carry out. I would like each of you to describe what new policies and procedures have been put in place, and how both agencies will conduct oversight to make sure they are followed. After the hearing, I would like a copy of the agreement between the two agencies that governs this process, as well as copies of any new visa policies and procedures from Homeland Security, and State Department memos outlining the implementation of those policies and procedures.

Response:
We are pleased to report that the Memorandum of Understanding between the Department of States and Homeland Security was signed on September 26, 2003 and became effective on publication in the Federal Register on September 30, 2003. Attached for your reference is a copy of the MOU. In addition, please find attached a memorandum from Under Secretary Asa Hutchinson to BTS components heads addressing implementation of the visa MOU and Q&As that will provide you with a brief overview of steps DHS is taking to implement this historic agreement. Under the MOU, DHS now has authority to establish visa policy, review implementation of the policy, and ensure that homeland security requirements are fully reflected in the visa process. Visa policy includes not only

policy decisions that affect the visa process as a whole, but also visa guidance that may affect individual visa determinations. DHS visa guidance will include federal regulations, Foreign Affairs Manual provisions (including all interpretive and procedural notes), and State Department cables to diplomatic and consular posts.

BTS and the Bureau of Citizenship and Immigration Services will be working closely to develop new visa policies and procedures. In addition, the BTS Office of Policy and Planning is chairing a visa policy working group that will develop short and long-term policy initiatives related to DHS' visa responsibilities under the MOU. This working group will make recommendations to Secretary Ridge on how DHS should alter or improve visa policy. We will gladly update the committee on DHS's progress in this area and on any new visa policies and procedures that are adopted by DHS in the near future.

Questions for Jayson P. Ahern, Bureau of Customs and Border Protection, Department of Homeland Security

Written Questions for the Record
Senate Judiciary Immigration, Border Security, and Citizenship Subcommittee Hearing
July 15, 2003, at 2:30 p.m
"Visa Issuance, Information Sharing and Enforcement in a Post 9-11 Environment: Are we ready yet?"

Senator Charles Schumer

1. Currently, 9 federal agencies operate 12 different watch list databases containing the names of individuals who are potential security risks. It is virtually impossible to coordinate this information in any useful manner when spread among these dozen databases. Each of these databases must be individually updated and maintained and the data within them shared in order for the system to work. The GAO recommended that, in collaboration with other departments, your department lead an effort to consolidate and standardize the federal government watch list structures and policies. Please describe the steps the Department will take in order to follow up on this recommendation and improve information sharing between agencies.

Response:
Based upon direction from the White House, the Department of Homeland Security (DHS) in coordination with the Department of State, the Homeland Security Council, Department of Justice, and the Central Intelligence Agency have developed two important, and soon to be integrated, initiatives, that improve interagency access to security information during visa, admissibility. The President announced his decision to create the Terrorist Threat Integration Center

(TTIC) during his State of the Union address and the Center began operations on May 1st of this year. The TTIC consolidates all international terrorist-related information from the FBI, CIA and other Federal agencies into a Terrorist Activities Database. On September 16, 2003, President Bush signed Homeland Security Presidential Directive-6 establishing the Terrorist Screening Center (TSC).

The Information Analysis and Infrastructure Protection Directorate already has been designated as lead in DHS's efforts to resolve the problems identified by the GAO with regard to the existence of multiple terrorist watch lists. IA/IP has worked closely with BTS, the Central Intelligence Agency, the Justice Department and the State Department to create the TSC—an effort that consolidates the many disparate watch lists identified in GAO's April 2003 Report. The TSC not only consolidates the Government's approach to terrorist screening but also provides the appropriate and lawful use of terrorist information in the screening process. The TSC will develop, integrate, and maintain thorough, accurate and current information about individuals known or suspected to be engaged in terrorist activities using the TTIC's Terrorist Activities Database for its supporting information. The TSC will provide the information to appropriate federal, state, and local law enforcement and other components to assist in the screening process.

2. In addition to the Department of State and the Department of Homeland Security, the Federal Bureau of Investigation is also involved in the visa approval and revocation processes. As of now, the FBI does not have a deadline by which it must respond in order to approve visas. Do you believe that implementing a deadline would facilitate the inter-agency visa processing system?

RESPONSE:
No. DHS, DOS, and FBI all support any initiatives that will ensure an efficient and effective visa process but also protect America's borders against any future threats. Setting an artificial deadline for visa clearance does not necessarily facilitate the visa process or ensure that homeland security requirements are met when visas are being adjudicated. DHS is aware that among the millions of visa applications filed annually, there will be cases that will not present clear cut answers and that will require further scrutiny and vetting – which in certain instances requires whatever time is needed for the agencies conducting the review to be fully satisfied that, based on available information, the individual applicant is not a threat to homeland security. The FBI clears an average of 90% of visas subject to the security clearance process within a 30-day time frame and clears 98% within a 120-day period. DHS believes that these are acceptable time frames for clearance and as all agencies improve automation and technology, cases will likely be processed in a more expedited fashion.

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Senator John Cornyn

3. Ms. Jacobs, Mr. Dougherty and Mr. Ahern. In answers to questions posed by members of the subcommittee, none of the panelists had any estimates on the number of illegal individuals currently in the U.S.

a.) Please review available data from the former INS, Census Bureau and any other government databases and provide the Committee with the government's best estimate of the illegal aliens currently in the U.S.

RESPONSE:
Based on the estimates from the 2000 Census on the foreign-born population and annual legacy INS statistics (immigrants admitted, deportable aliens removed, and nonimmigrant residents admitted), the former INS estimated that 7.0 million unauthorized immigrants resided in the United States in January 2000. The total population estimate is somewhat higher than legacy INS' previous estimate. In its last set of estimates, legacy INS estimated the population to be 5.0 million in October 1996; the new estimates produced a total of about 5.8 million for the same date. Estimated annual population growth was variable in the 1990s; on average, however, the population grew by about 350,000 per year from 1990 to 1999, about 75,000 higher than the former INS' previous annual estimate of 275,000 for the 1990s. DHS is currently working on developing annual estimations on the illegal immigrant population based on the new Census American Community Survey (ACS). However, the estimations made in the above answer, based on the numbers from the 2000 Decennial Census, are the latest figures available right now.

b.) In conjunction with the above question, please provide the Committee with the government's best estimate of individuals in the U.S. on expired visas.

RESPONSE:

The previous estimates distinguished between the share of the unauthorized resident population that enters the United States by crossing the border without inspection (Entries Without Inspection, or "EWIs") from those who enter legally with a temporary visa and stay beyond the valid time limits (nonimmigrant overstays). In the new estimates derived from the 2000 Census, it was no longer possible to distinguish between EWIs and overstays for each country. However, based on the percentage breakdowns of EWIs and overstays for each country in the previous report, an estimated 2.3 million, or 33 percent, of the 7.0 million unauthorized immigrants residing in the United States in January 2000 were nonimmigrant overstays.

4. Ms. Jacobs, Mr. Dougherty and Mr. Ahern.

- a.) What are your departments doing to locate and deport the estimated 300,000 aliens who are subject to final deportation orders?

RESPONSE:
ICE's fugitive operations program is being designed to address the problem of locating, apprehending, prosecuting and/or removing (deporting) aliens who have final orders of removal and have absconded. Our goal is to eliminate this backlog of fugitives and ensure that the number of aliens deported equals the number of final orders issued by the immigration courts in any given fiscal year.

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A FY '03 enhancement will establish additional fugitive teams to be placed in Baltimore, Richmond, VA, Boston, Houston, Rock Island, IL, the Pacific Northwest (Seattle/Portland), and Southern California (SND/LOS). Additional resources will also be assigned to the Law Enforcement Support Center as the permanent core of the current Resolution Unit tasked with the case management of the thousands of criminal aliens being placed into NCIC.

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ICE has also prioritized absconders posing the greatest public safety concerns and especially sexual offenders who prey on children. To increase awareness, ICE has

developed its Most Wanted list of fugitive criminal aliens. It is maintained at www.bice.immigration.gov (click on the Most Wanted list icon). Law Enforcement Officers can click on the alien number on the poster for an individual wanted poster of the subject. Contacts with these individuals may be reported to the number on the poster (800-Be Alert or 800-232-5378). Fugitive officers are on call 24/7 to respond to these encounters. I am happy to report that we have since located and taken into custody 9 of the initial Top 10 and we have confirmed that the 10th individual is outside of the U.S. On July 9, ICE launched Operation Predator to protect children world-wide, and to date we have arrested more than 1,000 predators. We will continue to prioritize our efforts by targeting aliens convicted of crimes of violence and sexual predators who prey on children.

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Questions for Jayson P. Ahern, Bureau of Customs and Border Protection, Department of Homeland Security

Written Questions for the Record
Senate Judiciary Immigration, Border Security, and Citizenship Subcommittee Hearing
July 15, 2003, at 2:30 p.m
"Visa Issuance, Information Sharing and Enforcement in a Post 9-11 Environment: Are we ready yet?"

Senator Edward Kennedy

1. Both the intelligence and immigration enforcement communities took great strides since September 11th. Unfortunately, I remain concerned about the lack of inter-agency coordination among the myriad of agencies working to prevent another September 11th attack on our nation's soil.

a. How successful is State's new revocation code in keeping DHS updated on the issuance of a visa revocation on terrorism grounds? What other steps can State take to help DHS track down those whose visas were revoked?

Response:

CBP believes the electronic interface between the CLASS and TECS/IBIS systems provides the best solution and a transparent, verifiable record of actions. CBP is currently examining TECS/IBIS information to confirm that there have been no instances where this code was ineffective.

b. As you are aware, to help foster greater coordination among the Department of Homeland Security and State, the "Border Security and Visa Reform Act" directed the President to develop a plan to improve inter-agency access to security information during visa, admissibility, or deportation proceedings. Has the President developed any recommendations in response to the Border Security Act's call for improving inter-agency coordination?

RESPONSE:
Based upon direction from the White House, the Department of Homeland Security in coordination with the Department of State, the Homeland Security Council, Department of Justice, and the Central Intelligence Agency have developed three important, and soon to be integrated initiatives, that improve interagency access to security information during visa, admissibility. The President announced his decision to create the Terrorist Threat Integration Center (TTIC) during his State of the Union address and the Center began operations on May 1st of this year. The TTIC consolidates all international terrorist-related information from the FBI, CIA and other Federal agencies into a Terrorist Activities Database. On September 16, 2003, by President Bush signed Homeland Security Presidential Directive-6 establishing the Terrorist Screening Center (TSC). The TSC will develop, integrate, and maintain thorough, accurate, and current information about individuals known or suspected to be engaged in terrorist activities using the TTIC's Terrorist Activities Database for its supporting information. TSC will provide the information to appropriate federal, state, and local law enforcement and other components to assist in the screening process. Complimenting both of these initiatives is a Memorandum of Understanding implemented between the Departments of Homeland Security and State that governs the implementation of Section 428 of the Homeland Security Act and ultimately creates a visa security process. The MOU ensures that DHS is able to establish visa policy, and review implementation of that policy. The MOUalso ensures that homeland security requirements are fully reflected in the visa process. DHS/BTS has designated the Office of International Enforcement (OIE) with responsibility for the implementation of the Visa Security Program. OIE is developing a visa vetting protocol that fully ensures that capabilities of both the TTIC and TSC are integrated into the visa vetting process.

2. In GAO's June 2003 report on visa revocations, they indicate that "the appropriate units of the INS and the FBI did not routinely investigate, locate,

or take any action on individuals who might have remained in the United States after their visas were revoked."

a. When CBP receives notice of a visa revocation, do you routinely investigate, locate, or take any action on individuals who might have remained in the United States after their visas were revoked?

Response:
CBP takes the following steps when it receives a visa revocation: First, CBP checks to ensure the visa revocation is in the TECS/IBIS system; next, CBP checks to see if there is a record of the alien having entered the U.S. If there is a record of an entry, CBP immediately notifies ICE and provides ICE with the information CBP has relating to the entry. CBP maintains a record of these actions.

CBP does not have an investigative role in locating aliens already admitted to the U.S. who subsequently had their visa revoked.

b. Is so, what steps does the agency take in response?

RESPONSE:
When ICE is notified of a visa revocation the Intelligence Unit conducts records checks, obtains all derogatory information relating to the subject of the visa revocation, and forwards it to the appropriate ICE Investigations Division for a full field investigation.

ICE has determined that there is no need to create additional policies to address actions that law enforcement and immigration agencies should take to investigate and locate individuals whose visa have been revoked because such policies are already in place. ICE Office of Investigations has jurisdiction over investigating persons who are in the United States in violation of immigration law and, and is an active member of the Federal Bureau of Investigation's (FBI) nation-wide Joint Terrorism Task Forces (JTTF). It is ICE policy to conduct a full field investigation of any foreign national that is believed to be in the United States and whose visa was revoked on national security grounds.

In cases where an individual has a revoked visa based on national security grounds, but is present in the United States, ICE has, in the past, attempted to locate the individual, verify his/her immigration status, and ensure that the person is complying with the terms of admission. ICE will continue to do so. ICE further investigates all immigration violations that would make the person amenable to removal proceedings (violations such as unauthorized employment, failure to depart the United States as required, etc.).

ICE, upon receipt of notification of a visa revocation, queries ICE databases to determine if any of the individuals who have had their visas revoked have entered the U.S. and still have not departed. Upon confirmation that individuals who have had their visas revoked for national security grounds have entered the U.S. and not departed, ICE Office of Investigations, in coordination with the FBI, will make every attempt to locate the individual and investigate all possible avenues to remove the individual from the U.S., thereby minimizing the threat they may pose to the homeland.

3. I remain concerned that despite our best efforts, homeland security remains threatened by a lack of agency coordination. Nine federal agencies currently maintain twelve distinct watch lists for terrorists. These watch lists include overlapping but not identical sets of data. It is critical that all nine federal agencies immediately share information about suspected terrorists but GAO reports that the agencies continue to work off different pages.

a. Will the Secretary of the Department of Homeland Security follow the GAO's recommendations and, in collaboration with the heads of other departments, lead an effort to, wherever possible, consolidate and standardize the federal government's watch list structures and policies?

Response:
Yes. The Information Analysis and Infrastructure Protection Directorate already has been designated as lead in DHS' efforts to resolve the problems identified by the GAO with regard to the existence of multiple terrorist watch lists. IA/IP has worked closely with BTS, the Central Intelligence Agency, the Justice Department, and the State Department to create the Terrorist Screening Center (TSC)—an effort that consolidates the many disparate watch lists identified in GAO's April 2003 Report. The TSC not only consolidates the Government's approach to terrorist screening but provides the appropriate and lawful use of terrorist information in the screening process.

b. Why did two of the nine federal agencies report to the General Accounting Office that they did not have any policies and procedures on watch list sharing?

Response:
As indicated below, CBP does not know which federal agencies GAO was referencing when it indicated that the agencies lacked specific policies and procedures for information sharing. CBP, therefore, cannot comment on the impact, if any, those agencies' failure to have specific policies and procedures on watch list and information sharing on CBP operations.

c. Do you know which federal agencies reported to not have any policies in place on sharing information?

Response:
No.

d. Do you agree with Ms. Jacobs that cultural differences between the agencies exist?

Response:
Yes.

e. If so, what are they and why would these "cultural and technological barriers stand in the way of a more integrated, normalized set of watch lists?"

RESPONSE:
There are certain cultural differences that exist between both Departments, but they are attributable to the different missions of each agency. DOS's core mission is to develop and implement U.S. foreign policy, while DHS's core mission is to protect the nation against future threats. However, we believe that DHS and DOS compliment each other in carrying out the basic missions of our respective Departments because we have a unified goal – a desire to insure the flow of legitimate people and goods back and forth across our international borders, while protecting the nation and the American people against future terrorist attacks and enforcing our laws. As for potential cultural barriers to watch list integration, we believe that our cultural differences do not stand in the way of efforts to develop a more integrated watch list. Any technological barriers, including those stemming from the use of different databases, and systems and automation standards, will be addressed as part of the overall effort, led by the Information Analysis and Infrastructure Protection Directorate (IA/IP) to resolve problems related to the existence of multiple terrorists watch lists and integration of such lists. IA/IP has worked closely with BTS, the Central Intelligence Agency, the Justice Department, and the State Department to create the Terrorist Screening Center (TSC), an effort that consolidates the many disparate watch lists identified in GAO's April 2003 Report. The TSC not only consolidates the Government's approach to terrorist screening but also provides the appropriate and lawful use of terrorist information in the screening process. As the TSC is charged with the responsibility to ensure consolidation of terrorist screening activities, we will defer to them for a more definitive response.

SUBMISSIONS FOR THE RECORD

Statement of Mr. Jayson P. Ahern
Assistant Commissioner, Office of Field Operations
Bureau of Customs and Border Protection
Before the
Senate Judiciary Subcommittee
On Immigration, Border Security, and Citizenship
July 15, 2003

Good afternoon Mr. Chairman and Members of the Subcommittee. It is a privilege to appear before you today.

As you know, on March 1, 2003, immigration inspectors and the Border Patrol from the Immigration and Naturalization Service (INS), agricultural inspectors from the Animal and Plant Health Inspection Service (APHIS), and customs inspectors from the U.S. Customs Service merged to form the Bureau of Customs and Border Protection – BCBP – within the Border and Transportation Security (BTS) Directorate of the Department of Homeland Security. Now, for the first time in our country's history, all agencies of the United States government with significant border responsibilities have been brought under one roof.

Secretary Ridge, Under Secretary Hutchinson, Commissioner Bonner, and I, have established clear, understandable chains of command for all BCBP personnel, and have directed that field operations not be interrupted.

We want to learn from our legacy organizations and at the same time we are looking to bring new innovations to border management. To that end a full-time Transition Management Office has been put in place to help address the challenges that come from the standup of any new organization. That office is staffed with representatives from all the incoming agencies.

The priority mission of BCBP is to prevent terrorists and terrorist weapons from entering the United States. This extraordinarily important priority mission means improving security at our physical borders and ports of entry, but it also means extending our zone of security beyond our physical borders – so that

American borders are the last line of defense, not the first line of defense. In sum, the BCBP's missions include apprehending individuals attempting to enter the United States illegally; stemming the flow of illegal drugs and other contraband; protecting our agricultural and economic interests from harmful pests and diseases; protecting American businesses from theft of their intellectual property; and regulating and facilitating international trade, collecting import duties, and enforcing U.S. trade laws. We must perform our all important security mission without stifling the flow of legitimate trade and travel that is so important to our nation's economy.

As the single, unified border agency of the United States, BCBP's mission is vitally important to the protection of America and the American people. In the aftermath of the terrorist attacks of September 11th, numerous initiatives were developed to meet our twin goals of improving security and facilitating the flow of legitimate trade and travel. Our strategy in implementing these initiatives – and accomplishing our twin goals – involves a number of factors, including

(A) improving targeting systems and expanding advance information regarding people and goods;

(B) pushing our "zone of security outward" by partnering with other countries, through our Container Security Initiative (CSI);

(C) pushing our "zone of security outward" by partnering with the private sector under our CTPAT initiative;

(D) deploying advanced inspection technology and equipment;

(E) increasing staffing positions for border security;

(F) working in concert with other agencies;

(G) integrating systems to improve business processes and information sharing.

The BCBP has an important role in the visa process in terms of information sharing and enforcement. Identifying and preventing the entry of persons, be they using fraudulent documents, concealing their true intentions

about the purpose of their visit or because they have had their visa revoked is a key responsibility of the BCBP.

The BCBP has reviewed the General Accounting Office's (GAO) recent report and its recommendations on the visa revocation process. This process is an extremely important element of protecting our country and we take the GAO's recommendations seriously. Of the three recommendations, we find two to be particularly relevant to BCBP. One GAO recommendation of significant relevance to BCBP is to develop specific policies and procedures for the interagency visa revocations process to ensure that notification of visa revocations for suspected terrorists and relevant supporting information is transmitted from DOS to immigration and law enforcement agencies, and their respective inspection and investigation units, in a timely manner. Also of some relevance to BCBP is GAO's recommendation to determine if any persons with revoked visas on terrorism grounds are in the United States, and if so whether they pose a security threat. BCBP provides information regarding the entry of revoked visa holders into the United States to BICE to assist BICE's investigation of the security risk posed by such individuals.

The BCBP has already begun to work with DOS, BCIS and BICE to address concerns raised by the General Accounting Office. Since DHS now has the lead for setting visa policy, BCBP, BICE and BCIS will work together to develop specific policies addressing the visa revocation process. DHS will work closely with DOS to implement these policies. Together, we will make sure the procedures are in place to ensure timely agency notification- so that revocations get into the lookout system.

Once the DOS revokes a visa, the BCBP needs a lookout in the Interagency Border Inspection System (IBIS) to ensure that if the subject arrives at a POE, the inspector will know that the visa is not valid. A special lookout code has been developed for this purpose.

At BCBP, our key concern is visas revoked for national security reasons. Like all revocations, these are transmitted to BCBP in two ways:

- By an automated interface from DOS to the BCBP lookout systems
- By facsimile transmission to the National Lookout Unit, with a cable transmission as a back up

The automated interface consists of DOS' Consular Lookout and Support System (CLASS) connection to the BCBP Interagency Border Inspections System (IBIS) on a real-time basis. As a redundancy, DOS sends revocations by facsimile transmission and by cable to the BCBP for entry into the legacy INS National Automated Immigration Lookout System (NAILS), which interfaces with IBIS as well. In this way, we have back-up procedures to ensure this critical information is available to BCBP Officers.

The BCBP is committed to strengthening the electronic interface, which we believe provides the best solution and a transparent, verifiable record of actions. The BCBP has taken the initiative to work with the DOS to find ways to improve this electronic interface to ensure visa revocation records are placed in the system for access by the BCBP inspector at the port of entry. Again, the BCBP is committed to improving this process; we will continue to work with BICE, BCIS, DOS and other agencies to provide better security for the American public.

Protection of the nation is our highest duty and we actively seek improvements of our own practices and work with other agencies to fulfill our mission. We know that this new agency, BCBP, faces great challenges in merging the border agencies and in fulfilling both our priority and traditional missions. But, now that all the Federal Inspection Services and the Border Patrol have been unified in BCBP, under the Department of Homeland Security, we are in a far better position to meet those challenges and accomplish those goals. We

will be far more effective working together, than we were as separate agencies in different departments. We will learn all we can from our legacy agencies and we will bring new innovation to border management.

BCBP is working to successfully meet the challenges we face, and will play a key role in the Department of Homeland Security by better securing our border against the terrorist threat.

Thank you again for this opportunity to testify. I would be happy to answer any of your questions.

U.S. Department of Homeland Security

STATEMENT

OF

MICHAEL T. DOUGHERTY

DIRECTOR OF OPERATIONS
BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT
U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

VISA REVOCATION/INFORMATION SHARING BETWEEN DHS AND DOS

BEFORE THE

SENATE SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY AND CITIZENSHIP

July 15, 2003

2:30 pm

226 DIRKSEN SENATE OFFICE BUILDING

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, thank you for the opportunity today to update you on the Bureau of Immigration and Customs Enforcement's (BICE) efforts to combat terrorism and to explain our role in the visa revocation process as well as our efforts to improve information sharing within the Department and with the Department of State on visa revocations and related national security information. No mission of the U.S. government is more important than protecting the Nation and the American people against future terrorist attacks. That mission is the paramount responsibility of the newly created Department of Homeland Security (DHS). The work of BICE is an indispensable part of fulfilling this mission.

Equally as important is knowing in real time when Department of State (DOS) or another government agency has developed information about or taken action, including a visa revocation, with respect to an individual who has entered but not departed. Since September 11, the law enforcement community has risen to the challenge of increasing communications and following through in national security information gathering, intelligence sharing, and investigations. I am pleased to be here today to discuss BICE's role in the investigations of all referred visa revocation matters.

INTRODUCTION

As the tragic events of September 11, 2001 illustrate, those intent on destroying America took advantage of our generosity and openness by exploiting any mechanism to gain access to the United States. The nineteen hijackers used our immigration system to enter this country and carry out the deadly attacks of September 11th. These horrific events highlighted vulnerabilities in our immigration system. Also, our experience with prior terrorism cases showed that operatives have used fraudulent identities, visas, and travel documents to gain access to our country and further their operations. Our country needs an effective immigration enforcement process to ensure that any vulnerabilities in our system cannot be exploited by terrorists and other violent criminals.

OVERVIEW

As this is the first time that BICE has had the opportunity to testify before this Subcommittee, I would like to provide a brief overview of our mission. The Homeland Security Act of 2002 abolished the Immigration and Naturalization Service (INS) and the President's Reorganization Plan established BICE. BICE combines the investigative and intelligence functions of the INS and the U.S. Customs Service with the Federal Protective Service (FPS). In addition, the President's Plan merged the Air and Marine Interdiction Unit and the legacy INS Detention and Removal Program into BICE. The new agency brings together approximately 14,000 employees, including some 5,500 special agents making BICE the second largest investigative team in Federal law enforcement.

Examples of our authority include investigating immigration violations, migrant and contraband smuggling, human trafficking, money laundering, trade fraud, export violations and document fraud. Controlling the flow of goods and people within our country, verifying the authenticity of identity and travel documents, and monitoring the legal transfer of funds are functions critical to reducing our vulnerability to terrorist

attacks. Meeting BICE's critical responsibilities requires a robust intelligence capability, an air and marine interdiction capability, and an ability to apprehend, detain, prosecute, and remove illegal aliens. Finally, BICE is charged with protecting more than 8,000 Federal facilities nationwide against terrorism, a responsibility carried out by a component part of the Agency, the FPS.

HISTORY

The focus of this hearing is visa revocation and how notice of such revocations had been handled by the former INS. Today we are prepared to discuss how BICE, through the National Security Unit (NSU), is responsible for investigating all leads and referrals involving terrorism and national security matters, to include all cases where an issued visa has been subsequently revoked.

GENERAL ACCOUNTING REPORT

On June 18, 2003 the General Accounting Office (GAO) issued a report entitled *Border Security: New Policies and Procedures Needed to Fill in the Visa Revocation Process*. BICE appreciates the review and comments of the GAO. While we disagree with some of the findings, we agree with the GAO that the Secretary of Homeland Security should work with the Secretary of State and the Attorney General to strengthen the visa revocation process as an antiterrorism tool and establish specific policies and procedures that ensure timely and direct notification of visa revocations to both the Bureau of Customs and Border Protection (BCBP) and BICE. BICE considers the timely notification of DOS visa revocations to be an important element in protecting the United States against the entry of inadmissible aliens, including possible terrorists. DHS and BICE have begun a dialog with DOS to modify existing procedures to strengthen the government's ability to take timely action against those who have had visas revoked and should be removed from the U.S.

Currently, the Department of State has agreed to provide BICE notice of visa revocations. The GAO recommendation that is particularly relevant to BICE is the one regarding determining if any persons with revoked visas on terrorism grounds are in the United States and if so whether they pose a security threat. In making these determinations during an NSU investigation, BICE relies on BCBP information to ensure that it has all appropriate information regarding entries into the United States. DHS will work closely with the Department of State to implement new procedures that we expect will be agreed to between DHS and DOS on visa revocations. BICE will also continue to work internally within DHS to increase the timeliness of the information flow among our Bureaus.

The NSU receives a number of national security leads and referrals, including visa revocations, and does not discriminate between types of national security referrals. The NSU has a clearly defined role in respect to visa revocation: to investigate those cases involving aliens who may have had their visa revoked after admission or were admitted despite the revocation of their visa. The Department of State has agreed to notify BICE of visa revocations. Pursuant to NSU standard operating policy, visa revocation cases are

investigated and coordinated in the same manner as all other types of cases handled by the unit including, but not limited to, the gathering and exploitation of intelligence information to generate leads; creating a target folder for referral to Special Agents in the field; full field investigation of all leads, determination on possible violations; and if applicable, arrest.

BICE's records indicate that during the time period studied in the report the NSU received information on ten leads involving visa revocations. In all 10 cases the NSU followed standard operating procedure for such referrals. The NSU conducted follow-up investigation in all 10 cases, concluding that there was insufficient evidence under current civil and criminal immigration law to allow BICE to take action against the visa holders. Despite these facts, GAO erroneously reported that BICE did not routinely investigate, locate or take any action on individuals with revoked visas. To the contrary, BICE always takes actions to investigate cases referred to the NSU and NSU conducted a full investigation of 100% of the referrals received.

As highlighted in Appendix II of the GAO draft report, the different standards of proof required for revocation and removal proceedings pose significant difficulties in resolving these matters. In this context, it is important to note that the information used to revoke a visa is not necessarily sufficient for BICE to initiate removal proceedings against an alien who has been admitted to the United States and is otherwise maintaining his or her status. When an alien is admitted to the United States, certain legal rights are attached to the admission. These legal rights require that BICE present clear and convincing evidence to demonstrate that the alien is a national security threat or is removable on other statutory grounds before an Immigration Judge.

Another factor in prosecuting these revocation cases is the current language used on the revocation certificate provides that if an alien is present in the United States, the visa revocation takes effect after the alien departs from the United States. Consequently, the visa remains valid and the alien maintains lawful status while in the United States absent any conduct making him or her subject to removal on other grounds. However, as previously stated, DHS and DOS are reviewing this language to determine what steps can be taken to improve our ability to remove an alien who has been admitted. Additionally, DHS and DOS have agreed to develop standard operating procedures to stop an alien of potential security concern at a port of entry and request of DOS that the alien's visa be revoked effective immediately.

CONCLUSION

Deterring illegal migration and combating immigration-related crime have never been more critical to our national security. The men and women of BICE are tackling this challenging mission with diligence, determined to ensure that no duty is neglected even as they continue to adjust during this time of transition into the new Department. We look forward to working with other DHS components, Department of Justice, and DOS on strengthening the visa revocation process and flow of critical information. Thank you. I look forward to your questions.

United States General Accounting Office

GAO

Testimony

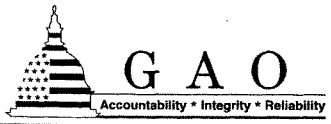
Before the Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship

For Release on Delivery
Expected at 2:30 p.m. EDT
Tuesday, July 15, 2003

BORDER SECURITY

New Policies and Increased Interagency Coordination Needed to Improve Visa Process

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



GAO-03-1013T

July 15, 2003

GAO
Accountability·Integrity·Reliability
Highlights

Highlights of GAO-03-1013T, a testimony before the Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship

BORDER SECURITY

New Policies and Increased Interagency Coordination Needed to Improve Visa Process

Why GAO Did This Study

Since September 11, 2001, visa operations have played an increasingly important role in ensuring the national security of the United States. The Departments of State, Homeland Security, and Justice, as well as other agencies, are involved in the visa process. Each plays an important role in making security decisions so that potential terrorists do not enter the country. In two GAO reports, we assessed the effectiveness of the visa process as an antiterrorism tool.

What GAO Recommends

GAO made numerous recommendations to strengthen the visa process as an antiterrorism tool. Among them, GAO recommended that the Department of Homeland Security, in conjunction with the Departments of State and Justice, develop specific policies and procedures for the interagency visa revocation process to ensure that when State revokes a visa because of terrorism concerns, the appropriate units within State, Homeland Security, and the FBI are notified immediately and that proper actions are taken.
State said it is using our recommendations as a roadmap for making improvements in the visa process. Homeland Security agreed that the visa process should be strengthened as an antiterrorism tool.

www.gao.gov/cgi-bin/getrpt?GAO-03-1013T.

To view the full testimony, 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

Our analysis of the visa process shows that the Departments of State, Homeland Security, and Justice could more effectively manage the visa process if they had clear and comprehensive policies and procedures and increased agency coordination and information sharing. In our October 2002 report on the visa process as an antiterrorism tool, we found that

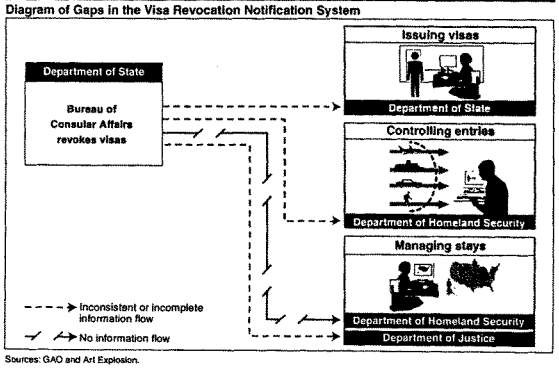
- State did not provide clear policies on how consular officers should balance national security concerns with the desire to facilitate legitimate travel when issuing visas; and
- State and Justice disagreed on the evidence needed to deny a visa on terrorism grounds.

In our June 2003 report, we found that State had revoked visas for terrorism concerns but that

- The revocation process was not being used aggressively to alert homeland security and law enforcement agencies that individuals who entered the country before their visas were revoked might be security risks; and
- The process broke down when information on revocations was not being shared between State and appropriate immigration and law enforcement officials.

These weaknesses diminish the effectiveness of the visa process in keeping potential terrorists out of the United States.

Diagram of Gaps in the Visa Revocation Notification System



Sources: GAO and Art Explosion.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here to discuss our recent work on the visa process and some of the ways we believe this process could be strengthened as an important part of our country's border security strategy. Mr. Chairman, citizens of other countries seeking to enter the United States temporarily for business, tourism, and other reasons generally must apply for and obtain a U.S. travel document, called a nonimmigrant visa, at U.S. embassies or consulates abroad before arriving at U.S. ports of entry. In deciding who should and should not receive a visa, consular officers must perform a risk assessment that balances the need to facilitate legitimate travel with the need to protect the United States against potential terrorists and to deter others whose entry is considered likely to be harmful to U.S. national interests. Consular officers also need to delicately balance U.S. national security interests with other interests such as promoting U.S. business, tourism, education and cultural exchanges, and the overall health of our economy.

Since September 11, 2001, visa operations have played an increasingly important role in ensuring the national security of the United States. The Departments of State, Homeland Security, and Justice, as well as other agencies, are involved in the visa process, with each playing an important role in making security decisions.

My testimony today is based on two of our recent reports[1] on the visa process that contained observations and recommendations on ways in which national and border security could be strengthened through the visa process, implementation of clear visa policies and guidelines, and sharing of information and data. The first report focused on the effectiveness of the visa process as an antiterrorism tool and recommended ways that the process could be strengthened as a screen against terrorists. The second report provides examples of how weaknesses in policy and interagency coordination are affecting border security. In addition to my comments based on the two reports, I will provide a brief overview of an emerging visa policy issue that warrants oversight.

[1]U.S. General Accounting Office, *Border Security: Visa Process Should Be Strengthened as an Antiterrorism Tool*, GAO-03-132NI (Washington, D.C.: Oct. 21, 2002) and 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).

Summary

Our analysis of the visa process shows that the Departments of State, Homeland Security, and Justice could more effectively manage the visa function if they had clear and comprehensive policies and procedures and increased agency coordination and information sharing. Our October 2002 report addressed the need for a clear policy on how to balance national security concerns with the desire to facilitate legitimate travel when issuing visas. It also addressed the need for more coordination and information sharing to realize the full potential of the visa process. In addition, there is a need for more human resources and more training for consular officers. We made several recommendations to the Department of State and the new Department of Homeland Security to improve this process. State reported that it plans to use our recommendations as a road map for improving the visa process.

Our June 2003 report also pointed out that the U.S. government does not have a clear and comprehensive policy on the interagency visa revocation process. This process should be used more aggressively to alert homeland security and law enforcement agencies that individuals who entered the country before their visas were revoked might be security risks. However, we found that the process broke down because information on visa revocations was not shared between State and appropriate immigration and law enforcement offices. It broke down even further when individuals in question had already entered the United States prior to revocation. In our review of the 240 visas that were revoked for terrorism concerns between September 11, 2001 and December 31, 2002, we found numerous cases where notifications of the revocations did not reach appropriate units within the Immigration and Naturalization Service (INS)[2] and FBI. We also found evidence that individuals whose visas were revoked because of terrorism concerns entered the United States and may still remain in the country. We have made recommendations to the Departments of Homeland Security, State, and Justice to improve the revocation process. Homeland Security agreed that the visa revocation process needed to be strengthened.

[2]On March 1, 2003, INS became part of three units within the Department of Homeland Security. INS inspection functions transferred to the Bureau of Customs and Border Protection; its investigative and enforcement functions transferred to the Bureau of Immigration and Customs Enforcement; and its immigration services function became part of the Bureau of Citizenship and Immigration Services. Because our work focused on visa revocation cases that took place before the March 1 reorganization, our report referred to the U.S. government's immigration agency as "INS."

State has directed that, beginning August 1, posts interview all foreign individuals, with a few exceptions, seeking to visit the United States prior to visa issuance. The purpose of this guidance is to tighten the visa process. The new regulations may result in delays if posts do not have adequate resources to handle the number of interviews.

Mr. Chairman, I now want to provide additional details on the policies, procedures, and coordination that we described in our reports.

Visa Process Should Be Strengthened as an Antiterrorism Tool

The September 11 attacks illustrated the vulnerabilities in the visa process when it became known that all 19 of the terrorist hijackers had been issued visas to enter the United States. Before the attacks, the State Department's visa operations focused primarily on screening applicants to determine whether they intended to work or reside illegally in the United States. In deciding on who should receive a visa, consular officers relied on the State Department's consular "lookout" system, a name check system that incorporates information from many agencies, as the primary basis for identifying potential terrorists.[3] Consular officers were encouraged to facilitate legitimate travel and, at some posts we visited, faced pressure to issue visas. The State Department gave overseas consular sections substantial discretion in determining the level of scrutiny applied to visa applications and encouraged streamlined procedures to provide customer service and deal with a large workload. As a result, according to State Department officials and documents, consular sections worldwide adopted practices that reduced the review time for visa applications. For example, some posts decided not to interview applicants who appeared likely to return to their country at the end of their allotted time in the United States.

Since the terrorist attacks, the U.S. government has introduced some changes to strengthen the visa process. For example, the State Department has, with the help of other agencies, almost doubled the number of names and the amount of information in the lookout system. Further, the Department began seeking new or additional interagency clearances on selected applicants to screen out terrorists, although these checks were

[3]U.S. General Accounting Office, *Information Technology: Terrorist Watch Lists Should Be Consolidated to Promote Better Integration and Sharing* GAO-03-322 (Washington, D.C.: Apr. 15, 2003). We recommended a series of actions including that the Department of Homeland Security and other agencies that have and use watch lists lead an effort to standardize and consolidate the federal government's watch list structures and policies.

not always completed by other U.S. agencies in a thorough or timely manner. We also observed that consular officers at some of the posts we visited were spending more time reviewing visa applications and interviewing applicants; they were able to do so, at least temporarily, because the number of visa applications decreased dramatically after September 11.

While these actions have strengthened the visa process, our work in 2002 showed that there were widely divergent practices and procedures among and within overseas posts regarding (1) the authority of consular officers to deny questionable applicants a visa, (2) the role of the visa process in ensuring national security, and (3) the types of changes in posts' visa policies and procedures that are appropriate given the need for heightened border security. Also, the Departments of State and Justice disagreed on the evidence needed to deny a visa on terrorism grounds. Most consular officers at the posts we visited stated that more comprehensive guidance and training would help them use the visa process as an antiterrorism tool to detect questionable applicants. In July 2002, the Secretary of State acknowledged that the visa process needed to be strengthened and indicated that the State Department is working to identify areas for improvement.

In addition, the State Department has stressed that it must have the best interagency information available on persons who are potential security risks in order to make good visa decisions. The additional data received from the intelligence and law enforcement community has increased State's access to information for use in the visa adjudication process. In addition, State indicated that it will work with Homeland Security to establish the systems and procedures that will ensure seamless sharing of information in the future.

We also found that human capital limitations are a concern, as some consular sections may need more staff if the number of visa applicants returns to pre-September 11 levels or if State continues to institute new security checks for visa applicants. At some posts the demand for visas combined with increased workload per visa applicant still exceeded available staff, as evidenced by the waiting time for a visa appointment and in overtime of consular staff. Moreover, several posts we visited reported that they could manage their existing workload with current staffing but would need more staff if they faced an increase in either security clearance procedures or visa applications.

In our October 2002 report, we concluded that the visa process could be an important tool to keep potential terrorists from entering the United States but that weaknesses limited its effectiveness as an antiterrorism tool. The State Department needed to improve implementation of the visa process to increase its effectiveness and consistency among posts.

To strengthen the visa process as an antiterrorism tool, we recommended that the Secretary of State, in consultation with appropriate agencies,

- establish clear policy on addressing national security concerns through the visa process that is balanced with the desire to facilitate legitimate travel, provide timely customer service, and manage workloads;
- develop comprehensive, risk-based guidelines and standards on how consular affairs should use the visa process as a screen against potential terrorists;
- reassess staffing for visa operations in light of the current and anticipated number of visa applications and, if appropriate, request additional human resources to ensure that consular sections have adequate staff with necessary skills; and
- provide consular training courses to improve interview techniques, recognize fraudulent documents, understand terrorism trends, and better use the name check system.

To address visa issues requiring coordination and actions across several agencies, we recommended that the Department of Homeland Security coordinate with appropriate agencies to

- establish governmentwide guidelines on the level of evidence needed to deny a visa on terrorism grounds under provisions of the Immigration and Nationality Act;
- reassess interagency headquarters' security checks on visa applicants to verify that all the checks are necessary and promptly conducted, and provide clear guidance to overseas posts and headquarters agencies on their roles in conducting these checks;
- consider reassessing, on an interagency basis, visas issued before the implementation of the new security checks;
- reexamine visa operations on a regular basis to ensure that the operations effectively contribute to the overall national strategy for

homeland security; and

- ensure that law enforcement and intelligence agencies promptly provide information to the State Department on persons who may pose a security risk and, therefore, should not receive visas.

In its response to our recommendations, the Department of State noted that it has acted on or is currently acting on some of the issues we reported and continues to reexamine its visa process. Moreover, in January 2003, the Assistant Secretary for Consular Affairs reported that State plans to use our recommendations as a roadmap for improvements within the Bureau of Consular Affairs and in consular sections around the world. State has also indicated that it is currently undertaking a number of initiatives to review visa policies, staffing, and training needs. Furthermore, State said it is looking at refining various screening programs and will coordinate with other agencies to reassess interagency headquarters' security checks.

New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process

In our recent work on visa revocations, we again found weaknesses caused by the lack of comprehensive policies and coordination between agencies. The visa revocation process can be an important tool to prevent potential terrorists from entering the United States. Ideally, information on suspected terrorists would reach the Department of State before it decides to issue a visa; however, there will always be some cases in which the information arrives after the visa has been issued. Revoking a visa can mitigate this problem, but only if State notifies the appropriate agencies and if those agencies take appropriate actions to deny entry or investigate persons with a revoked visa. In our June 2003 report, we identified the policies and procedures of several agencies that govern the visa revocation process and determined the effectiveness of the process. We focused on all 240 visas that State revoked for terrorism concerns from September 11, 2001, to December 31, 2002.

Our analysis indicated that the U.S. government has no specific written policy on the use of visa revocations as an antiterrorism tool and no written procedures to guide State in notifying relevant agencies of visas that have been revoked on terrorism grounds. State and INS have written procedures that guide some types of visa revocations; however, neither they nor the FBI has written internal procedures for notifying appropriate personnel to take action on visas revoked by the State Department. State and INS officials could articulate their informal policies and procedures for how and what purpose their agencies have used the process to keep

terrorists out of the United States, but neither they nor FBI officials had specific policies or procedures that covered investigating, locating, or taking appropriate action in cases where the visa holder had already entered the country.

The lack of formal, written policies and procedures may have contributed to systemic weaknesses in the visa revocation process that increase the probability of a suspected terrorist entering or remaining in the United States. At the time of visa revocation, State should notify its consular officers at overseas posts, the Department of Homeland Security, and the FBI. State would have to provide notice of revocation, along with supporting evidence to the appropriate units within Homeland Security and the FBI, which would allow them to take appropriate action. In our review of the 240 visa revocations, we found that (1) appropriate units within INS and the FBI did not always receive timely notification of the revocations; (2) lookouts were not consistently posted to the agencies' watch lists; (3) 30 individuals whose visas were revoked on terrorism grounds entered the United States and may still remain in the country;[4] (4) INS investigators were not usually notified of individuals with revoked visas who had entered the United States and therefore did not open investigations on them; and (5) the FBI did not investigate individuals with revoked visas unless these individuals were also in TIPOFF. For instance:

- In a number of cases, notification between State and the appropriate units within INS did not take place or was not completed in a timely manner. For example, INS officials said they did not receive any notice of the revocations from State in 43 of the 240 cases. In another 47 cases, the INS Lookout Unit received the revocation notice only via a cable, which took, on average, 12 days to reach the Unit.

- In cases in which the INS Lookout Unit had received notification, it generally posted information on these revocations in its lookout database within 1 day of receiving the notice. In cases where it was not notified, it could not post information on these individuals in its lookout database, which precluded INS inspectors at ports of entry from knowing that these individuals had had their visas revoked.

[4]This number is based on our analysis of data we received from INS as of May 19, 2003. On May 20 and 21, INS and the FBI, respectively, provided additional information related to this matter. We were not able to complete analysis of the data prior to the release of our report due to the nature and volume of the data. The data could show that the actual number of persons is higher or lower than 30.

Moreover, the State Department neglected to enter the revocation action for 64 of the 240 cases into its own watch list.

- GAO's analysis of INS arrival and departure data indicates that 29 individuals entered the United States before their visas were revoked and may still remain in the country. These data also show that INS inspectors admitted at least four other people after the visa revocation, one of whom may still remain in the country. However, in testimony on June 18, 2003, the FBI said that none of these 30 individuals posed a terrorist threat since they were not in TIPOFF, a State-operated interagency terrorist watch list that FBI's Foreign Terrorist Tracking Task Force monitors. State Department officials told us during our review that State relied on sources of information in addition to TIPOFF in making visa revocation decisions. INS inspectors prevented at least 14 others from entering the country because the INS watch list included information on the revocation action or had another lookout on them.

- INS investigators said they did not open cases on these individuals with revoked visas who had entered the United States because their unit had not been notified that State had revoked visas because of terrorism concerns and that these persons had entered the country. They added that, in the 10 cases that were referred to them, they conducted a full investigation of possible immigration violations. INS officials said that it would be challenging to remove individuals with revoked visas who had entered the United States unless they were in violation of their immigration status. Homeland Security officials said that the issue of whether a visa revocation, after an individual is admitted on that visa, has the effect of rendering the individuals out-of-status is unresolved legally.

- FBI officials told us they were not concerned about individuals whose visas were revoked because of terrorism concerns unless the individuals' names were in TIPOFF. They said that they had a system in place to monitor individuals in TIPOFF who enter the country but that they would not investigate individuals who were not in TIPOFF based solely on the revocation notice from State. FBI's position indicates that FBI is not taking into account all sources of information that State uses in determining if a person may pose a terrorism threat.

We concluded that the visa process could be an important tool to keep potential terrorists from entering the United States. However, there are currently major gaps in the notification and investigation processes. One reason for this is that there are no comprehensive written policies and

procedures on how notification of a visa revocation should take place and what agencies should do when they are notified. As a result, there is heightened risk that persons who State believed should not have been issued a visa because of terrorism concerns could enter the country with revoked visas or be allowed to remain after their visas are revoked without undergoing investigation or monitoring.

To strengthen the visa revocation process as an antiterrorism tool, 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 notification of visa revocations for suspected terrorists and relevant supporting information is transmitted from State to immigration and law enforcement agencies and their respective inspection and investigation units in a timely manner;
- develop a specific policy on actions that immigration and law enforcement agencies should take to investigate and locate individuals whose visas have been revoked for terrorism concerns and who remain in the United States after revocation; and
- determine if persons with visas revoked on terrorism grounds are in the United States and, if so, whether they pose a security threat.

In response to our recommendations, the Department of State testified that the Bureau of Consular Affairs is engaged in an effort to formalize standard operating procedures. The Department of Homeland Security also remarked that it was working to better standardize its procedures. The FBI determined that 47 of the 240 persons with revoked visas were in TIPOFF and therefore could pose a terrorism threat but that it had no indication that any of these individuals were in the country.

Plans to Tighten the Visa Process

The Department of State has recently issued guidance to its posts about using the visa process as an antiterrorism tool. In May 2003, the Secretary of State announced that, by August 1, 2003, with a few exceptions, all foreign individuals seeking to visit the United States would be interviewed prior to receiving a visa. The purpose of this guidance is to tighten the visa process to protect U.S. security and to prepare for the eventual fingerprinting of applicants that State must undertake to meet the legislated mandate to include a biometric identifier with issued visas. To comply with the new guidance, some posts may have to make substantial

changes in how they handle nonimmigrant applications. State acknowledges that posts may find that personnel or facility resources are not adequate to handle the additional number of interviews. Even though State expects interview backlogs, the Department has indicated that posts are to implement the interview requirement with existing resources.

It is not certain what impact the new policy will have on visa issuance. However, education, business, and government officials have expressed concern that it was already taking too long to issue visas and that without a commensurate increase in resources to accommodate the heavier workload that may result from the new requirement, there could be serious delays for those seeking to visit the United States. In March 2003, the House Committee on Science held a hearing on "Dealing with Foreign Students and Scholars in the Age of Terrorism: Visa Backlogs and Tracking Systems." In June 2003, the House Committee on Small Business held a hearing on "The Visa Approval Backlog and its Impact on American Small Business. " In both hearings, higher education and business leaders and agency officials testified on the negative impacts of delays in issuing visas. The testimonies also highlighted the difficulties of balancing national security interests with the desire to facilitate travel. At the request of the House Committee on Science, we are currently examining the amount of time taken to adjudicate visa applications from foreign science students and scholars. As part of this work, we will be looking at how the new interview policy will affect the process.

Before I conclude my statement, I would like to raise some questions that the subcommittee may want to consider in its oversight role:

- Have the Departments of State, Homeland Security, and Justice reached agreement on how best to communicate information on individuals who should not be issued visas and on individuals whose visas have been revoked?

- Have the Departments of State, Homeland Security, and Justice agreed on the level of evidence needed to deny and revoke visas?

- Does the Department of State have adequate number of trained staff for visa processing, especially if the number of visa applicants or security checks increase?

- Do the Departments of Homeland Security and Justice agree on whether persons who are in the country and have visas that have been revoked on terrorism concerns should be investigated and, if so, by

which agency?

Mr. Chairman, I would like to reiterate our two overarching areas of concern for U.S. visa policy. First, the U.S. government needs to have clear, comprehensive policies governing U.S. visa processes and procedures so that all agencies involved agree on the level of security screening for foreign nationals both at our consulates abroad and at ports of entry. These policies should balance the need for national security with the desire to facilitate legitimate travel to the United States. The Departments of State and Homeland Security should coordinate to establish governmentwide guidelines on the level of evidence needed to deny a visa. There should also be a specific policy for the interagency visa revocation process, including the actions that immigration and law enforcement agencies should take to investigate and locate individuals with revoked visas who have entered the country.

The second area of concern is the continued need for coordination and information sharing among agencies. If our intelligence or law enforcement community is concerned that an individual poses a security risk, we have to make sure that this information is communicated to the State Department so that consular officers can deny and, if need be, revoke visas in a timely manner. Similarly, when State revokes a visa for terrorism concerns, we have to make sure that full information on the revocation is communicated to immigration and law enforcement agencies.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions that you or members of the subcommittee may have.

Contacts and Acknowledgements

For future contacts regarding this testimony, please call Jess Ford at (202) 512-4128. Individuals making key contributions to this testimony included John Brummet, Andrea Miller, Kate Brentzel, Janey Cohen, Lynn Cothern, and Suzanne Dove.

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United States Senate Committee on the Judiciary
Subcommittee on Immigration
Hearing on Information Sharing
Testimony of Janice L. Jacobs
Deputy Assistant Secretary of State
For Visa Services
July 15, 2003

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to address you on a subject that all of us in the executive and legislative branch agree is crucial: the swift and proper exchange of information among relevant agencies controlling the security of our borders. The Department of State's visa work abroad constitutes the "forward based defense" of the United States against terrorists and criminals who seek to enter the country to harm us. We have no higher responsibility and we are determined to do this work in the best and most comprehensive manner possible. The General Accounting Office has issued a number of reports touching upon this subject, and the three we have just heard GAO speak to are very familiar to us at State. We have found them to be thoughtful studies of a complex subject and we have learned from them and put many of their recommendations into effect.

The GAO report from October of 2002 entitled "Visa Process Should Be Strengthened As An Anti-Terrorism Tool" made a number of excellent recommendations that we have used as a sort of roadmap for implementing the changes that more perilous times demand of us. I have appended to my written statement a substantial list of actions taken since September 11 to strengthen the visa process along the lines suggested by GAO. Let me summarize them quickly here: we have doubled our database holdings on individuals who should not be issued visas, increased our training efforts to better apprise consular officers of counter-terrorism issues, increased data-sharing capabilities among federal agencies, set up special programs to more fully vet visa applicants of particular concern, and moved to increase staffing for visa positions abroad. Our training efforts have focused on needed counter-terrorism expertise and we have devoted much more time in senior training for Ambassadors and Deputy Chiefs of Mission to consular work and its responsibilities for senior managers. We have thoroughly reviewed consular procedures on visa work and begun a series of Standard Operating Procedures cables to the field to codify the way in which we expect visa work to be consistently performed abroad. While you never achieve perfection in this area, I am confident that we have a much stronger visa process in place at our posts overseas than we had just one year ago and the country is safer for it.

There is a cost to all of this effort and it is not simply born by the Department in terms of greater personnel and equipment needs. It also comes at a cost in time and a certain amount of inconvenience to visa applicants who now must navigate a process that is more burdensome than it has been in the past. Secretary Powell has succinctly

articulated our policy as "Secure Borders, Open Doors", and we at the Department are acutely aware of the need to satisfy both of these objectives. The US economy counts on the billions of dollars spent each year by international tourists, our universities reap the economic benefits of pre-eminence among destination countries for international students, our scientific establishment flourishes in a climate of open exchange across borders, and our entire society is accustomed to living in a free and open manner that counts upon an ease of movement across international borders. We are determined to preserve these crucial benefits to the United States even as we work to strengthen the visa process' security.

Secretary Powell has also said to the Congress that we are only as good on visa lines as the information we have available to us on threats to the United States. I of course agree completely with this observation, and the Department greeted the report done by GAO in April of this year ("Terrorist Watch Lists Should Be Consolidated to Promote Better Integration and Sharing" GAO-03-322) on this theme with its full endorsement. While none of the 9/11 hijackers would have been identified by a unified watch list, since they were not known to us prior to their visa applications, swift provision of all the best information known to the US government from whatever source to our line visa officers is essential to ensure that we stop those dangerous persons who are identified by our various agencies.

This particular GAO report charges the new Department of Homeland Security with working with other agency heads and departments to design a consolidated and standardized "watch list" that can be unified and shared among the agencies that need this information, and it also suggests that DHS is best placed to know who might need such access among the universe of potential end users. Again we agree that DHS is the place where such an effort ought to be vested, and we pledge our full support for such an essential project. The GAO speaks of "cultural differences" as being among the chief reasons for variation in the sharing of such lists among the federal agencies. While I would not deny that "cultures" unique to a particular federal agency condition its work, I think that what the GAO really means is that the mission of each federal agency is distinct and the need for and ability to use certain information is different among them.

A consular officer abroad, who has as much time as he needs to review a visa applicant and can send that applicant home to bring in more information if needed, is in a much different situation than a Port of Entry inspector who has a few minutes to decide whether or not to admit an alien to the United States. Our consular officer can use information that is less conclusive than the inspector would require, and a law enforcement officer in the United States will have somewhat different requirements than either of those two officials. While it is obviously right to err on the side of caution when dealing with potentially lethal security risks, we cannot eliminate every element of risk from our operations, and saddling certain officials with information that experience tells us they cannot use effectively, either because of legal or operational requirements, will not enhance our border security. These are questions without easy answers, but we believe that DHS is best placed to consider them, and broker intelligent solutions based on the contributions of the interested agencies.

Finally, let me address the question of visa revocations that was studied by the GAO in yet a third report (New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process; GAO 03-798). The GAO correctly identified a problem in our failure to rapidly and certainly apprise our border inspection and law enforcement agencies of "prudential revocations" that we had made based on intelligence and other source identifications of potential security threats. Our procedures were insufficiently systematic and our notifications did not make use of the best our technology can deliver. The problem though has been fixed in the creation last year of a revocation code that is shared out to the relevant agencies via the Inter-Agency Border Inspection System (IBIS) when a visa is prudentially revoked. Though it should have been fully operational in August of 2002 when we designed the code, it was put into place in December of that year, and we have verified that each and every revocation for calendar year 2003 was properly coded and entered into CLASS and IBIS and was available in near real time to our law enforcement and border inspection colleagues.

The question of when a prudential revocation takes effect, while somewhat complex legally, is pretty straight-forward operationally. A prudential revocation of a visa is just that: a safety precaution that, in security cases, we undertake with a relatively low threshold of information to ensure that all relevant or potentially relevant facts about an alien are thoroughly explored before we admit that alien to the United States. It is a signal to the consular officer abroad to re-adjudicate the case with the new information at hand. In many such instances we find that the information does not pertain to the alien whose visa was revoked (a mistaken identity due to incomplete identifying data), or that the information can be explained in a way that clarifies the question at hand and eliminates the potential threat. In these cases we re-issue the visa and purge the alien's name from the lookout system.

The Department of State has advised the Department of Homeland Security that it is prepared to begin revoking visas effective immediately in cases of aliens who present a valid visa to an immigration inspector at a port-of-entry but of whom DHS nevertheless has security concerns resulting from a more in-depth inspection. We will institute this practice on a routine basis once we have developed implementation procedures with DHS; meanwhile, we can consider cases on an individual basis. Making a revocation effective immediately when the alien is at the port-of-entry will allow DHS to use expedited exclusion procedures appropriate to the nature of the potential threat. Because the alien's visa will have been invalidated, DHS will be able to deny the alien admission to the United States under INA 212(a)(7)(lack of a valid visa). Thus, as in the cases of aliens outside the United States, the visa revocation will eliminate the need for DHS to establish that the alien is ineligible for admission under one of the security grounds of exclusion in Section 240 removal proceedings, which could require the disclosure of classified information.

A third situation arises if the alien has already been admitted to the United States. In this context, there is no legal precedent indicating that, if a visa were revoked effective immediately, it would facilitate DHS's ability to remove the alien from the United States.

For example, it is unclear what removal charges could be filed against the alien. We intend to discuss this matter further with DHS as well as with the Department of Justice.

I can assure this subcommittee that in all of these areas we work hand in glove with our colleagues in law enforcement and homeland security. There are no cultural differences in each of our determination to make the United States safe from terrorists and criminals for Americans and our foreign guests. We have made great strides in information sharing and cooperation towards this end, but we clearly have a way to go. I would be glad to answer any questions you may have. Thank you.

Attachment: Bureau of Consular Affairs
Accomplishments in FY 2002/2003

Bureau of Consular Affairs
Accomplishments in FY 2002/2003

In FY 2002-2003, the Bureau of Consular Affairs (CA):

- Set a worldwide standard for visa interview policy.
- Tightened visa interview requirements for nationals of state sponsors of terrorism.
- Instituted specialized training for consular officers in determining deception through a visa interview at the National Foreign Affairs Training Center.
- Incorporated over 7 million records from the FBI's National Crime Information Center (NCIC) into the Consular Lookout and Support System (CLASS) namecheck database, nearly doubling the size of CLASS to 13 million records.
- Received into CLASS a threefold increase in namecheck records from the intelligence community (through the Bureau of Intelligence and Research's TIPOFF office).
- Provided access to the Consular Consolidated Database (CCD) to consular officers worldwide, as well as to the Department of Homeland Security's ports of entry and a military intelligence entity.
- Mandated that each post review consular management practices and utilized the results in developing and transmitting a series of cables providing standard operating procedures (SOP) to the field to standardize consular practices worldwide.
- Broadened cooperation with the Bureau of Diplomatic Security (DS), creating a vulnerability assessment unit in CA to alert us to possible malfeasance trends through statistical analysis.
- Organized Consular Management Assistance Teams (CMATs) to visit, assess, and provide guidance to posts in strengthening consular management practices.
- Continued to expand entries to our Foreign Lost and Stolen Passport Database and expanded electronic sharing of this information with U.S. ports of entry.
- Deployed the new, tamper-resistant Lincoln visa worldwide to prevent alteration and duplication.
- Increased datasharing with the intel and law enforcement community.
- Automated crosschecking of new derogatory information (i.e. lookout list entries) against records of previously issued visas.
- Broadened the definition of terrorism for visa denial purposes.
- Added more interagency security checks for counter-terrorism purposes known as "Visas Condor".
- Implemented a new supplemental visa application form of all men ages 16 to 45 from every country in the world.
- Engaged in ongoing discussions with Mexico and Canada about greater cooperation on immigration, security, and visa issues.
- Closed a loophole that allowed certain non-immigrant aliens to re-enter the U.S. with an expired visa.
- Issued a proposed rule in the Federal Register for the elimination of the crew list visa.
- Improved the system for exchanging background check data with the FBI.

- Implemented a training program for consular officers to better understand the CLASS system, especially linguistically-based namecheck returns, and expanded intranet resources to assist officers in reading entry/exit cachets in Arabic or Persian script.
- Deployed the latest Nonimmigrant Visa (NIV) software release incorporating enhanced data collection and improved scanning features to help with security-related tasks.
- Developed a more secure way of canceling machine-readable visas to deter "visa washing."
- Released an update of the NIV software, which incorporates imaging of serious visa refusals into the CCD.
- Provided the National Institute of Standards and Technology with over a million photographs of visa applicants for use in their facial recognition evaluation tests and continued work on biometric identifier standards and electronic systems.
- Approved an Entry-Exit Project Charter, drafted jointly with INS, Customs, and DOT, that sets the parameters for an automated system to record the arrivals, departures, and stay activities of individuals coming to and leaving the U.S.
- Commenced programs to increase document fraud training for Diplomatic Security agents, and with SSA to improve document fraud training for SSA special investigators.
- Compiled a "Law Enforcement Package" that Diplomatic Security field offices, Passport Agencies, or other DOS offices may provide to state and local law enforcement contacts or to banks or other businesses requesting general guidance on assessing U.S. visas and passports as identity documents.
- Launched the Interim Student and Exchange Authentication System, which provided for the electronic verification of foreign students and exchange visitors applying to enter the U.S. 329,831 records were entered into ISEAS from 6,720 organizations before it sunset on March 31, 2003, with the advent of the DHS Student and Exchange Visitor Information System (SEVIS).
- Began participation in the European Union fraudulent documents working group, sharing information on smuggling trends, fraud patterns and document fixers.
- Launched a facial recognition pilot in April 2003 for nonimmigrant visas.
- Developed global standards for passport issuance security, which were adopted by the G-8 countries.
- Began working with DHS to institute a prevent-departure system to assist in preventing an alien parent or alien child from leaving the country when international child abduction is suspected.

Statement of Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee
Subcommittee on Immigration and Border Security
Hearing on "Visa Issuance, Information Sharing, and Enforcement in a Post 9-11 Environment: Are We Ready Yet?"
July 15, 2003

A series of recent reports from the General Accounting Office has raised questions about the effectiveness of communication between the State Department and the Department of Homeland Security concerning applicants for visas to come to the United States. This hearing will provide an opportunity to examine the conclusions in these reports, as well as the two Departments' responses.

The GAO reported in April that there is little or no coordination among the 12 separate databases maintained to identify potentially dangerous visitors to the United States. I understand that the DHS is leading a project to coordinate these databases, but that the task is enormously complicated. I hope that our witnesses from the DHS can update us on the Department's progress in this important task.

In addition, a GAO report from June found that there was no uniform process among executive branch agencies concerning when to revoke the visa of an alien, or of how to inform other agencies when revocation decisions are made. As a result of these communication problems, the GAO found that aliens whose visas had been revoked were able to remain in the United States. I hope that the Committee hears today what efforts the Administration is taking to address the GAO's recommendations to develop inter-agency policies and procedures to clarify the visa revocation process and to develop a policy for investigating those who remain in the U.S. after their visa has been revoked on terrorism grounds.

Today we are appropriately discussing possible security weaknesses in the visa process. We should also remember, however, the vital role that tourism plays in our economy. Considering the extraordinary weakness of our economy, with unemployment at a 9-year high, we should be very concerned about adopting policies that will unnecessarily exacerbate our economic woes. Foreign visits to the United States have already dropped nearly 20 percent since the September 11 attacks. With new requirements for face-to-face interviews for visa applicants set to take effect on August 1, and without any additional resources to accomplish this new policy, the travel industry and the U.S. Chamber of Commerce are deeply concerned that foreign visitors and business people will choose to take their business elsewhere. I am curious to hear how the Administration plans to accomplish the objective of interviewing an estimated 9 million visa applicants a year with the current resources allocated for visa processing.

INFORMATION-SHARING AND WATCHLISTING: CHANGES NEEDED TO PROTECT OUR BORDERS

TUESDAY, SEPTEMBER 23, 2003

UNITED STATES SENATE,
SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY, OF
THE COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:39 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Saxby Chambliss, Chairman of the Subcommittee, presiding.

Present: Senators Chambliss, Cornyn, and Feinstein.

OPENING STATEMENT OF HON. SAXBY CHAMBLISS, A U.S. SENATOR FROM THE STATE OF GEORGIA

Chairman CHAMBLISS. The hearing will come to order. We are going to ahead and proceed. I understand Senator Kennedy is on his way. Gentlemen, I will tell you that at some point we may interrupt. If Senator Kennedy has an opening statement he wishes to give, we certainly are going to allow him to do that.

Last July, this Subcommittee held a hearing entitled "Visa Issuance, Information-Sharing, and Enforcement" that focused on an absence of information flow among Federal agencies concerning visa revocations. In the post-9/11 world, we need to scrutinize every step of the process for those coming to the United States, from background checks to visa issuance, border protection to immigration enforcement.

Today, we will look at the initial, often unseen step of watch-listing in order to ensure that the right information gets into the hands of those who keep potential terrorists and other criminals out of our country.

One problem we saw after September 11 was a lack of information-sharing. A frustrating example of this failure to communicate was the State Department issuing visas to two of the dead hijackers 6 months after the attack. To address this, we have got to provide our folks on the front lines with more and better information to connect the dots by sharing intelligence among various agencies and to get the information out from overseas to the Federal level and down to the State and local level.

We have made significant progress as a Nation in making America a safer place, although we still have a way to go. We created the Department of Homeland Security, separated and clarified the missions of immigration services and border protection, and unified

Federal agency efforts to protect Americans in a comprehensive and coordinated approach.

An example of improvements is in the intelligence community, with no strategies to gather and share critical information in an effective manner. Last week, the administration announced the creation of a consolidated watch list. Situated at the FBI, a new Terrorist Screening Center will merge the dozen different watch lists from nine Federal agencies into a single source that is accessible to consular officers, border protection officials, and law enforcement personnel.

Homeland Security Secretary Tom Ridge announced the center will get information to our agents on the borders and all those who can put it to use on the front lines, and get it there fast. I have long supported a common watch list, but the key is to have a database that is accessible, up to date, and substantial. Along with a consolidated list, the State Department's TIPOFF database will be transferred to the multi-agency intelligence body, the Terrorist Threat Integration Center, or TTIC, which was created earlier this year. TIPOFF, which contains classified intelligence gathered largely from foreign sources, will become a main component of the consolidated watch list.

But questions need to be answered. Why is the master watch list at FBI rather than Homeland Security? Why is TIPOFF being moved to TTIC rather than to where the master watch list will reside? How effective will the new Department of Homeland Security be if TTIC and the FBI control watch lists that are essential to visa issuance and border protection?

Information-sharing and coordination among immigration-related agencies is essential to our homeland security and we must get it right. We recognize the importance of watch lists in the effort to keep out of the country certain persons who threaten the United States.

We are pleased to have today testifying before us those who are integral in the new strategy for information-sharing and watch-listing: John Brennan, Director of the Terrorist Threat Integration Center; Larry Mefford, Executive Assistant Director for Counterterrorism and Counterintelligence at the FBI; and Bill Parrish, Assistant Secretary for Information Analysis at the Department of Homeland Security.

Gentlemen, we welcome you here today. We look forward to your testimony and we look forward to dialoguing with you on where we are and how this new system is going to work. I don't know if you among yourselves have any preference of which order you go in.

Normally, John, we would start on your end and move this way, and unless there is any disagreement otherwise, that is what we will do. So, John, welcome and we look forward to hearing from you.

STATEMENT OF JOHN O. BRENNAN, DIRECTOR, TERRORIST THREAT INTEGRATION CENTER, OFFICE OF THE DIRECTOR OF CENTRAL INTELLIGENCE, MCLEAN, VIRGINIA

Mr. BRENNAN. Thank you, Mr. Chairman. I appreciate the opportunity to appear before you and the Subcommittee today.

As members of this Subcommittee well know, a key ingredient to the U.S. Government's counterterrorism strategy is to ensure that the many Government agencies and departments involved in the war on terrorism work closely together and share threat information analysis to prevent terrorist attacks.

The May 2003 establishment of the Terrorist Threat Integration Center, known as TTIC, is supporting this objective. Charged with the full integration of terrorist threat-related information and analysis, TTIC is a multi-agency joint venture that integrates and analyzes terrorist threat-related information collected domestically or abroad and disseminates information and analysis to appropriate recipients.

To execute this complex mission, TTIC has both broad authorities and responsibilities in the realm of information-sharing. A formal directive issued by the Director of Central Intelligence known as DCID 2/4 in May of this year mandates that TTIC assignees with a need to know have unfettered access to terrorist threat-related information collected domestically or abroad. This DCID also directs TTIC to create a structure to institutionalize information-sharing across appropriate Federal agency lines.

The DCID is supplemented by the Homeland Security Information-Sharing Memorandum of Understanding signed earlier this year by the Attorney General, Secretary of Homeland Security, and the Director of Central Intelligence. Among other things, this memorandum of understanding directs that a broad interpretation of mission and need to know be applied, that the use of originator controls be minimized, that maximum effort be made to reduce classification levels through the use of tear lines, and that modern, compatible information technology systems be utilized to speed the pace of dissemination.

It is of critical importance to note, as specified in the DCID, that TTIC assignees will continue to be bound by all applicable statutes and executive orders, including those relating to the protection of constitutional rights and privacy.

In order to implement this broad mandate for information-sharing, TTIC has undertaken several initiatives. We have partnered with other organizations, specifically the intelligence community, writ large, the FBI, and DHS, to form a joint program office to implement a systematic approach to interagency information-sharing. The task at hand is to ensure that all obligations enumerated in the Homeland Security Act and information-sharing MOU are met.

In order to effect rapid information-sharing with a wide array of partners and customers, we also have established a classified TTIC online website which hosts information and analysis produced by TTIC and other U.S. Government organizations. This website reaches analysts and consumers at all major departments and agencies having a role in the war on terrorism.

Over the coming months, we will be replicating TTIC online on less sensitive networks in order to provide terrorism information and analysis at a lower level of classification to a much broader customer set, including, through the FBI and the Department of Homeland Security, to the non-Federal family.

Let me now address briefly the role TTIC plays in supporting the State Department's visa issuance program. DCID 2/4 requires that

TTIC maintain an up-to-date database of known and suspected terrorists accessible to appropriate government officials. Since its stand-up, TTIC has been developing a terrorist identities database that will incorporate everything the U.S. Government knows about such individuals. We have been working very closely with the Department of State and others over the last several months to ensure that this database is entirely compatible with the demands of the newly-announced Terrorist Screening Center.

Homeland Security Presidential Directive 6 and the associated memorandum of understanding signed by Secretaries Powell and Ridge, Director Tenet, and Attorney General Ashcroft, have substantially improved the terrorist watch-listing process by creating the Terrorist Screening Center. Under this initiative, TTIC will become the sole provider of international terrorist identities information to the screening center. The FBI will be responsible for providing information on purely domestic terrorist.

At the Terrorist Screening Center, Department of State representatives who will be able to reach back to TTIC's terrorist identities database will be able to provide the full level of support to the consular affairs visa issuance process at U.S. embassies and consulates abroad.

In sum, Mr. Chairman, I believe that TTIC has already made significant strides in improving the sharing of critical terrorist-related information across the U.S. Government. I look forward to taking your questions.

Thank you.

[The prepared statement of Mr. Brennan appears as a submission for the record.]

Chairman CHAMBLISS. Thank you, Mr. Brennan.

Mr. Mefford.

STATEMENT OF LARRY A. MEFFORD, EXECUTIVE ASSISTANT DIRECTOR, COUNTERTERRORISM/COUNTERINTELLIGENCE DIVISION, FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. MEFFORD. Thank you, Mr. Chairman, and thank you for inviting me here to testify today about this very important measure to better protect our Nation.

I would like to take this opportunity to inform you of the ongoing cooperation between the FBI and the Department of State as it relates to the State Department's ability to access and use information from the FBI in making visa determinations and to further discuss the Terrorist Screening Center.

The collection of information has always been a core function of the FBI's investigative mission, whether it involves criminal investigations, counterintelligence activities, or terrorist-related operations. However, historically, for a variety of reasons, the sharing of information tended to be case specific and oriented rather than enterprise-wide activity.

With the advent of new legislation, revised Attorney General guidelines, and certain court decisions, new opportunities have given rise to strengthen and expand the FBI's intelligence capabilities, which in turn today allow the FBI to share this data to a

greater extent with our intelligence and law enforcement partners nationwide, including State and local law enforcement agencies.

Prior to the enactment of the USA PATRIOT Act, statutory restrictions limited the type of information the FBI was allowed to share with the intelligence community. Today, however, the FBI can share more information than ever before, and can do so more efficiently and with more value. This has resulted in several information-sharing initiatives.

Today, there are 84 FBI Joint Terrorism Task Forces spread throughout the United States, with coverage in all major metropolitan centers of the Nation. These JTTFs, as they are referred to, are staffed with almost 3,000 police officers, sheriffs' deputies, Federal agents and investigators, representing over 25 independent Federal agencies and hundreds of State and local law enforcement agencies. Every JTTF officer, agent, and analyst has a top secret clearance today which allows those members unfiltered access to all of the FBI's information and databases.

In addition to the local JTTFs spread throughout the country, the National Joint Terrorism Task Force is located at FBI headquarters. This entity interacts on a constant basis with the local JTTFs in information-sharing and coordinating activities. The NJTTF, as it is referred to, is comprised of 35 separate Federal agencies, including the Department of State. To further facilitate information-sharing, the FBI has personnel currently stationed at the State Department, and the State Department has assigned personnel to the FBI's Counterterrorism Division at FBI headquarters.

Today, the FBI's Terrorist Watch and Warning Unit, which is assigned in our Counterterrorism Division here in D.C. at FBI headquarters, works with the State Department on a daily basis to share information and assist in resolving name checks arising from visa applications overseas.

An example, the State Department's Office of Consular Affairs routinely sends to the FBI possible name check matches for review as a result of overseas visa applications. These are individuals that are possibly involved in terrorist activities which we have detected as a result of these name check processes.

These reviews are the result of a sharing of pertinent information from the National Crime Information Center and from the VGTOF file, which is the Violent Gang and Terrorist Organization File, which is a subset of NCIC today, with the State Department's Consular Lookout and Support System, known as CLASS.

The FBI today has written procedures in place for notifying the appropriate FBI personnel to take specific action on all State Department cables concerning visa matters, to include security advisory opinions and visa revocations.

These internal procedures include requiring that all State Department cables received by the FBI on a daily basis be uploaded into the FBI's electronic case file, allowing for full-text retrieval. When the State Department has a possible hit on a name in their CLASS database, they notify the FBI through what the State Department refers to as a Condor cable.

This cable goes directly to the FBI's Record Management Division's National Name Check Unit, which is responsible for conducting both an electronic and manual name check of all FBI inter-

nal records. Pertinent information is run against the FBI's universal indices to ensure that we have conducted a thorough check.

Today, the FBI has responded to over 97,000 visa Condor name checks submitted by the State Department. That number is since June of 2002. There are currently about 120 full-time FBI employees working in the Records Management Division assigned to the National Name Check Unit who are responsible to ensure that these checks are completed accurately and on a timely basis. This is a unit that was configured and staffed after 9/11 to fulfill this mission in response to this great need.

The recently announced Terrorist Screening Center will consolidate all existing terrorist watch lists currently being used by the U.S. Government into a single function to provide accurate information to terrorist screeners around the country on a 24/7 real-time basis. This function will consolidate for the first time into one central location information that law enforcement, the intelligence community and the State Department already possess. Creation of the TSC, or the Terrorist Screening Center, does not create new law enforcement powers. The center will have no independent authority to conduct intelligence collection and/or operations.

This integration of existing watch list functions of a variety of agencies will enhance the coordination, consistency and accuracy of ongoing efforts by creating a mechanism for one-stop shopping to be used by local, State and Federal officers, as well as by others who may have a need to retrieve this information.

Creation of the TSC is the latest step in the ongoing process to improve our ability to identify suspected terrorists and to stop them before they can do us harm. It brings together such databases as the Department of State's TIPOFF system, used to vet visa applicants overseas; the Department of Homeland Security's transportation and border security lists; and the FBI terrorism watch list, contained in the VGTOF file in NCIC.

All of these efforts reflect the FBI's recognition of the importance of an integrated terrorist database accessible to all of our partners in the criminal and intelligence communities. I want to emphasize to you that this issue has the full attention of Director Mueller and the FBI. The FBI appreciates the interest of the Committee in this matter. We look forward to working with you on this very important issue and we will answer questions when you are ready.

Thank you.

[The prepared statement of Mr. Mefford appears as a submission for the record.]

Chairman CHAMBLISS. Thank you very much, Mr. Mefford.

Mr. Parrish.

STATEMENT OF WILLIAM PARRISH, ACTING ASSISTANT SECRETARY FOR INFORMATION ANALYSIS, INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION DIRECTORATE, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Mr. PARRISH. Good afternoon, Mr. Chairman. I am delighted to be here, sir, and we appreciate the opportunity for the Department of Homeland Security to appear before you today to share our view and assessment of our role in the President's Terrorist Threat Integration Center and the emerging Terrorist Screening Center.

I am the Acting Assistant Secretary for Information Analysis in the Information Analysis and Infrastructure Protection Directorate. Prior to assuming this position on the July 3 of this year, I was the senior Department of Homeland Security representative to the Terrorist Threat Integration Center. In this capacity, I served in a senior leadership position as the Associate Director for Homeland Security, working under John Brennan.

Prior to my assignment to DHS, I served as the first Executive Director of the Office of Antiterrorism within U.S. Customs, and during that tenure in Customs I recognized the importance of information-sharing. It became very evident to me that it was a critical aspect in this war against terrorism.

What I observed within our Government at that time was that once agencies' capabilities were clearly understood and how the information and intelligence would be used, information-sharing became a much easier process. For example, providing Customs inspectors with current watch lists of suspected terrorists allows for the collection of critical information that could contribute to the threat analysis and assessment process of connecting the dots.

I continue to emphasize the importance of knowing the capabilities of other agencies and understand how they support the national effort in combatting terrorism. Both TTIC and the emerging Terrorist Screening Center will enhance this process of understanding the capabilities of other agencies.

The Terrorist Screening Center will be an interagency effort administered by the FBI, with a DHS official serving as the principal deputy director. The Departments of Homeland Security and State, in addition to the Department of Justice and the intelligence community and other Federal agencies, will be represented in the Terrorist Screening Center.

As a senior partner in the Terrorist Screening Center, the Department of Homeland Security will play a key role in developing the center's operational capabilities and policy direction. IAIP is very familiar with participating in interagency efforts through the TTIC program. Similarly, IAIP hosts the Homeland Security Operations Center, where we have multiple agencies and interdepartmental organizations represented in a 24/7 operations center. This exchange of information and recognition of agencies' capabilities has significantly enhanced the information-sharing and the flow of critical information in a timely fashion amongst our agencies.

As you from the legislation passed by you, IAIP is unique among the U.S. intelligence and law enforcement elements in its authority, its responsibility, and access to information. IAIP possesses robust, comprehensive, and independent access to information relative to homeland security. It is collected both domestically and abroad.

Our mission is to obtain that intelligence and provide the necessary analysis and assessment to ensure appropriate actions are taken to protect against terrorist attacks directed at the United States and our homeland, actions such as conveying threat information to State, local and private sector entities that will assist them in taking appropriate actions to detect, prevent, or disrupt potential terrorist acts.

These partnerships of IAIP, established with TTIC and the Terrorist Screening Center, will further enhance the capabilities of our Information Analysis and Infrastructure Protection Directorate to better support our State, local, and private sector partners.

Since assuming my position as the Acting Assistant Secretary for IA, I have initiated a program for our analysts to coordinate directly with analysts of the FBI, TTIC, and other members of the intelligence community. This exchange of liaison personnel and direct access to other analysts provides a face-to-face or a voice-to-voice connectivity that will provide essential connectivity to ensure information is shared until our IT systems are fully in place. I am confident that these work-around measures are succeeding in ensuring a timely and efficient flow of information both into and out of the Department of Homeland Security.

Locating the Terrorist Screening Center within the FBI's Foreign Terrorist Tracking Task Force will allow for the initial stand-up in the near term and will enhance the detection and identification process of terrorists or suspected terrorists who are committed to killing Americans and altering our way of life.

I thank you, sir, and each of your staffs for your dedication and for your support. Together, we will preserve the freedom and security of this great Nation. Sir, that concludes my remarks. I look forward to your questions.

[The prepared statement of Mr. Parrish appears as a submission for the record.]

Chairman CHAMBLISS. Thank you very much to all three of you.

Mr. Brennan, you mentioned the website. Is that website already up?

Mr. BRENNAN. Yes, Senator, it is.

Chairman CHAMBLISS. Who has access to that website?

Mr. BRENNAN. There are approximately 2,500-plus officials of the Federal Government right now at various departments and agencies that have access to it.

Chairman CHAMBLISS. And is it a secure website?

Mr. BRENNAN. It is a secure website. It is at the top-secret level at this point.

Chairman CHAMBLISS. And did I understand you to say that your ultimate goal is to try to distribute that out to State and local officials, also?

Mr. BRENNAN. No. What we are doing now is to put out the TTIC online website on less sensitive networks at the secret level, and also at the sensitive but unclassified levels, making that available to the FBI and to the Department of Homeland Security. The Bureau and the Department of Homeland Security have responsibility for sharing that information, then, with State and local law enforcement, as well as with the private sector. So it is through those mechanisms that we would do that.

Chairman CHAMBLISS. Mr. Mefford, I believe you said we are up now to 84 JTTFs?

Mr. MEFFORD. That is correct, sir.

Chairman CHAMBLISS. Is there a CIA officer affiliated with each one of those 84 JTTFs?

Mr. MEFFORD. Not with each one, sir. I believe the number is around 30 at this point.

Chairman CHAMBLISS. How do we do that, though? How do you integrate the FBI into those that don't have a direct officer affiliated with them?

Mr. MEFFORD. There may be a part-time presence and there may be liaison officials that are designated so that we can share information broadly.

Chairman CHAMBLISS. Well, I guess you have answered my question. I wanted to make sure that there was information-sharing with all 84 JTTFs and with the FBI, the CIA and NSA.

Mr. MEFFORD. Yes, sir. There is a layered system that has been created where the JTTFs locally around the country, some of which—I mentioned, I believe, it is approximately 30 that have full-time CIA presence, but there is the National JTTF at FBI headquarters here in D.C. which includes representatives of the U.S. intelligence community. So information is shared locally, regionally and nationally through FBI headquarters and the National Joint Terrorist Task Force.

Chairman CHAMBLISS. Mr. Parrish, I am obviously pleased to see the creation of this watch list. This is something I have supported for several years, including in my role as Chairman of the House Subcommittee on Terrorism and Homeland Security.

A looming question is why is this master watch list not being situated at the Department of Homeland Security? An April GAO report recommended that DHS lead the effort. With visa issuance, border protection, and immigration enforcement authority now under one roof, do you think it makes more sense to have the consolidated watch lists also at DHS?

Mr. PARRISH. Mr. Chairman, Secretary Ridge, with other members of the Homeland Security Council, supports the initial stand-up of the center under the authority and the management, if you will, of the FBI. When you look at the capabilities that the FBI is developing within the Foreign Terrorist Tracking Task Force, I think the ability to rapidly stand up this center, as you indicate is so urgently needed, would be the place to effect that the quickest. The center looks to have an initial operating capability on December 1, bringing in the necessary connectivity to make this happen.

The other aspect of it is the law enforcement functions of the FBI. Using an example, we may have a State or local officer that calls in. He has stopped someone who is run through the Terrorist Screening Center. It would require a law enforcement response, and as Mr. Mefford indicated, the JTTFs out there may be the ones that would immediately respond to that.

At 180 days, there will be a review to see how the progress of the center is going. Again, we have a lot of operational and policy and procedure things to implement. At that same time, we will also assess and revisit the structure of where it is currently assigned. But the Department is a major player. The principal deputy director is from the Department of Homeland Security. We are probably one of the major users of the screening center, when you look at our border functions and the visa process.

Chairman CHAMBLISS. Mr. Brennan, if TTIC is an interagency intelligence body, why is the consolidated watch list not being placed there, particularly since TTIC is housed within the capabilities of the Director of the CIA?

Mr. BRENNAN. Senator, TTIC is going to have the sole responsibility for maintaining this database on known and suspected international terrorists. So we will have that responsibility.

TTIC reports directly to the DCI. The DCI, in fact, does not have any statutory authority to carry out a lot of the watch-listing and screening process functions. Therefore, I think it would be inappropriate for the DCI to be overseeing a center that would have to make decisions about who needs to be detained, who is going to be prevented from coming into the country, or what actions are going to be taken domestically here in most instances against U.S. persons and non-U.S. persons.

So, again, from an intelligence database perspective, TTIC has the responsibility now under the new HSPD. We have that responsibility, but the actual decisions that need to be taken in the watch-listing and screening process, I think, more appropriately fall under other department leaders.

Chairman CHAMBLISS. Mr. Mefford, with the FBI maintaining the watch list now, who is going to make the decision of who goes on that watch list?

Mr. MEFFORD. Currently, there is a working group between the participating agencies that is reviewing the criteria and the policies and procedures that will be in place effective December 1 of this year, when the screening center initiates is operations.

Those policies, which will be derived from an interagency process, will dictate who gets entered, when a name is removed, and will put in place quality control functions to ensure that, for example, there continues to be a reason to have a name on the list. And if somebody ends up on the list that shouldn't be on the list, we can immediately remove that person. All of these specific details are being hammered out now and it is a work in progress.

Chairman CHAMBLISS. We know now, looking back pre-September 11, that 2 of the 19 hijackers, Al-Midhar and Alhazmi, were placed on the then FBI watch list in August of 2001. We know, also, looking back, that the information that we had, although it was not properly shared between agencies, was that those two individuals attended the now famous Malaysia meeting in January of 2000. That, in part, led to their being placed on that watch list in August of 2001.

Mr. Mefford, can you give me a quick synopsis or idea of how this new watch list would work? If we had the information on these two individuals in January of 2000, if this particular watch list had been in place at that time, how would it have worked and how would they have been placed on there and what would have happened from that point?

Mr. MEFFORD. The names would have actually been placed on the list or a single system. The view of the terrorist screening system is that it will consolidate a variety of lists that exist today and systems that exist today so that we have one-stop shopping to maintain. For accuracy and consistency in policy implementation, we have one system.

TTIC will provide the international terrorism names. The FBI will provide the names that are purely domestic in nature. The names will then be sent to the screening center and they will be immediately loaded into a system to which various customers will

have a different level of access depending on the need, and that will all be defined by the policy.

Today, if these names were placed on the watch list, for example, they would immediately be made available through NCIC, the National Crime Information Center, to every law enforcement agency nationwide, to every border security personnel in DHS, to the State Department TIPOFF system that they can use to vet visa applicants overseas.

So if one of these individuals were stopped for a traffic violation by a local police officer today and they happened to run the name through NCIC, which police officials do—we are running about 4 million inquiries a day nationwide on the system, so it is a very robust system and it has a very aggressive capability. If the names were run by a police officer that had, let's say, casual contact with these individuals, which is routinely done, the name would pop up and give us an indication of where they are.

Clearly, in the case that you mentioned, we were looking for those individuals after August of 2001 and if we had had a lead developed like that, we would have immediately reached out and contacted the police officer and tried to locate those individuals and hopefully asked the police officer to detain them until the JTTF personnel could get on scene.

So one of the reasons at this stage of putting the screening center in the FBI is that the screening center would have a complementary relationship with the Foreign Terrorism Tracking Task Force which was established in October 2001 as a result of a presidential directive. That interagency task force is responsible for helping us find terrorists if they should enter the United States.

Additionally, the screening center will be latched up with CT Watch, which is an FBI counterterrorism operations center at FBI headquarters here in D.C. that operates 24/7 and links up to the various joint terrorist task forces around the country. So the Terrorist Screening Center receives an inquiry from a local police officer that potentially they have Alhazmi or Al-Midhar stopped in a traffic violation. The center will immediately contact CT Watch, which will contact the local joint terrorist task force to immediately respond. The center will also give guidance to the local policy agency on what to do with these two individuals. It would give us, we think, a greater opportunity to obviously take proactive action to prevent and disrupt terrorist activity.

Chairman CHAMBLISS. One last question before I go to Senator Feinstein. Let's say Alhazmi enters the United States under the name of Joe Smith. How are we going to determine who he is?

Mr. MEFFORD. Do you have a preference, Senator?

Chairman CHAMBLISS. Whoever can answer that.

Mr. MEFFORD. Well, I can tell you that is clearly one of the challenges in the intelligence field, and it is very critical that we maintain a very accurate and thorough database of suspected and known international terrorists so that we can link known aliases with true identities.

Mr. BRENNAN. The key challenge is to make sure that we have the analytic capability, as well as the intelligence that is able to associate that name, Joe Smith, with the known name of the terrorist. Terrorists are trying to circumvent security procedures and

all of our watch-listing efforts, but as much robust intelligence that we have, as well as the analysis, then, that links those names, the better chance we are going to be able to stop individuals that are coming in under aliases.

So this database, the watch list, and the Terrorist Screening Center, as well as TTIC, will have in there all of the known aliases or pseudos or whatever else that these individuals are known to go by.

Chairman CHAMBLISS. Senator Feinstein.

Senator FEINSTEIN. Thanks very much, Mr. Chairman. I am rather puzzled by this, because as I read the definition of the Department of Homeland Security, the responsibility is to access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government. You are supposed to integrate such information in order to identify and assess the nature and scope of terrorist threats to the homeland, detect and identify threats of terrorism against the United States, and understand such threats in light of actual and potential vulnerabilities.

It seems to me the CIA just won out and it is just going to put the Department of Homeland Security way out in left field as far as this information is concerned. The one thing that I have observed over the past years is that the CIA is not a good information-sharing institution, and for good reason. So I am really surprised that TTIC is placed under the CIA rather than Homeland Security.

Can anyone respond to this?

Mr. BRENNAN. Senator, yes, I can.

Senator FEINSTEIN. The reason Al-Midhar and Alhazmi didn't get identified in San Diego was because the CIA didn't pass the information on to the FBI. That is what happened there, as I understand it. If I am wrong, please correct me.

Mr. BRENNAN. Senator, I must correct you because TTIC does not fall under the CIA. TTIC is not part of the Central Intelligence Agency. TTIC is a joint venture that is composed of members of the intelligence community, the Federal Bureau of Investigation, the Department of Defense, the Department of State, and the Department of Homeland Security.

I report directly to the Director of Central Intelligence. I have no reporting chair that goes through the CIA. So TTIC is a multi-agency joint venture; it is not the CIA. So your statement that the CIA won out, I think, is incorrect.

Senator FEINSTEIN. How do you disconnect George Tenet from the CIA?

Mr. BRENNAN. Well, I think as you know, Senator, George Tenet wears the hat of the Director of Central Intelligence that is composed of many intelligence organizations throughout the U.S. Government. He simultaneously wears the hat of the Director of the CIA, but he performs a lot of his responsibilities in his capacity as Director of Central Intelligence and TTIC reports directly to him in that capacity. I don't report through anybody in the CIA.

Senator FEINSTEIN. But he has no statutory and no budgetary authority over any of the other agencies outside of the CIA. So I don't understand why he was chosen as the individual rather than

Tom Ridge, for example, where it seems to me is the Homeland Security Department that has the need to know, not the intelligence units of the Government.

Mr. BRENNAN. The Department of Homeland Security, Senator, and the Information Analysis and Infrastructure Protection Directorate is a part of the intelligence community by statute. By statute of this Congress, it has made the Department of Homeland Security and its senior officials members of the intelligence community.

So as the head of the joint venture of TTIC, I am part of the Department of Homeland Security, as well as part of the FBI and the CIA and others. I don't reside in any one of them. Bill Parrish, as he mentioned earlier, was my former Associate Director for Homeland Security within TTIC. So we are the embodiment within TTIC of those different missions and individual responsibilities because, by statute—

Senator FEINSTEIN. Who would you take your direction from?

Mr. BRENNAN. I report directly to the Director of Central Intelligence, but I also believe I need to be equally responsive to Director Mueller, to Secretary Ridge, Secretary Powell, and Secretary Rumsfeld.

Senator FEINSTEIN. Where is that on a piece of paper anywhere?

Mr. BRENNAN. In terms of what, Senator?

Senator FEINSTEIN. Your responsibilities?

Mr. BRENNAN. My responsibility, as I mentioned in my statement, is under a Director of Central Intelligence directive that was issued this year earlier, in May, that enumerates the responsibilities within the TTIC and who I report to and what the responsibilities are within TTIC. I am not CIA, Senator. I am a U.S. Government officer. I happen to be a CIA official, but I head up TTIC as a U.S. Government officer representing these other agencies as well.

Senator FEINSTEIN. Well, let me ask this. How does that facilitate the transmission of analysis to the law enforcement agencies within the homeland?

Mr. PARRISH. If I may, Senator, when TTIC stood up on the May 1, I was there, as John indicated, as the Director of Homeland Security. The information that was coming into TTIC from the FBI, from the CIA, and from members of the intelligence community was information that I had immediate access to and I was working with my colleague at that time, who was Paul Redmond, who was the assistant secretary. I was communicating to him on information that we needed to take a look at.

I would also push, as the senior Department of Homeland Security representative to TTIC, to get information rapidly downgraded to the secret level or law enforcement-sensitive to get that to the State and local authorities. An example of it, I guess, would be on the morning of the Riyadh bombing attacks, as I was looking at some of the sensitive traffic at that time, seeing some different tactics and techniques being employed by Al-Qaeda, I realized that that information needed to be transmitted to State and locals and the private sector as soon as possible.

I communicated to Paul Redmond, who was then the Assistant Secretary for Information Analysis at Homeland Security, and said begin preparing a Department of Homeland Security advisory bul-

letin and I will get this information downgraded to a law enforcement-sensitive level so that we can get that out.

The success of that is that at the end of that day, at six o'clock that night, we had a Department of Homeland Security advisory that went out to State, local, and private sectors advising them of these tactics and techniques that Al-Qaeda had applied to the attack on the apartment complex and the facilities that we saw.

I would say prior to the stand-up of the Department of Homeland Security and prior to the stand-up of TTIC, that process probably—you are exactly right—would have taken three or 4 days to get through the CIA process of getting that information downgraded to the point that we could get it in the hands of State and locals. So we have come a long, long way from where we were and we are making progress in that regard.

I have other examples of how that information-sharing has improved. By having members of the Department of Homeland Security sitting in TTIC, analysts that come from IAIP, they are there representing the operational environment of this department and looking out for the welfare of the security of the country.

Senator FEINSTEIN. Well, I understand that you all feel strongly this way, but I don't know if you gave any attention—probably not—to the testimony before the Congress of the former Deputy National Security Adviser Jim Steinberg, who advised us that it was a big mistake to place this under the Director of the CIA rather than Homeland Security.

If I might just quote him, "Unfortunately, by placing TTIC under the direction of the DCI rather than the Secretary of Homeland Security, and disconnecting it from those with direct responsibility for safeguarding homeland security, the administration's proposal falls far short of what is necessary to develop an effective, integrated approach to countering terrorist threats to the United States, and risks creating more duplication that could harm homeland security efforts."

He goes on to say, "TTIC represents a step forward in the middle stage of the process, collating and analyzing all source intelligence, but it fails to link that process to two equally critical tasks—deciding what information to collect based on the requirements of those who must act on it and making sure that once the information is collected and analyzed, it gets to these people in and out of Government who need it."

I can tell you I met this past break with the counterterrorism task forces in San Diego and in Los Angeles, and this is still a problem, gentlemen. The information just doesn't flow. Now, it seems to me that by its structural designation, it is being moved even farther from the flow of things into sort of the most clandestine and secretive operation we have.

Mr. PARRISH. Senator, the information flow, in my estimation, right now is working very well with the Terrorist Threat Integration Center. I meet in video teleconference daily with John and with the members of the FBI in a small group of exchange of sensitive information in that regard.

It is my job and my responsibility to ensure that when I hear this information and I see that it is germane to getting out to those individuals at our borders, State and local authorities and the pri-

vate sector, that this information is downgraded in a timely fashion so that we can information out there to them.

I am very familiar with the 19 functions which Congress has chartered us to take on, and I feel right now comfortable that we are complying with those 19 functions. We are making progress. We have only been in business for 6 months and we are moving as fast as we can to enhance our capabilities, but I am satisfied right now that we are making progress pushing that information out there.

Senator FEINSTEIN. Well, I will just say one last thing. Mr. Brennan, I have written you a letter asking for some protection at some potential targets in California. I have never received a response. I would very much appreciate receiving that response.

Mr. BRENNAN. Senator, I would like to correct the record here today. First of all, you didn't send me a letter asking me to take action. You informed me of a request that you made to Secretary Ridge and to Director Mueller for that support.

I sent you back a response that your staff has had now for the past several weeks. So I did respond to you and I told you that we were doing everything possible to ensure that all information is shared with the Department of Homeland Security and the FBI. So I would ask you to check your staff's records, but you have that.

Senator FEINSTEIN. But my letter was not about sharing of information in that case. It was about something else, but I think I get your message loud and clear, Mr. Brennan.

Mr. BRENNAN. Senator, I must say that I respectfully but strenuously disagree with Mr. Steinberg. He gave that testimony before TTIC was even up and running. As you know, the overwhelming majority of information about international terrorist threats to the homeland comes from foreign intelligence. The Director of Central Intelligence has responsibility for that foreign intelligence.

Therefore, if we are really going to tip into that gold mine of information, we need to make sure that the DCI is, in fact, very supportive of that effort. That is why I think TTIC is appropriately placed under the DCI, and I am doing everything in my power to ensure that that information is made available to the FBI and to the Department of Homeland Security so that it can be shared at the State and local law enforcement level. That is my commitment. I am going to fulfill that commitment on behalf of the DCI to ensure that information cascades its way down so we can get it to the—I refer to them as the last preventers, as opposed to just the first responders. They are the ones who can actually stop the terrorist attack from taking place on the ground.

Senator FEINSTEIN. Well, one thing is we will know. Thank you very much. Thanks, Mr. Chairman.

Chairman CHAMBLISS. Thank you, Senator.

Senator Feinstein raises a very valid point that wherever the information is located, wherever it finally lands, it is incumbent, gentlemen, that it be shared at the Federal level and all the way down. And if there is a problem in it getting down, it is our job to tell you what we are hearing and we are going to continue to do that.

Senator Cornyn.

Senator CORNYN. Thank you, Mr. Chairman.

Mr. Mefford, the Terrorist Screening Center is merging a dozen existing lists maintained by nine different Federal agencies. Is that correct?

Mr. MEFFORD. It is merging at least a dozen different systems. I am not really sure of the exact number of lists. One of the advantages that we have by consolidating is that we will have one entity that is responsible for the process.

Senator CORNYN. Well, I was referring to an Associated Press article that called it a list, but you would call it consolidation of systems as opposed to a list?

Mr. MEFFORD. I think so.

Senator CORNYN. Okay, from nine different Federal agencies. Could you tell us what earns you a mention on one of these lists? In other words, what are the standards or criteria that are used to put someone on one of these lists?

Mr. MEFFORD. The specific criteria are being defined as we speak by the interagency working group that will develop the pertinent policies and procedures. But, conceptually, known and suspected terrorists would go on the list; somebody that is supporting terrorist activities. It may be somebody that is running a training camp suspected to facilitate terrorist communications, somebody who is of interest to the U.S. protective standpoint, somebody that potentially poses an imminent threat to our country.

There is a variety of criteria and, in detail, I would have to ask your patience as it is further defined. But right now, based on the variety of lists that exist today and systems that exist today, we have a variety of standards, and one of the advantages we see is consistency in policy.

Senator CORNYN. Well, I don't underestimate the challenges that any one of you gentlemen or the agencies you work for have in this area because it is mind-boggling to me. But I would imagine that that is an important objective to identify standard criteria for who ought to be on the list and who doesn't deserve a mention on the list.

Mr. MEFFORD. Yes, sir. I might add it is a key goal, obviously, and I might add that quality control and management of the list is also very, very important. In our constitutional system, we are very aware, and certainly in the FBI we are very attuned to the constitutional safeguards and privacy rights of individuals, and we will ensure that the system is designed in way to afford the appropriate protections.

Senator CORNYN. I understand the very difficult balance that needs to be achieved, but obviously that is your responsibility and our responsibility together to make sure that the right balance is achieved both in legislation and in actual administration of the law.

Mr. MEFFORD. Yes, sir.

Senator CORNYN. But just so I understand, you say that eventually the goal would be to identify a standard criterion or criteria that would help you identify either a known terrorist or a suspected terrorist. Is that correct?

Mr. MEFFORD. Yes, and that would include, in my view—and again the interagency working group has to define these criteria, but in my view, and I think the rational view, would include mate-

rial support to a terrorist organization. So it may not be constricted to just somebody that is developing a bomb, for instance. It may be somebody that is aiding Al-Qaeda in raising funds or training or recruiting efforts.

Senator CORNYN. The goal, as I understand it, is sort of raise a flag and then further investigation would be warranted, and either the concern would be confirmed or not, depending on the facts.

Mr. MEFFORD. That is correct.

Senator CORNYN. Approximately how many names are on the current lists that exist? Could you give us a ball park?

Mr. MEFFORD. In the FBI's current system, in NCIC, we have roughly 7,600 names. I understand in the TIPOFF system, we have over 100,000. That is the overseas State Department system. And I understand there are several thousand in TSA's no-fly selectee list. There are other names on other lists and one of our challenges is to ensure there is no duplication and that we have consistent standards.

Again, I just would like to emphasize that it is not enough to enter a name on the list. We have to now constantly monitor the name on the list to make sure there still a significant reason to have the name remain on the list, and we intend to institute quality control measures to ensure that that is accomplished.

Senator CORNYN. Mr. Parrish, since the Department of Homeland Security now has the responsibility for aspects of immigration enforcement, is the goal of an integrated list to try to identify just known or suspected terrorists, or does it also include, for example, identification of people whose visas have expired and who are no longer living legally in the United States?

Mr. PARRISH. As you know, sir, the Under Secretary for Border Transportation Security has that responsibility in the visa process, and I believe Under Secretary Hutchinson is coming to the Committee next week. But let me just share with you a little bit of some of the process of how it works with the Treasury Enforcement Communications System, TECS, and what we are seeing recently now, again, I think, to the credit of the great Americans out there standing at our borders, at the airports and the land border crossings, the level of scrutiny of looking at these documents as they are coming in.

Each day, as I look at the morning reports, I am seeing individuals that are turned around to get on another airplane because their visa had been revoked or expired. That wasn't picked up on the other end and they are turned back. I think this system will enhance that process as we work with the State Department, as the Bureau of Transportation Security is working with the State Department aggressively with this MOU, as we get this system in.

So as you have your consular affairs overseas looking at the visa applicants, running the names back through the Terrorist Screening Center to see if there is any information about these individuals, it will be another, I think, aspect of the program to enhance the capabilities of detecting those that are coming here for purposes other than business or travel.

Senator CORNYN. I had the good fortune to visit the facility there in Mexico City recently and see the tough job that they have just

screening people who want to get visas to come to the United States.

Just to be able to differentiate what we are talking about, we have been talking a little bit with Mr. Mefford about known or suspected terrorists, but there are literally millions of people who come to the United States each year who wouldn't fall in that category, presumably.

Is that the job of the Department of Homeland Security to monitor those entries and those exits? Is that separate and apart from your counterterrorism function?

Mr. PARRISH. Certainly, again, it falls under—and I don't want to speak for Under Secretary Hutchinson, but certainly it is within the responsibilities of the border protection of screening those individuals that are coming into our country to make sure that they have the right documentation before they come into the country.

Senator CORNYN. I know Chairman Chambliss had earlier hearings where we heard some interesting statistics about the number of people who came into the country legally but are no longer here legally, and the difficulty of simply identifying where they are and who they are and showing them the way, I guess, back to their country of origin, or at least try to make sure that they comply with the law.

We heard figures like 40 percent of the people who are illegally in the United States now got here originally through a visa and just simply overstayed. We heard figures like 300,000 individuals are under final orders of deportation and they simply melted into the landscape and we don't know where they are.

Just to differentiate what we are talking about, we are talking about both the identification of known and suspected terrorists, which is the primary role of the watch list I think you are here talking about today, but there is a whole huge and immense body of people that would fall under a separate category. We don't suspect them of being terrorists, either known or suspected, but they simply are here in violation of our immigration laws. Would that be a fair characterization?

Mr. PARRISH. Yes, sir, and I think if you look at the screening process, we begin with the screening process outside our borders. That is the visa issuance. The next layer in that screening is at our borders as we screen those that are coming in. The center will then support those that are inside the United States, as you mentioned that may be here on an expired visa and are now trying to blend into society, and then again on the exit from our country as they return back.

As individuals' names come into the center, they will be bounced against these lists to see if, in fact, they are people of interest that need to be talked to. The State trooper on I–81 in New York, or you could say on Interstate 95 heading south, pulls over an individual and runs it back through their operations center that comes in and is bounced off the Terrorist Screening Center.

There may be information there that this trooper now is given a little more information to ask maybe a little bit more pointed questions that raises a little bit more suspicion that eventually leads to a little bit more probable cause to allow that trooper to

open up the trunk and pull out blueprints for the next terrorist attack. That is the essence of what we are trying to get to.

Senator CORNYN. I think that is an admirable goal and I certainly am pleased with the developments that have occurred that make that more likely. But just so we understand what we are talking about, that same trooper does not have access to a list of the, let's say, 8 to 10 million people who are illegally in this country now, because they wouldn't appear necessarily on a list of known or suspected terrorists. Is that correct?

Mr. PARRISH. That is correct.

Senator CORNYN. Just in conclusion, I would be interested to hear the comments of each of you on how we reconcile ourselves to our goals in terms of homeland security, which to me are knowing who is coming across our borders, their reason for being here, and that they actually leave when they say they are going to leave at the expiration of their lawful visa—how do we reconcile homeland security concerns with the fact that we probably have between 8 and 10 million people living illegally in this country, in violation of our immigration laws?

Mr. PARRISH. Again, sir, I would like to defer that to my colleague, Under Secretary Hutchinson, as he has that border transportation—

Senator CORNYN. Well, I will ask him that question when he comes next week, I guess.

Mr. Mefford, do you have any observations or reaction?

Mr. MEFFORD. Senator, I agree that is an immense challenge, and obviously we look forward to working with DHS and other agencies to do our part to make the country safer.

Senator CORNYN. Mr. Brennan, do you have any observations or comments?

Mr. BRENNAN. It is basically a homeland security, domestic law enforcement affair. My role in this is to make sure that we provide the best intelligence possible on the international terrorist threat as we know it, including those folks who may be here in the States.

Senator CORNYN. Well, Mr. Chairman, I hope, as we have discussed in previous hearings, we do finally come to grips with what I think is a big homeland security issue, and that is to be able to identify those people who are here with either expired visas or have come here illegally and figure a way to address that.

I don't see how we can truly call ourselves prepared from the standpoint of homeland security until we come to grips with the literally millions of people who are here who are not terrorists and who are not suspected of terrorism, but come here for other reasons. We simply need to identify who they are and their reason for being here.

Thank you very much.

Chairman CHAMBLISS. Along that same line, is there an active effort to identify those folks who maybe have some terrorist activity in their background whom we know came here legally, but are here illegally?

Mr. PARRISH. Again, Mr. Chairman, I would like to defer that to the border transportation security under secretary, as that falls into his area with the immigration and customs enforcement organization which falls under him.

Chairman CHAMBLISS. Mr. Mefford, in negotiating the MOU on the consolidated watch list with other agencies, what issues were discussed about how foreign intelligence will essentially be housed in an agency with domestic law enforcement responsibilities? Also, have consular officials been assured that they will have the same or better access to information in making visa determinations?

Mr. MEFFORD. Mr. Chairman, in regard to the second question, yes, we will ensure that we build into the system an assurance that Department of State personnel will have equal or better information than they have access to today to ensure that they can properly carry out their duties.

In reference to dealing with international intelligence information, the FBI is a law enforcement agency. We are also an intelligence agency. As a result of certain presidential orders and other statutory developments, we are a full partner in the U.S. intelligence community. We have a long history of dealing with foreign intelligence information both from a counterintelligence or espionage standpoint and from a counterterrorism standpoint.

We are merging our ability to conduct criminal investigations with our intelligence function in a way that we think enhances the protection of the country, but we have a significant history as an agency in dealing in foreign intelligence information and we believe that we bring those authorities to the center.

Chairman CHAMBLISS. Mr. Brennan, along with the MOU that creates the consolidated watch list, the State Department is giving up control of its TIPOFF database. Why is the consolidated database being placed at the FBI and the TIPOFF database at TTIC?

Mr. BRENNAN. The TIPOFF database, which consists of over 100,000 names or so, is going to be fully integrated into the TTIC identities database. In fact, the TIPOFF database is going to be the engine that we are going to drive initially as we create this database.

TIPOFF really has two parts to it. One is the database, the names themselves. The other is those elements that provide support to the embassies and consulates abroad as they make decisions and adjudicate visa issues. That portion which provides that support, in fact, is going to be migrating to the Terrorist Screening Center.

So what we will be inheriting within TTIC, working very closely with State, is the information itself, the database itself, those names and the people who are responsible for integrating and inputting that. The rest of TIPOFF that provides that support will be, in fact, fully integrated into the Terrorist Screening Center.

Chairman CHAMBLISS. Do you foresee any adverse effects, such as long waits for visas at our service centers?

Mr. BRENNAN. No, Senator. I would say that the State Department and TTIC and others are working very carefully to ensure that there is no degradation whatsoever of support to that process.

Chairman CHAMBLISS. Mr. Mefford, in April a GAO report on watch lists blamed parochialism and turf battles for information-sharing problems. A consolidated watch list is part of the solution because relevant information will be accessible to appropriate agencies and a structural change, but how will this master watch list solve problems that require a proprietary change?

For instance, foreign intelligence sources are reluctant to share classified information and domestic agencies resist revealing law enforcement-sensitive information. How will, for example, a consular official be sure he can access all categories of information?

Mr. MEFFORD. That is the crux of our major challenge, Senator. As Director Mueller is reorganizing and reengineering the FBI and we are in the process of fusing our law enforcement mission with our intelligence mission, those are the exact points that we are looking to improve.

We think that we have made dramatic enhancements and improvements since 9/11. We are sharing more information and better-quality information today with all agencies, including the private sector, than at any time in the history of the FBI. Clearly, it is a key goal of ours to ensure that we continue to improve in that area.

Chairman CHAMBLISS. Mr. Parrish, border agents need to access information quickly and effectively. How do you see the two DHS bureaus, Customs and Border Protection, and Immigration and Customs Enforcement, accessing the consolidated watch list as an improvement on their current immigration lookout system called IBIS?

Mr. PARRISH. Sir, the current system of the Treasury Enforcement Communications System bounces off, if you will, the databases of the NCIC, VGTOF, and TIPOFF. I think this will be an enhancement to make sure that we have immediate access to all of these databases. The TECS system made some adjustments right after 9/11 based on the FBI's adjustment to the NCIC by migrating VGTOF into the NCIC. The Treasury Enforcement Communications System picked up on that.

Just a quick success story, I guess, of how this can work and goes back to who do we put on this list was when the FBI called me 1 day with 150 names that were found in a safe house in Afghanistan. It was a training roster that came out of a terrorist training camp, 150 very generic names—Al Hindi, the Indian Mohammed, the Egyptian, Omar Shashani, the Chechan; no dates of birth, no passport numbers. But the ability in TECS is to put a footnote in there so that inspector on the line, when he accesses that name, sees the reference name associated with a terrorist training camp.

As you may recall, in July of 2002, on a Northwest flight from Tokyo to Detroit, the name came up of Omar Shashani. The TECS record showed the name associated with a terrorist training camp. Mr. Shashani was taken in a secondary by a very alert inspector who detected some deception and took him down to his luggage and searched him, as they have full authority to do, as you know, at the borders, and found $12 million in counterfeit checks. And there is more to the story.

The bottom line is as we make this system, we want to make sure that we don't lose that capability of what TECS has right now to put those footnotes in, to be able to put that information in to make sure that we don't miss an Omar Shashani or another individual because we don't have quite enough information.

So when we talk about who goes into this list, I push very hard every morning when I read the intelligence reports and read about a name, and the first question I ask is is it in the system. I don't

care if that name is coming out of a safe house or a cave in Afghanistan or uncovered in Iraq. If it is somebody who is associated with a terrorist nexus, we need to get it into the system because we are fighting a very decentralized enemy who is focused on coming into this country by hook or by crook by any means that they can, and we need to make sure that those names are placed in there. This center will give us that capability to make sure that we can identify these people.

Chairman CHAMBLISS. One aspect of this that we have talked about, and the purpose of the hearing was to talk about the information that goes into the system and the establishment of the watch list, who goes on it and why they are on it.

There is another aspect of this that creates a real significant problem for us and for you, in particular, and that is getting this information in the hands of the right people. I have been to the border in Mexico. Senator Cornyn has been to that same border. You go to any one of those crossings from end of that border to the other and there are thousands of people who are coming across every day.

So in addition to the challenge of establishing this list and getting the right information in there, you have another challenge of getting that information to that border patrol agent to make sure that the person who is coming across is the person he says he is, and that if he is a bad guy, we keep him out. That is a huge challenge to you. As we continue to be the freest, most open country in the world, the challenge is going to do nothing but get bigger.

Gentlemen, we have come a long way since September 11th, and I want to commend each of you for the job you are doing and I want to thank you for coming here today to share this information on the watch list. But at the same time, the challenge to you is going to be even greater, and in spite of everything you do, we are still going to have vulnerabilities.

But I hope you will express to everyone underneath you that the support in Congress is strong with respect to the challenge that you have undertaken and the work that you are doing. We hope we are providing you with the resources necessary to continue to do this job. You guys are really three of the more important people in the country right now when it comes to keeping bad guys out, and I would like to make sure that this Subcommittee maintains a strong dialogue with you and that we get you back up here from time to time to give us an update on what you are doing, how you are doing it, and how effective you think you are in doing that.

Senator Cornyn, do you have anything else?

Senator CORNYN. I just want to say thanks, Mr. Chairman, for convening this hearing today, and thanks to each of you gentlemen for your service to this country. I guess the best evidence of your success and the success of our Government in keeping us safe is the fact that we haven't had a repeat of 9/11. Let's knock on wood, but it is tough to get credit when the best evidence of your success is nothing happens.

So I think the American people perhaps don't appreciate it. They would if they knew more about what you are doing, but the American people need to know more about the efforts that are being undertaken by so many people like you on behalf of them and keeping

America that free and safe society where we can enjoy liberties other people only dream about. So we want to be supportive of your efforts. We are empathetic of the challenges you have.

Mr. Chairman, I was at a confirmation hearing for the newly designated head of the Environmental Protection Agency, and I think he has an awfully tough job. Someone was saying why in the world would you want that job? But I know these gentlemen have vigorously embraced the responsibilities they have and we want to work with them toward the end of keeping those terrorists at bay and winning that war.

Thank you.

Chairman CHAMBLISS. Gentlemen, I will tell you that we are leaving the record open for a period of 7 days. There may be some written questions to be submitted to you by Senators who could not be here.

So with that, this hearing will be adjourned.

[Whereupon, at 3:49 p.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 22, 2004

The Honorable Saxby Chambliss
Subcommittee on Immigration, Border Security
and Citizenship
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed are responses to questions posed to Mr. Larry A. Mefford, Executive Assistant Director of the Federal Bureau of Investigation, following Mr. Mefford's appearance before the Subcommittee on September 23, 2003. The subject of the hearing was "Information Sharing and Watchlisting: Changes Needed to Protect Our Borders."

We hope that this information is helpful to you. Please do not hesitate to call upon us if we may be of additional assistance in connection with this or any other matter.

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Edward M. Kennedy
Ranking Minority Member

Responses of the Federal Bureau of Investigation Based Upon September 23, 2003 Testimony of Executive Assistant Director Larry A. Mefford Before the Senate Committee on the Judiciary Subcommittee on Immigration, Border Security and Citizenship

Questions Posed by Senator Sessions

Questions about the Terrorist Threat Integration Center (TTIC) and the Terrorist Screening Center (TSC) and on the formation of the consolidated watchlist.

1. The Terrorist Threat Integration Center (TTIC) was established by Presidential directive in January, became operational on May 1, 2003 and is housed at the CIA. The Terrorist Screening Center (TSC) was established just this month and will be housed at the FBI.

In last week's DOJ press release, Secretary Ridge stated that the Terrorist Threat Integration Center (TTIC) was "created to ensure that all members of the federal government's intelligence community have access to the same information" and that the new Terrorist Screening Center (TSC) is "to make sure we get the information out to our agents on the borders and to all those who can put it to use on the front lines." The distinction between the two centers and need for two separate centers is unclear.

Please explain the functional differences and the relationship between TTIC and TSC - I want to clarify why we still need two separate terrorist information centers.

Response:

The Terrorist Screening Center (TSC) is an operational screening support center that will maintain a comprehensive database containing sensitive but unclassified domestic and international terrorist identifying information. The Terrorist Threat Integration Center (TTIC), on the other hand, is an analytical, international terrorism fusion center that will continue to maintain a classified, all-source database containing identifying and derogatory international terrorist information. The TTIC will continue to perform its analytical function and submit nominations to be included in the TSC's consolidated Terrorist Screening Database (TSDB). The TSC will review these nominations for inclusion in its database, and provide access to an unclassified subset of this international terrorism information to its customers, such as the Department of Homeland Security (DHS), the Department of State (DOS), and state and local law enforcement, for use in their terrorist screening processes.

2. Why was the FBI chosen as the repository for the newly created Terrorist Screening Center and the CIA chosen as the homebase for TTIC? Wouldn't it make sense to have TTIC, which will feed information to the TSC, housed in the same agency as the TSC?

Response:

The TTIC is a multi-agency entity charged with fusing all intelligence related to international terrorism, and is not specifically aligned with any one entity within the federal government. The TTIC is temporarily housed at CIA Headquarters until May 1, 2004, when it will move to a new location in Northern Virginia.

The TSC's mission is to support the identification and apprehension of known or suspected terrorists. Therefore, its function is inherently related to law enforcement. As the lead federal law enforcement agency for counterterrorism, and due to its technical experience in watchlist integration, the FBI has been chosen to administer the TSC's initial operations.

Due to the two entities' unique missions, it is not necessary or operationally beneficial to house the TTIC under the same agency as the TSC. As stated above, the TTIC's mission is to analyze and integrate intelligence, while the TSC's is to consolidate terrorist screening information so federal, state, and local law enforcement agencies are working from the same unified set of anti-terrorist information in order to protect the United States from terrorist attacks.

3. Is it anticipated [that] the Department of Homeland Security will eventually takeover responsibility for TTIC or the TSC?

Response:

The Memorandum of Understanding (MOU) that outlines the responsibilities of the TSC states: "The Parties [the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of Central Intelligence] shall review [the] Memorandum not later than one year from its effective date." However, the MOU does not discuss the possibility of the Department of Homeland Security taking over responsibility for the TSC. This issue, however, may be reviewed in the future.

4. When do you expect to have the Terrorist Screening Center (TSC) operational? I have heard that December 1, 2003 is the target date.

Response:

The TSC achieved Initial Operating Capability (IOC) on December 1, 2003.

5. To be included on the one consolidated watchlist it is my understanding that each agency that currently has a watchlist will "nominate" individual names to be included.

How will the determination of which names to include be made? Will the TSC or TTIC be responsible for the determination to include a name?

Response:

Any federal agency can nominate an individual for terrorist watchlisting. Nominations for inclusion of international terrorists will go to TTIC, which will determine whether to forward the nomination request to the TSC. Nominations for purely domestic terrorists will go to the FBI, which will determine whether to forward the nomination request to the TSC. The records that are nominated by the TTIC and the FBI will be adjudicated by the TSC to determine whether they are appropriate for inclusion in the TSDB.

6. If an agency "nominates" an individual for inclusion into the consolidated watchlist and the individual is not included, what happens to that information, it is done away with or does it remain on the agency's individual watchlist?

When the agency obtains additional information on the "nominated" individual that would help to meet the criteria the TSC sets, will the agency have to "renominate" the individual for inclusion on the consolidated watchlist?

Response:

If an individual is nominated for inclusion on a terrorism watchlist, and TSC makes an initial determination that the individual should not be placed on the terrorism watchlist, a record of the basis for that rejection will be sent back to the nominating agency through TTIC or FBI, as appropriate. TSC procedures currently under development will include a TSC advisory board, comprised of representatives from various agencies, which will review initial determinations to decline nominations for inclusion in the TSDB. TTIC or the FBI will work in coordination with the nominating agency to determine whether there is a deficiency that can and should be rectified so that the individual can be renominated, and will submit any renomination. Although individual agencies may maintain their own terrorism watchlists initially during transition to the TSDB, eventually the TSDB will be the only terrorism-related database in the Federal government. This will ensure the appropriate centralization of terrorism-related information and will enable the Federal government to address the complaints by those who believe they have been wrongly placed on this watchlist. Inclusion on, or deletion from, the TSDB list will be coordinated among the relevant agencies but, if inclusion is determined to be inappropriate, the name will be deleted from all agencies' terrorism watchlists. Individual agencies may continue to maintain non-terrorism watchlists, as appropriate.

7. What will happen to all of the separate individual watchlists that are currently maintained by different federal agencies when the TSC stands up on that date? Will they continue to be maintained by their parent agencies or will each list cease to exist?

Response:

The TSC will maintain the TSDB as the master terrorism watchlist. During the early months of TSC's operation, TSC will provide this list for use with the Transportation Security Administration's No-Fly list, the State Department's Consular Lookout and Support System (CLASS), and the Department of Homeland Security's Interagency Border Inspection System. These separate databases will cease to be used for terrorism purposes as the TSC becomes fully operational. The agencies participating in the TSC may continue to maintain their databases as a part of their investigative procedures, as the primary tool for nominating individuals to the TTIC and the FBI for potential inclusion in the TSDB, and for other purposes. As indicated above, however, eventually the TSDB will be the only terrorism-related database in the Federal government.

8. What is the plan for each agency to have access to the newly consolidated watchlist? Will all agencies have access to all consolidated information or will information be kept in pockets, with each agency only able to access the pocket of information they have permission to access?

Response:

Any Federal, state, or local agency with a legitimate need to screen terrorists will have access to the TSDB, which is maintained at the sensitive but unclassified level. The TSDB will be accessible via a standard National Crime Information Center (NCIC) query to all Federal, state, and local law enforcement officers and to all inspectors and border patrol agents. Plans are being developed for the provision of access to other users.

Questions on the State Department's terrorist watchlist, TIPOFF, being moved to the Terrorist Threat Integration Center (TTIC) at the CIA and the relationship the State Department will now have to the Terrorist Screening Center (TSC).

1. As I understand it, TIPOFF is the classified State Department terrorist database. The classified version of TIPOFF is scrubbed down and fed into CLASS, the database used at the consular officer posts and NAILS, the database used at the border and by customs agents.

After TIPOFF is consolidated into a single watchlist by the Terrorist Threat Integration Center, will TIPOFF continue to exist? What will the State Department use in

making its visa determinations at consular posts? Will they continue to rely on TIPOFF or will they rely on information found in the new consolidated watchlist?

Response:

As of November 17, 2003, operational control of the TIPOFF database has moved to TTIC and TTIC has assumed responsibility for the production side of TIPOFF. TIPOFF customer support functions will go to TSC. The TIPOFF database will be used by TTIC to house international terrorist information until TIPOFF's successor is developed. The State Department will continue to be serviced in the same way as it is today except that the TSC database will feed the CLASS database. State Department personnel in consular posts will interact with State Department officials at the TSC. State Department personnel assigned to the TSC will continue to have access to the classified TTIC database.

2. If TIPOFF will be dissolved and the State Department will now rely on the information found in the consolidated watchlist to make visa determinations, what will happen to the names and information that are currently in TIPOFF but do not meet the criteria needed to be entered into the consolidated list?

Will they be kept by the State Department or will they be done away with?

Response:

The Department of State's TIPOFF database will not be dissolved. Rather, it has been moved to TTIC for integration with the TTIC Terrorist Identities Database (TID). The TSC database will contain a subset of information contained in the TTIC (TIPOFF/TID) database. While the State Department will go through the TSC, initially it will continue to rely on the same database it uses today. The only difference will be that the TTIC database will contain more information than the TIPOFF database currently contains. No terrorist related information will be done away with.

Questions on the plan for sharing information in both TTIC and TSC with state and local law enforcement.

1. Page 19 of the April 2003 GAO [report] [en]titled "Information Technology: Terrorist Watchlists Should be Consolidated to Promote Better Integration and Sharing" has a chart that shows to what extent information from the 12 previously separate terrorist watchlists was shared with state and local agencies. See attached. Many agencies had no mechanism for sharing information with state and local police.

I firmly believe that State troopers and local police officers are well situated to be America's front line against terrorism and that arming them with the information currently on the separate terrorist watchlists is absolutely imperative if we are to effectively combat terrorists where they hide.

To effectively get information to state and local police, we must make it available through the tools they are currently familiar with and know to be effective. The most important tool they use is the NCIC. It needs to be a place for one stop shopping, shopping that includes terrorist activity.

Can you tell me the plan for sharing information in the new consolidated watchlist with state and local police?

Response:

The NCIC will continue to be the communications channel for providing terrorist watchlist data to state and local law enforcement. The appropriate list of terrorist identities information generated by the TSC will be placed in the TSDB, which will be made available through NCIC. This will result in state and local law enforcement having access to relevant terrorist information. When an officer queries NCIC, he/she also will be automatically checking the consolidated TSDB to determine if the individual under law enforcement scrutiny is a potential terrorist. If the officer receives a positive identification prompt, he/she will be instructed to contact the TSC's 24/7 operations center for identification assistance.

2. If the plan is to enter all of the information in the new watchlist into VGTOF (Violent Gang and Terrorist Offender File), the terrorist subfile of the NCIC, what will be the process when a state or local policeman gets a hit from an entry into VGTOF. Will it be the same process they now use or will they [h]ave access to the Terrorist Screening Center that will help them make the determination of what action to take after the hit?

Response:

As previously stated, the query into NCIC will be identical for the state or local officer once the TSDB is in place. Under the new screening procedures, if the query of NCIC produces a "hit" on a known or suspected terrorist, the officer will see a handling code indicating a suggested course of action. Also, officers will be directed to contact the TSC for assistance with identification.

3. We know that several agencies that have current terrorist watchlists are either reluctant to share information with state and local police or are legally prevented from sharing information with state and local police. Will state and local police be allowed to view all

information contained in the newly consolidated watchlist or will they continue to be limited in the information they receive?

Response:

The TSC's consolidated TSDB will be maintained at a sensitive but unclassified level, allowing it to be fully accessed by state and local law enforcement officials. The derogatory information on the known and suspected terrorists who appear in the TSC's consolidated database will, however, be contained in classified databases maintained at the TTIC and the FBI. This derogatory information is not made available to state and local law enforcement, as most of these personnel do not have the proper security clearances to view this type of information.

4. Is there a plan for sharing information in the newly consolidated terrorist watchlist with private entities?

Response:

Once the TSC has reached Full Operating Capability, private entities will be able to enlist the TSC's services. Although the details have not been determined, it is expected that a phased-in approach will be used to include these private sector screening opportunities in the overall TSC process.

Questions Posed by Senator Schumer

1. The new Terrorist Screening Center will administer a consolidated watch list. Please provide a detailed timeline for establishing and implementing the Terrorist Screening Center and the consolidated watch list. Please explain the process for consolidating the information from each of the existing 12 watchlists into this new consolidated list.

Response:

The TSC reached IOC on December 1, 2003, and is in the process of developing a detailed schedule for rolling out future enhancements.

The TTIC is working to integrate information regarding international terrorists in its Terrorist Identities Database with the Department of State's TIPOFF database. This information will be added to the FBI's information about domestic terrorists in the TSC's consolidated TSDB.

By mid-2004, the TSC will develop an enhanced database to serve as the primary consolidated TSDB. TTIC will continue to nominate international terrorists to the TSC, while purely domestic terrorism information will be submitted by the FBI.

The 12 "lists" referred to by the General Accounting Office are actually a combination of lists, databases, and systems. The initiation of the TSC will join the international and domestic terrorist names into one facility for assistance in identifying those individuals.

2. How much will the development of the TSC and the consolidated watch list cost? Have these costs been factored into the FBI's larger information technology upgrade?

Response:

The total development costs for the TSC and its consolidated TSDB are currently under review, pending the determination of final operational requirements. The FBI looks forward to working with Congress and the Administration to identify any funding required to support this initiative.

As the TSC is a multi-agency initiative that will incorporate information technology and funding from numerous agencies, the TSC's information technology costs have not been factored into the FBI's overall technology upgrade program.

3. When will FBI staff be trained to use and operate the resources of the Terrorist Screening Center including the consolidated watch list?

Response:

TSC personnel who staff the call center and conduct nomination reviews (including but not limited to FBI assignees) received training before IOC on December 1, 2003.

4. As you know, the FBI has spent much of the past two years attempting to bring its computer system up to date. Just this spring, phase two of the "trilogy" computer and network upgrade program was finally implemented after several delays and some 138 million dollars over its budget. The final phase, the implementation of the Virtual Case File system, will be started in December and completed by next June. How will the TSC use the information found in the Virtual Case File System? Will the operation or effectiveness of the TSC be dependent upon the Virtual Case File system being fully operational?

Response:

The TSC's operational effectiveness will not be dependent on the Virtual Case File (VCF) system being fully operational. Prior to implementation of the VCF, the FBI and

TSC will use the current FBI information technology infrastructure to nominate, review, and identify suspected domestic terrorists for possible inclusion in the TSDB.

5. Please describe how the FBI administered database will work with that developed by the TTIC? Will both entities maintain databases of known terrorists? If so, will the TTIC list and the TSC list contain the same information? How will the lists be updated and maintained to ensure they are fully complete in real time?

Response:

The TSC's consolidated TSDB will contain unclassified domestic and international terrorist identifying information provided by the FBI and TTIC. Both the FBI and TTIC will continue to maintain their separate databases, which contain domestic and international terrorism supporting information, respectively. The TSDB will have only name, date of birth, passport number, and country code, while the FBI and TTIC will maintain all the supporting information (identifying and derogatory) on the subject. The TSDB (sensitive, but unclassified) will be available to all law enforcement officers through NCIC. The FBI's supporting documentation is maintained at the Secret level and is available to FBI agents/analysts and TSC personnel. Data maintained at the TTIC is Top Secret and only available to appropriately cleared individuals, including TSC personnel. Other than classification level, the primary distinction between the TSC's TSDB and the TTIC and FBI systems is the amount of information maintained.

The TSC will have procedures in place to ensure that its database is updated and maintained as efficiently and quickly as possible. The TSC will take electronic feeds from both nominating agencies, TTIC and FBI, over encrypted computer networks. The same networks will be used to report TSC actions back to these agencies (i.e., acceptance or rejection of a nomination for inclusion into the TSDB).

To the maximum extent possible, the TSC intends to use automated guard systems to allow near instantaneous transfer of pre-approved types of information to pass between the separate computer networks. These guard systems will help ensure the near real time update of information in the TSDB. During TSC's initial stand up, extracts of the TIPOFF database will be disseminated to customer organizations to be used in their screening systems, including the Department of State's CLASS database and the Department of Homeland Security's Interagency Border Inspection System. These extracts will be disseminated as soon as updates are made to the TSDB and can be accepted by the customer screening system. In the future, TSC plans to create electronic query services by which customers can query the TSDB directly to get instant access to the latest information.

6. Has the F.B.I. taken steps to develop an enterprise architecture to ensure that all of its information technology components, including the watch list administered by the Terrorist Screening Center, will be fully integrated? What lessons has the F.B.I. learned from the

process of the Trilogy upgrade that will assist in the implementation of the new TSC's consolidated watch list? How will you use the experience of the Trilogy upgrade to ensure that the TSC's watch list are fully integrated with the FBI's computer systems at the outset?

Response:

The FBI is taking steps to develop an integrated approach to its information technology architecture. During initial startup of the TSC, the consolidated database will be the NCIC system. A final determination of the architecture for the TSDB will be made when all of the requirements are complete and have been evaluated.

The process of upgrading the FBI's technology infrastructure through the Trilogy program has provided a wealth of lessons learned that have been applied to the establishment of the TSC, such as the needs for early user involvement and comprehensive training.

Senator Edward M. Kennedy
Questions for the Immigration Subcommittee Hearing on "Information-sharing and Coordination for Visa Issuance: Our first line of defense."
Sept. 23, 2003

Question for All the Witnesses:

- **John Brennan**, Director
  Terrorist Threat Integration Center (TTIC), CIA
- **Larry Mefford**
  Executive Assistant Director
  Counter-Terrorism & Counter- intelligence, FBI
- **Bill Parrish**
  Assistant Secretary of Information Analysis & Infrastructure Protection, DHS

I. False Hits:

Since the implementation of the "No Fly List" by the Transportation Safety Authority (TSA), there have been numerous "false hits" where innocent persons are wrongly labeled as suspected terrorists. In one case, an individual whose name matched a suspected terrorist on the "No Fly List" has been repeatedly stopped, questioned, denied boarding, or delayed from boarding his flight each time he traveled for work twice a week. He has tried repeatedly to get his name off the "No Fly List" with the assistance of several members of Congress, has spoken with DHS and TSA officials, yet no one has been able assist him.

Question: With the consolidation of the watch lists at the Terrorist Screening Center, how will you be able to guard against "false hits," duplicate or even incorrect names? How will TSC be updated as to ensure that the information contained in it is as current as each of the individual watch lists? Do you or will you have an appeal procedure in place if someone is incorrectly listed on a watch list?

II. Purpose of Terrorist Screening Center

I understand that the new Terrorist Screening Center will consolidate all existing terrorist watch lists currently being used by the U.S. government into a single function to provide accurate information to terrorist screeners around the country on a real-time basis. The Border Security Bill enacted last year requires the development of an electronic interoperable data system that accomplishes the same goal.

Question: Was the Terrorist Screening Center developed to meet the requirements of the Border Security bill or does the center is the purpose of the center?

III. Filtering of Information:

I imagine that the Terrorist Screening Center could contain information that is highly sensitive. Persons accessing the TSC may have different clearance levels.

> **Question:** How will information be filtered as to give agents with different clearance levels access to necessary information, but without giving them unfettered access to all sensitive information?

> **Question:** I understand that the FBI's Violent Gangs and Terrorist Organization File combines intelligence of suspected terrorism with that of other criminals. The file will soon be managed by the TSC. Will the consolidation only include information on suspected terrorists or will it include general information on some that is of interest to the FBI?

IV. Obtaining Information for Watch Lists:

I understand that at one point, the Department of Justice paid millions to a private company for database information on foreign citizens. The information was then entered into various watch lists and other databases. Information privately compiled for commercial databases are notoriously filled with inaccuracies.

Question: Have you used or are continuing to use commercial databases for information on foreign citizens? What safeguards are in place that let you know that the information you are receiving is accurate information? How do you correct misinformation that is provided to you through a commercial database?

V. Coordination of the TSC:

I understand that although the FBI will administer the Terrorist Screening Center, it will be a multi-agency effort. Representatives from the Department of State, Department of Homeland Security, Department of Justice, and the Intelligence community and other federal agencies and sub-agencies will be assign representatives to the TSC.

Question: How will all the various representatives from the different agencies develop cohesive objectives and then work together to fulfill those objectives in light the individual agencies' unique missions, including their respective legal, cultural, and systems environments?

SUBMISSIONS FOR THE RECORD

September 23, 2003

Statement for the Record of
John O. Brennan
Director, Terrorist Threat Integration Center

on

The Terrorist Threat Integration Center and its role in Sharing Information and Supporting the Department of State's Visa Issuance Program

Good afternoon Mr. Chairman and Members of the Subcommittee on Immigration and Border Security.

I appreciate the opportunity to join my colleagues from the Department of State, Department of Homeland Security (DHS) and the Federal Bureau of Investigation (FBI) to discuss information sharing and support to the Department of State's Visa Issuance Program. I'll address the critical role TTIC plays in sharing information related to terrorist activities across the Government and the specific role we have in supporting the Department of State.

As the Members of the Subcommittee well know, a key ingredient of the U.S. Government's counterterrorism strategy is to ensure that the many government agencies and departments involved in the war on terrorism work closely together and share threat information and analysis that could be used to prevent terrorist attacks. The May 1, 2003 establishment of the Terrorist Threat Integration Center is supporting this objective. Charged with the integration of terrorist threat-related information and analysis, TTIC is a multi-agency joint venture that integrates and analyzes terrorist threat-related information collected domestically or abroad and disseminates information and analysis to appropriate recipients.

To execute this extraordinarily complex mission, TTIC has both broad authorities and responsibilities in the realm of information sharing. The Homeland Security Act of 2002, of course, has very specific statutory provisions requiring that the entire government support the Department of Homeland Security with "timely and efficient" access to all information necessary to discharge DHS' responsibilities. Two other key documents are also directly relevant to TTIC. In March 2003, the Attorney General, Secretary of Homeland Security, and the Director of Central Intelligence signed the Homeland Security Information Sharing Memorandum of Understanding (MOU), which binds all members of the Intelligence Community, as well as all U.S. law enforcement entities. Among other things, the MOU directs that a broad interpretation of mission and need-to-know be applied, that the use of originator controls be minimized, that maximum effort be made to reduce classification levels through the use of tear lines and that modern, compatible information technology (IT) systems be utilized to speed the pace of dissemination. In May 2003, Director of Central Intelligence Directive (DCID) 2/4 mandated that TTIC assignees with a need-to-know "have unfettered access to terrorist threat-related information, collected domestically or abroad." And having utilized that access to integrate all appropriate information related to the terrorist threat, the DCID also directs that a structure be created to "institutionalize sharing across appropriate federal agency lines." While these documents provide a broad mandate to share information, it is of critical importance to note – as

directed by the President and specified in the DCID – that "TTIC assignees will continue to be bound by all applicable statutes and Executive Orders, including those relating to the protection of Constitutional rights and privacy."

In order to implement this broad mandate for information sharing, TTIC has undertaken a number of initiatives:

- We have partnered with other organizations to form a joint program office to implement a systematic approach to inter-agency information sharing. The task at hand is to ensure that all obligations are met, as enumerated by the President's announced policies, the Homeland Security Act of 2002, and the Information Sharing MOU. Whether it's establishing standards for tear lines, reaching out to non-Intelligence Community organizations, or overhauling reporting standards; TTIC member agencies are facilitating efforts within the Intelligence Community – in concert with law enforcement activities – to ensure that all appropriate departments and agencies receive the information necessary to execute their missions.

- In order to effect rapid information sharing with a wide array of partners and customers, we have established a TTIC Online website which hosts TTIC analysis and links to other counterterrorism reports. While TTIC Online contains some of our most sensitive intelligence and therefore must have controlled access, it already reaches analysts at all the major departments and agencies having a role in the war against terrorism. Over the coming months we will be replicating TTIC Online on less sensitive networks in order to provide terrorism information and analysis at a lower level of classification to a much broader community of analysts and consumers. This initiative will ultimately extend to a "sensitive but unclassified" (SBU) version that will allow FBI and DHS to make SBU material available to state and local government, law enforcement, and the private sector.

These initiatives have broad applicability to all elements of the Government – including the State Department – involved in the war against terrorism. But let me now address more specifically the role TTIC plays in supporting the State Department's VISA issuance program.

The President has directed, and DCID 2/4 specifies that TTIC "maintain an up to date database of known and suspected terrorists accessible to appropriate government officials." TTIC, working with other appropriate government departments and agencies, has been developing just such a terrorist identities database that will incorporate all information concerning such individuals' association with international terrorism. Our FBI partners, in turn, will continue to manage information that has been determined to be purely domestic terrorism, with both sources of information available to the new Terrorist Screening Center (TSC), discussed in more detail below. We have been working closely with the Department of State and others over the last several months to ensure that this database is entirely compatible with the demands of the newly announced Terrorist Screening Center.

Homeland Security Presidential Directive (HSPD) 6, and the associated Memorandum of Understanding signed by Secretaries Powell and Ridge, Director Tenet, and Attorney General Ashcroft, have substantially improved the terrorist watchlisting process. Under this initiative, TTIC is given specific responsibilities which impact on information sharing with the Department of State relating to the visa issuance and revocation process.

HSPD 6 and the associated MOU clearly define TTIC's role, as well as its interaction with the Department of State. Section 28 of the MOU states that "the Director of the TTIC will promptly assume responsibility for the functions and personnel of the Department of State's TIPOFF counterterrorist program, less those components devoted to providing operational support to TIPOFF users and will ensure that all terrorist identity information contained within the TIPOFF database is fully integrated into the TTIC database."

As defined in the HSPD and associated MOU, the production component of TIPOFF will become part of TTIC, in which State, of course, is a full partner, and the dissemination/ operational support function will become part of the Terrorist Screening Center. TTIC will become the sole provider of international terrorist identities information to the Terrorist Screening Center. Section (4)(a) of the MOU mandates that the TSC will: "(a) maintain a consolidated terrorist screening database that is a continuously updated, sensitive but unclassified subset of the Terrorist Information possessed by the TTIC, and the Purely Domestic Terrorism Information . . . possessed by the FBI." This formulation will ensure that the Terrorist Screening Center has access to all relevant information to perform its watchlist function.

TTIC will provide the TSC with nominations for terrorist watchlisting. Members of the Terrorist Screening Center, in turn, will then perform two key functions: First, it will adjudicate those nominations to determine whether they are appropriate for entry into the Terrorist Screening Center's database, as well as determine the screening processes which will include each accepted individual. Second, it will provide operational support for the agencies that access this database.

Specifically addressing the Department of State's visa issuance and revocation processes, TTIC will provide terrorist identities information to the Terrorist Screening Center. Department of State representatives (the component of the TIPOFF Program that has been assigned to support the Bureau of Consular Affairs) will be assigned to the Terrorist Screening Center to provide the full level of support to Consular Affairs. At the Terrorist Screening Center, assignees will continue the existing support relationship, providing Consular Affairs needed input for the proper determination as to whether visas should be issued, or revoked.

In sum, Mr. Chairman, I believe that TTIC has already made significant strides in improving the sharing of critical terrorist threat-related information across the U.S. Government. There is no question that we have a myriad of technical and security challenges with which to deal. But we have a broad mandate, have established a program office that is identifying and dealing with such issues, and have fielded an IT architecture that is already disseminating terrorist threat-related information across the Government. And with regard to sharing information with the State Department, we are well along toward developing a terrorist identities database that will be merged with TIPOFF, and fully support the Terrorist Screening Center and State's VISA Application process.

Statement of
The Honorable Saxby Chambliss
United States Senator
Georgia

September 23, 2003

PRINTABLE VERSION

Statement for Chairman Saxby Chambliss
Immigration and Border Security Subcommittee Hearing
Information-Sharing and Watchlisting: Changes Needed to Protect Our Borders
September 23, 2003

Last July, this Subcommittee held a hearing titled, Visa Issuance, Information-Sharing and Enforcement, that focused on an absence of information flow among federal agencies concerning visa revocations. In the post-9-11 world, we need to scrutinize every step of the process for those coming to the United States: from background checks to visa issuance, border protection to immigration enforcement. Today, we will look at the initial, often unseen, step of watchlisting in order to ensure that the right information gets into the hands of those who keep potential terrorists and other criminals out of our country.

One problem we saw after September 11th was the lack of information-sharing. A frustrating example of this failure to communicate was the State Department issuing visas to two of the dead hijackers six months after the attack. To address this, we've got to provide our folks on the front lines with more and better information, to connect the dots by sharing intelligence among various agencies, and to get the information out from overseas to the federal level and down to the state and local level.

We've made progress as a nation in making America a safer place, although we still have a ways-to-go. We created the Department of Homeland Security, separated and clarified the missions of immigration services and border protection, and unified federal agency efforts to protect Americans in a comprehensive and coordinated approach. An example of improvements is in the intelligence community with new strategies to gather and share critical information in an effective manner.

Last week, the Administration announced the creation of a consolidated watchlist. Situated at the FBI, a new Terrorist Screening Center will merge the dozen different watchlists from nine federal agencies into a single source that is accessible to consular officers, border protection officials, and law enforcement.

Homeland Security Secretary Tom Ridge announced this Center will "get information to our agents on the borders and all those who can put it to use on the front lines, and get it there fast." I have long supported a common watchlist, but the key is to have a database that is accessible, up-to-date, and substantial.

Along with a consolidated list, the State Department's TIPOFF database will be transferred to the multi-agency intelligence body, the Terrorist Threat Integration Center, or "T-TIC," which was created earlier this year. TIPOFF, which contains classified intelligence gathered largely from foreign sources, will become a main component of the consolidated watchlist. But questions need to answered: Why is the master watchlist at FBI rather than Homeland Security? Why is TIPOFF being moved to T-TIC rather than to where the master watchlist will reside? How effective will the new Department of Homeland Security be if T-TIC and the FBI control watchlists that are essential to visa issuance and border protection?

Information-sharing and coordination among immigration-related agencies is essential to our homeland security, and we must get it right. We recognize the importance of watchlists in the effort to keep out of the country certain persons who threaten the United States. We are pleased to have testifying before us those who are integral in the new strategy for information-sharing and watchlisting:
• John Brennan, Director of the Terrorist Threat Integration Center
• Larry Mefford, Executive Assistant Director for Counter-terrorism and Counter-intelligence at the FBI; and
• Bill Parrish, Assistant Secretary for Information Analysis at the Department of Homeland Security.

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PRINTER FRIENDLY VERSION

Statement of Senator Edward M. Kennedy
Immigration Subcommittee Hearing on "Information-sharing and Coordination for Visa Issuance: Our first line of defense."
Sept. 23, 2003

I commend the Chair for calling this important hearing on information-sharing and agency coordination in the war against terrorism.

Strengthening the ability to share watch list and terrorist information among the relevant agencies is a critical part of the ongoing effort to prevent future attacks on our nation. State Department consular officials and Department of Homeland Security inspectors are on the front lines on this effort and they have a heavy responsibility. They must prevent the entry of any person who may be a terrorist threat, and they must do so with as little interference as possible with persons who seek to enter the United States for legitimate purposes. Their mission is even more difficult when watch list databases are not available to them in real time.

Our goal in dealing with the terrorist threats is not to isolate our nation, but to isolate the terrorists and apprehend them. America is still a beacon of freedom, democracy and hope for peoples throughout the world. Millions of persons enter the United States legitimately each year on business, as students or tourists, or to seek safe haven. Billions of dollars are spent each year by foreign nationals visiting our country and contribute significantly to our economy.

Congress has done much to respond to the vicious attacks of September 11th. We have authorized the use of force against terrorists and those who harbor them in other lands. We have enacted legislation to strengthen airport security, improve the security of our borders, and give law enforcement and intelligence officials greater powers to investigate and prevent terrorism. Early on, I was concerned that some of changes sought by the Administration in the PATRIOT Act did not strike the right balance between law enforcement and civil liberties. We made significant

improvements to the bill during Senate negotiations, and a sunset provision was added so that Congress could monitor the implementation of these new powers. Two years later, many of us are still concerned that some of these powers may be abused by the Administration. But all of us can agree that the government's anti-terrorism efforts will not succeed unless government agencies are able to work well together.

The Department of Homeland Security and the State Department are the nation's gatekeepers. To improve their coordination in fulfilling this joint mission, the Border Security Act, enacted in May 2002, directed the President to develop a plan to improve inter-agency access to security information in real time. The law created an electronic data system, so that officials who evaluate visa applicants or screen persons entering the United States have access to the best information on security and law enforcement.

The newly created Terrorist Screening Center announced last week is intended to fulfill this goal. The

Center will consolidate terrorist watch lists and compile the most accurate, up-to-date information about potential terrorists, so that federal agents and consular officials will be able to access this information effectively and in real time. We have not yet received a detailed briefing on the implementation of the plan for the Center, and today's witnesses have not provided timely advance copies of their testimony so that we could prepare adequately to question them. We will be listening carefully to hear what the plans are for avoiding racial profiling, protecting privacy, and offering opportunities to correct misinformation in the databases, among other concerns. And we will follow up with detailed written questions on these and other matters raised by today's testimony.

But, I look forward to hearing from our witnesses today about the new Center and other steps to guarantee greater information-sharing and coordination by the front-line agencies.

Testimony of Larry A. Mefford,
Executive Assistant Director,
Counterterrorism/Counterintelligence Division,
Federal Bureau of Investigation,
before the
Senate Judiciary Committee,
Subcommittee on Immigration and Border Security
September 23, 2003

Mr. Chairman and members of the Committee, thank you for inviting me here today to testify regarding information sharing and the ongoing cooperation between the FBI and the State Department as it relates to accessing and using information from the FBI to make visa determinations a part of our antiterrorism and border protection efforts.

Improvements with information sharing and watch lists

The collection of information/intelligence has always been a core function of the FBI's investigative mission, however the sharing of information was case oriented rather than an enterprise-wide activity. With the advent of new legislation, revised Attorney General Guidelines, and certain court decisions, new opportunities have given rise to strengthen and expand the FBI's intelligence capabilities, which in turn allow the FBI to share this data with our intelligence and law enforcement partners. Prior to the enactment of the USA PATRIOT Act, statutory restrictions limited the type of information the FBI was allowed to share with our Intelligence Community partners. Today, however, the FBI can clearly share much more information than ever before, which has resulted in several information initiatives. The mere collection and sharing of vast amounts of information, without any thought as to the usefulness of the information, is counterproductive as it wastes collection resources and clouds the picture for the end user.

Today there are 84 FBI Joint Terrorism Task Forces (JTTF) spread throughout the United States, with coverage in each one of your districts. The JTTFs are made up of over 25 different Federal agencies and hundreds of state and local law enforcement agencies. Every JTTF Officer, Agent, and Analyst has a Top Secret clearance which allows those members unfiltered access to all of the FBI's information. In addition to the local JTTFs spread across the country, the National Joint Terrorism Task Force is located in the Strategic Information and Operations Center at FBI Headquarters, where 35 different Federal agencies, including the Department of State, with access to their respective databases, are represented. To further facilitate information sharing, the FBI has personnel stationed at the State Department, and the State Department has assigned personnel to the FBI's Counterterrorism Division.

Since September 11, 2001, Director Mueller has directed field offices of the FBI to place the subjects

of open terrorism related investigations into the FBI's Terrorism Watch List which is housed within the National Criminal Information Center (NCIC), in the Violent Gangs and Terrorist Organization File (VGTOF). The Terrorism Watch List has been the Counterterrorism Division's single, integrated listing of individuals of an investigative interest to the FBI, be that the lone terrorist subject or a specific terrorist group. It was designed to assist both the intelligence and law enforcement communities in their investigations of terrorist groups and/or individuals. The Terrorism Watch List (VGTOF) is in the process of being consolidated into a single data base managed by the Terrorist Threat Integration Center (TTIC) and the recently announced Terrorist Screening Center (TSC).

Today, the Terrorist Watch & Warning Unit of the FBI's Counterterrorism Division works with the State Department on a daily basis to share information and assist in resolving name check issues arising from Visa applications. As an example, the State Department's Office of Consular Affairs routinely sends to the FBI possible VGTOF name check matches for the review of the Terrorist Watch & Warning Unit. These reviews are a result of the sharing of pertinent NCIC and VGTOF data with the State Department's Consular Lookout and Support System (CLASS). The CLASS system is designed to detect those who may be ineligible to receive visas, including known or suspected terrorists as they apply for visas overseas, or as they attempt to pass through U.S., Canadian, or Australian border entry points. Currently the FBI is providing an "extract" of identifying information for non-U.S. persons from the NCIC subset of "Wanted Persons" and from the Interstate Identification Index (III). The FBI is identifying records as non-U.S. persons through their place of birth (POB) information. This information is currently being provided on a monthly basis, on a disk, until an automatic electronic transfer of information can be engineered as part of the TSC.

Following interagency discussions that took place after the attacks of September 11, 2001, the Department of State (DOS) implemented the Visa Condor Program to conduct additional checks for applications determined to be "high risk." The program commenced in January of 2002; the DOS forwards the "short" visa application form to the FBI for a name check. The searches seek all instances of the individual's name and approximate date of birth, whether the individual is the subject of an investigation, or merely mentioned as an associate or witness. The names are searched in a multitude of combinations, switching the order of the first, middle, and last names. The names are also searched using different phonetic spelling variations of the name, which is important considering that many names in our indices have been translated from a language other than English. If there is a name match with an FBI record, it is designated as a "hit", meaning that the system has identified a potential match with the name being checked, which will then require additional research regarding specifics of that file to determine if any derogatory information exists. Less than 1% of the name matches result in derogatory information being developed about that subject. In these incidents, the matter is forwarded to the appropriate FBI division having investigative oversight. The FBI investigative division having such oversight prepares a written Security Advisory Opinion and forwards that to DOS. In reviewing these visa requests, the FBI has been successful in identifying individuals attempting to enter the United States who are of serious concern to the FBI.

The FBI has written procedures in place for notifying the appropriate personnel to take specific action on all State Department cables concerning visa matters, to include Security Advisory Opinions (SAO)

and visa revocations. These procedures include requiring that all cables sent to the FBI related to visa issues be uploaded into the FBI's Electronic Case File, allowing for full text retrieval.

Due to an initial Condor backlog developed, the Foreign Terrorist Tracking Task Force (FTTTF) provided support to help to clear the backlog of visa name check requests. The backlog was eliminated in June 2003. The FBI's Records Management Division (RMD), which manages the National Name Check Unit, accepted central control responsibility for the Visa Condor Program from FTTTF on December 12, 2002. Now in a supporting role, the FTTTF will augment, as requested, the FBI's overall Visa Condor review process through its unique ability to exploit public and proprietary data sources to find the electronic footprint of known and suspected terrorists. The RMD tracks the records through the analysis process in Counterterrorism Division (CTD) and presents completed packages to the Department of State.

The FBI has responded to over 97,600 Visa Condor name check requests submitted by the State Department since June of 2002. There are 119 full time employees working in the Records Management Division working for the National Name Check Unit.

Inter-agency information sharing

Regarding the existing restrictions on inter-agency information sharing, including the Privacy Act, there are no statutory, regulatory, or any other legal restrictions on the sharing of unclassified information with other United States governmental agencies. Pursuant to the USA PATRIOT Act, the FBI can now share Grand Jury and Title III information in International Terrorism related cases with other United States governmental agencies, with the coordination of the local United States Attorney's Office having jurisdiction on the matter being investigated.

Creation of a central repository

The recently announced Terrorist Screening Center (TSC) will consolidate all existing terrorist watch lists currently being used by the United States Government into a single function to provide accurate information to terrorist screeners around the country on a 24/7, real-time basis. This function will consolidate into one central location information that law enforcement, the Intelligence Community, and the State Department already possess. Creation of the TSC does not create new law enforcement powers, and it will have no independent authority to conduct intelligence collection or other operations.

This integration of existing watch list functions of a variety of agencies will enhance the coordination, consistency and accuracy of on-going efforts by creating a mechanism for one-stop shopping to be used by local, state, and federal officers, as well as others who may have a need to receive this information. Creation of the TSC is the latest step in the ongoing process to improve our ability to identify suspected terrorists and to stop them before they can do us harm. It brings together such data-bases as the Department of State's TIPOFF system used to vett visa applicants overseas, the

Department of Homeland Security's transportation security lists, and the FBI's Violent Gang and Terrorist Offender's File in NCIC.

The TSC will be responsible for developing appropriate policies and criteria to ensure the accuracy of information in the database and to ensure that the legal safeguards are in place to protect privacy rights and personal freedoms, consistent with our Constitution and legal framework. The TSC will also be responsible for quality control issues, such as ensuring the appropriateness of entering a particular name when warranted. It will consolidate overall responsibility for day-to-day operation of the nation's various terrorist watch lists into a single interagency Center for the purpose of continuing efforts to protect the nation. As called for by the 9/11 Congressional Joint Inquiry, this streamlined approach is designed not only to enhance operational efficiencies but also to clearly designate responsibility for the system - all with the goal of making the country safer.

Conclusion

All of these efforts reflect the FBI's recognition of the importance of an integrated suspected terrorist database, accessible to all of our partners in the criminal and intelligence communities. I want to emphasize to you, this issue has the full attention of Director Mueller and the FBI. The FBI appreciates the interest of the Committee in this matter. I thank you for the invitation to speak today and look forward to working with you in the future. I am prepared to answer any questions the Committee may have.

Statement of William Parrish
Acting Assistant Secretary for Information Analysis
Information Analysis and Infrastructure Protection Directorate
Department of Homeland Security
Before the Senate Judiciary Committee
Subcommittee on Immigration and Border Security
September 23, 2003

Good morning Mr. Chairman and distinguished members of the Subcommittee. I am delighted to appear before you today to discuss the Department of Homeland Security's role in the Terrorist Screening Center as well as the role of the Information Analysis Office in the Intelligence Community.

I am currently serving as the Acting Assistant Secretary for Information Analysis in the Information Analysis and Infrastructure Protection Directorate (IAIP). Prior to assuming this role, I was the Senior DHS representative to the Terrorist Threat Integration Center (TTIC). In this capacity I served in a senior leadership position as the Associate Director for Homeland Security. My tenure in the US Customs Service as the Executive Director of Anti-terrorism provided the opportunity to gain an appreciation for the criticality of information sharing and the necessity for recognition and understanding of individual agencies' capabilities in the fight against terrorism.

Although only six months old, I can assure you that IAIP is moving forward to carry out its statutory responsibilities, and the key missions of Information Analysis including:

- Providing the full range of intelligence support to senior DHS leadership
- With IP, mapping terrorist threats to the homeland against our assessed vulnerabilities in order to drive our efforts to protect against terrorist attacks
- Conducting independent analysis and assessments of terrorist threats, including competitive analysis, tailored analysis, and "red teaming"
- Integrating the work of all of DHS' components as well as managing the collection and processing of information into usable and actionable information from DHS' intelligence components, e.g., the Bureau of Customs and Border Protection, Immigration and Customs Enforcement, Transportation Security Administration Coast Guard, and Secret Service
- Working closely to maintain transparent information exchange between those DHS/IA officers assigned to work on DHS' behalf at the TTIC, IA officers conducting the threat analysis mission at DHS Headquarters, our TTIC partners and other Federal Agencies, state and local officials and the private sector
- Disseminating time sensitive alerts and advisories to federal, state, local governments and private sector infrastructure owners and operators

IAIP is unique among U.S. intelligence and law enforcement elements in authority, responsibility, and access to information. IAIP has robust, comprehensive, and independent access, as mandated by the President and in the law, to information relevant to homeland security, raw and processed, collected domestically and abroad. Accessing the information and intelligence from this mosaic of programs and systems of federal, state and local agencies supports our mission to analyze data and take action to protect against terrorist attacks directed at the U.S. homeland. IA has the ability to conduct its own analysis and to leverage the information of the FBI, CIA, and the remainder of the Intelligence Community and federal government, plus state and local law enforcement and private sector entities, to protect the Homeland.

Central to the success of the DHS mission is the close working relationship between the Office of Information Analysis ("IA") and the Office of Infrastructure Protection ("IP") to ensure threat information is correlated with critical infrastructure vulnerabilities and protective programs. This threat and vulnerability information can then be used to recommend preventative and protective measures. The integration of information access and analysis on the one hand, and vulnerabilities analysis and protective measures on the other, is the fundamental mission of the IAIP Directorate.

Beyond the unique IA-IP partnership; the Homeland Security Operations Center (HSOC) serves as a focal point for the Nation's efforts to protect our homeland. The HSOC is a 24 x 7 x 365 days a year Watch Center and is comprised of members from over thirteen federal agencies from the Intelligence Community, Law Enforcement Agencies, emergency preparedness organizations and entities focused on infrastructure protection. Given the information provided from the parent organizations of these entities, and the all-source data provided by other DHS partners, information and intelligence relating to threats to the homeland are analyzed from multiple perspectives. This all-source data-fusion performed at IAIP allows products to be tailored to address a specific threat to allow DHS constituents to prioritize resource allocations in the enhancement of their security posture to counter potential terrorist acts.

IAIP is the central information center of DHS efforts to coordinate the protection of the U.S. homeland. As such, with active participation of the Directorates, particularly the Border and Transportation Security Directorate, IA supports the DHS law enforcement components through timely and integrated analytical support. For example, in a single day:

- In coordination with BCBP, which process over 1.1 million passengers arriving in our Nation's airports and seaports, inspection of over 57,000 trucks and containers, 580 vessels, 2,400 aircraft, and 323,000 vehicles coming into this country, IA has immediate access to valuable information of potential terrorist activities which further enhances our ability to develop threat plot lines

- In coordination with BICE, which investigates cases involving alien smuggling, terrorist financial dealings and other crimes associated with terrorist operations, IA analysis and assessments have the ability to identify potential trends of terrorist related activity

- In coordination with the Transportation Security Administration, which screens approximately 1.5 million passengers before they board commercial aircraft, IA assists in determining which individuals should be prevented from boarding those aircraft

IA ensures that homeland security products derived from the fusing of disparate types of information are shared with Federal, state, and local governments, as well as the private sector. Additionally, IA coordinates with the Federal Bureau of Investigation (FBI) in publishing combined DHS-FBI Intelligence Bulletins.

In addition to mapping terrorist threats to the homeland, and carrying out its many other intelligence-support and analytic functions, IA is a full participant in the TTIC, with IA personnel physically located at the TTIC. The assignment of IA analysts to assist in the carrying out of DHS' analytic mission as full partners in TTIC ensures the timely and relevant information flow to and from the IAIP directorate. This is not a substitute for the receipt of information directly at DHS Headquarters, but rather represents a recognition that, as provided by Congress and the President, authorities and capabilities to deter and disrupt terrorist threats, particularly overseas, are shared among a number of departments and agencies and such activities often must be undertaken in concert with state, local, and foreign governments.

Several IA officers are located at TTIC, working day-in-day-out, participating in processing and analyzing terrorist threat-related information, developing, shaping, and disseminating TTIC products, assessing gaps in the available information, and ensuring that TTIC products reach appropriate DHS Headquarters officials, and through DHS and the FBI as appropriate, state, local and private sector officials.

IA analysts assigned to TTIC will ensure that information gathered by DHS (from its own collectors as well as state and local governments and the private sector) reaches TTIC and informs its work and, equally important, that TTIC's work directly supports DHS's unique mission to protect the homeland.

The direct receipt at DHS Headquarters of information provided by statute and Presidential direction to DHS, the complimentary work of IA personnel assigned to TTIC, IA analysts detailed to other Intelligence Community partners, coupled with the multi-agency representation in the HSOC, ensures IA a robust, comprehensive, and independent access to information-- raw and processed, collected domestically and abroad-- relevant to analyzing terrorist threats to the homeland.

These efforts are further enhanced by the formation of the Terrorist Screening center, which is one of several new critical initiatives taken by the Administration to increase the sharing of information at all levels of government.

On September 16th, Secretary Ridge, Attorney General John Ashcroft, Secretary of State Colin Powell, FBI Director Robert Mueller and Director of Central Intelligence George Tenet announced the establishment of the Terrorist Screening Center (TSC) to consolidate terrorist watch lists and provide 24/7 operational support for thousands of federal screeners across the country and around the world. The Center will ensure that government investigators, screeners and agents are working off the same unified, comprehensive set of anti-terrorist information – and that they have access to information and expertise that will allow them to act quickly when a suspected terrorist is screened or stopped.

The new Terrorist Screening Center, which receives the vast majority of its information from TTIC, will further enhance our ability to get information out to our agents on the borders and others who can put it to use on the front lines - and to get it there fast. TSC will consolidate information from a wide range of sources into an unclassified terrorist screening database accessible to federal, state and local agencies for a variety of screening purposes.

The TSC will be an interagency effort, administered by the FBI with a DHS official serving as the Principal Deputy Director. The Departments of Homeland Security and State will coordinate with and assign operational and staff support to the TSC. In addition to the Department of Justice, the Department of Homeland Security, and the Department of State, the Intelligence Community and other federal agencies will assign representatives to the TSC.

The Department of Homeland Security will play an integral role in developing the TSC's operational capabilities and governing policy directions through our presence in the TSC.

I appear before you today to tell you that progress has been, and continues to be made on a daily basis by DHS. IAIP is building a strong team of professionals and assigning dedicated and knowledgeable individuals in key liaison positions within our partnering agencies. This will further enhance the timely access to critical information that when placed in the hands of the dedicated and competent members of DHS serving at our borders, airports, seaports across America, will increase our ability to detect, prevent and deny terrorists from striking our Homeland. With the continued support of Congress, I am confident that IAIP and our partners in the war against terrorism can succeed in meeting the challenges before us.

As Secretary Ridge has stated on numerous occasions, "When our hometowns are secure, our homeland will be secure." This is a fundamental principle of the nation's homeland security effort. Everyone is a partner in the effort. We must be aggressive in connecting and staying connected with our partners to provide an extraordinary and unprecedented exchange of information. This information must be actionable by local law enforcement and first responders, but must also empower the average citizen to do his part in helping to secure our Homeland.

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

VISA ISSUANCE: OUR FIRST LINE OF DEFENSE FOR HOMELAND SECURITY

TUESDAY, SEPTEMBER 30, 2003

UNITED STATES SENATE,
SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY, OF THE COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:10 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Saxby Chambliss, Chairman of the Subcommittee, presiding.

Present: Senators Chambliss, Grassley, Sessions, Craig, Cornyn, and Kennedy.

OPENING STATEMENT OF HON. SAXBY CHAMBLISS, A U.S. SENATOR FROM THE STATE OF GEORGIA

Chairman CHAMBLISS. The hearing will come to order.

Let me first apologize to our witnesses as well as those in the audience for running behind, but we got slightly waylaid getting over here.

I understand Senator Kennedy is on the way and will join us. His caucus has not ended yet, either, so he will hopefully be here shortly in any event.

In November of 2002, Congress passed the Homeland Security Act to establish the Department of Homeland Security, incorporating the immigration functions of the former Immigration and Naturalization Service. The Act also transferred visa issuance authority from the Department of State to the Department of Homeland Security. This was a significant transfer of authority, because it clearly envisions visa issuance as a critical stage in border security for our Nation. All 19 of the September 11 hijackers came to the United States on visas. With improved information sharing, we can stop a potential terrorist before he gets to our borders by denying him a visa in the first place.

Just yesterday, the President signed a Memorandum of Understanding, or MOU, between the State and Homeland Security on exactly who will be in charge of visa issuance functions. This MOU is the product of months of negotiations between the departments to spell out the intent of Section 428 of the Homeland Security Act, which covers visa issuance procedures. Importantly, the MOU details the coordination that is necessary between the two departments when a decision is made to issue or deny a visa—a decision that must be made with a sharp eye toward our homeland security.

A key issue in the passage of the Homeland Security Act was putting control of the visa issuance process specifically under the

Border and Transportation Security Directorate in order to keep the functions of immigration services separate from the functions of border security. The old INS system was broken, so Congress split up the agency to make it more accountable. We must keep it that way if our homeland security is to remain vigilant.

I know that Under Secretary Hutchinson will work with Director Aguirre and Assistant Secretary Harty on immigration services. This is important work, but the point is that in a post-9/11 world, visa issuance must be a border security job.

In a July hearing this Subcommittee held, we urged Homeland Security to adopt and formalize policies in order to stop immigration-related threats to our Nation's security. I am pleased that our efforts have at least brought us to the point of having an agreement on visa issuance authority. That is a necessary first step, and this Subcommittee will continue to work with both departments to make sure that border security measures are implemented and adhered to in order to protect Americans from future attacks.

I welcome a good friend and my former colleague from the House, Under Secretary Hutchinson, and also Secretary Harty. We have plenty of questions to ask you about the Memorandum of Understanding and about other homeland security functions. As you know, we have spent a good amount of time this year discussing the role of information sharing, for instance, with the visa revocation problem.

Today we look forward to talking about the fuller picture of coordination for visa issuance as a border protection measure in order to better ensure our Nation is safe.

If Senator Kennedy desires to make any statement when he comes in, we will interrupt the proceeding to allow him to do so.

At this time, I will ask my colleague Senator Cornyn if he has any statement he wishes to make.

STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM TEXAS

Senator CORNYN. Just briefly, Mr. Chairman, thank you for convening this hearing today. I want to thank the witnesses for coming to bring us up-to-date and to answer our questions in this important area.

I recently during the month of August had a chance to visit some of the cities on the Texas-U.S. border, places like Laredo, the largest land port in the United States, and El Paso, another important border city, and hear from some of my constituents about how well we are doing not only in theory but in practice, and I want to explore a little bit of that with the witnesses today, but also to travel to Mexico City and see what I was told will be really the state of the art when it comes to visa applications and issuance in foreign capitals like that around the world.

Finally, I have been reading and hearing a lot about "lateral repatriation" and have a few questions I want to be able to ask Mr. Hutchinson perhaps about that when the time comes.

Thank you very much.

Chairman CHAMBLISS. Thank you, Senator Cornyn.

Nobody on this Subcommittee has been more vigilant than you with respect to the work on border security, and you certainly have

many critical areas in your State. I appreciate your attention and hard work in that area.

We are pleased to have today the honorable Asa Hutchinson, Under Secretary for Border and Transportation Security Directorate, Department of Homeland Security, and also the honorable Maura Harty, Assistant Secretary for Consular Affairs of the Department of State.

Secretary Hutchinson, we will start with you, and we welcome any comments you would like to make to open up.

STATEMENT OF ASA HUTCHINSON, UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY DIRECTORATE, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Mr. HUTCHINSON. Thank you, Chairman Chambliss, Senator Cornyn. It is good to be with you. I look forward to the questions from the Committee.

First, I want to recognize my colleague, Assistant Secretary Maura Harty, for her partnership and her leadership in coming to a conclusion on this Memorandum of Understanding.

We are pleased that the President submitted that to Congress after it was signed by Secretary Ridge and Secretary Powell. This document transfers the responsibility for visa policy and oversight to the Department of Homeland Security in accordance with the legislation passed by the Congress.

When Congress created the Department of Homeland Security and specifically the Homeland Security's new role in the visa process, it charged the Secretary with responsibility for establishing and administering rules in accordance with section 428, which governs the granting of visas or other forms of permission to enter the United States. As the lead in DHS on this initiative, I believe our role in the visa process is one of the most important missions of the Department of Homeland Security and is a cornerstone of our homeland security efforts.

The effectiveness of the new Department's role in visa security is dependent upon an effective partnership with the Department of State. By signing this agreement, both the Department of Homeland Security and State have pledged to work cooperatively together to create and maintain an effective and efficient visa process that secures our borders from external threats while ensuring that our borders do remain open to legitimate travelers and visitors.

This agreement has been the subject of many months of discussion between State and Homeland Security, not just at the working level but also through personal discussions I have had with my colleague, Assistant Secretary Maura Harty. Without her direction and leadership, it would not have been accomplished. I wish to thank her for her personal commitment to making this effort a success and implementation of this agreement.

This memorandum affirms our commitment to continue working with Department of State in improving the security of our visa system. We view the visa process as the foundation of our security against terrorists and criminals who seek to enter the United States with the intention to do harm.

Our security is dependent upon three objectives—that is, the development of sound visa policy, operational support overseas, and

the enhanced information-sharing and integration. Each of these is critical to our success in improving security.

In the area of policy, the Department of Homeland Security will now establish most visa policy, have final approval over most Department of State-initiated guidance, review implementation of visa policy, and ensure that homeland security requirements are fully reflected in the visa process.

When we speak of visa policy, we refer not just to our policy decisions but also the guidance that may affect individual visa determinations. This guidance will include Federal regulations, Foreign Affairs Manual provisions, and State Department cables to diplomatic and consular posts.

In carrying out our responsibilities related to visa policy, the Department will respect the Secretary of State's role in leading and managing the consular corps and its functions, managing the visa process, and executing the foreign policy of the United States. And the mutual respect for those responsibilities and objectives is important as we set the cornerstone for this agreement.

In my arena, we will have the Office of International Enforcement, which will handle the operational duties related to the 428 process for homeland security. I have also committed to work with my good friend, Eduardo Aguirre, the Director of Citizenship and Immigration Services, and I respect his role in helping to develop visa policy.

The law requires that we first put personnel in Saudi Arabia, where we will have a 100 percent review of visa applications once this MOU has become effective. We have already deployed a team to Saudi Arabia at the end of August that has established offices in Riyadh and Jeddah. Their team is working with State Department colleagues to develop policies for review of Saudi visa applications, and we expect what happens in Saudi Arabia to be a standard that will be applicable in other arenas of the world, a model for procedures that we can use at other posts. They have already done good work.

Beyond Saudi Arabia, the law authorizes—it does not mandate, but authorizes—the Department to assign personnel to other diplomatic and consular posts where visas are issued. We are in the process of reviewing the next phase of deployment and assignment of Homeland Security personnel to selected consular offices. These will be integrated into the diplomatic missions and subject to the authority of the Chief of Mission in the same manner as other executive branch employees serving abroad.

Our visa security officers will provide expert advice and training to the consular officers, will help review visa applications, and will help conduct investigations with respect to matters pertaining to the issuance of visas.

We will also enhance information sharing, because that will be critical to make sure the visa security officers have the information that they need on the ground, in the field, during their day-to-day work.

So we are grateful for the cooperation and support and leadership of this Committee, and I look forward to answering any questions.

[The prepared statement of Mr. Hutchinson appears as a submission for the record.]

Chairman CHAMBLISS. Thank you very much, Mr. Secretary.

Ms. Harty, we welcome comments from you at this time.

STATEMENT OF MAURA HARTY, ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, DEPARTMENT OF STATE, WASHINGTON, D.C.

Ms. HARTY. Thank you, Mr. Chairman, members of the Subcommittee.

I appreciate the opportunity to address you today on a subject that all of us agree is crucial—preventing terrorists from entering the United States. The Department of State's visa work abroad constitutes America's front line of defense against terrorists and criminals who seek to enter the country to harm us. We have no higher responsibility, and we are determined to do this work thoroughly and comprehensively.

In this historic time of change, State and Homeland Security have come together to establish procedures that protect America's borders from external threats while continuing to promote legitimate travel to the United States.

The MOU gives the Secretary of Homeland Security and policy role contemplated by the Homeland Security Act while maintaining the Secretary of State's clear chain of command over consular officers and relying on the foreign policy expertise of the Department of State.

Our broad organizing principle in together drafting the MOU was to recognize and respect the different expertise of the two Departments consistent with the law granting the Department of Homeland Security authority over visa policy.

The Secretary of Homeland Security will establish visa policy, review implementation of that policy, and have the final responsibility to issue or approve visa guidance. Diplomatic and official visas as well as any visa case that may affect foreign policy are reserved for the Secretary of State.

The MOU establishes guidelines for assignment of DHS personnel at U.S. missions abroad, their duties once assigned, and the interactions and authorities they will have with consular offices and with the visa process. It reflects the recognition that the officers DHS assigns should add important value to the visa process by bringing to bear specific homeland security and counter-terrorism experience or training, broad knowledge of immigration law, and experience or training in investigative interviews.

DHS personnel abroad will act as coordinators of source information involving threats to the United States, particularly focusing on terrorist threats, and be fully integrated into post committees such as the Visas Viper group designed to identify such threats. They will have the ability to review visa applications of classes of applicants who present security threats. In Saudi Arabia, they will review all applications. They will provide training and intelligence support to our consular officers, and they may recommend visa refusals or revocations as the need arises.

Consular systems and records, though maintained by the State Department, will be fully available to our DHS partners.

The MOU recognizes that the Secretary of State must have control over officers in his chain of command. DHS officers assigned visa duties abroad may provide input related to the evaluations of consular officers, but the evaluations themselves will continue to be written by State Department consular supervisors. Direction of consular officers will come from their State Department supervisors, and all officers assigned abroad, including DHS, come under the authority of the Chief of Mission.

You may ask why it took so long to negotiate the MOU. The simple answer is because we wanted to get it right. The complexity of visa law, regulation, and policy and the challenge of management issues at more than 200 visa-adjudicating required careful analysis to ensure that we wrote an MOU that we together believed would address the Congressional intent of Section 428 of the Homeland Security Act.

But the MOU is not the end-product. It is in fact only the beginning of the new partnership. Even before we completed the MOU, we were already forging a new relationship. We have a liaison office staffed at State with two senior officers, one of ambassadorial rank, to coordinate daily with DHS on matters of joint concern. On a number of initiatives, we have cooperated, including the new requirements for personal appearance for visa applicants and the Visa Waiver Program Waiver.

We coordinate weekly on the new entry-exist system now known as US-VISIT. Just last month, DHS teams arrived in Saudi Arabia to begin their integration into our consular operations in Riyadh and Jeddah. They were warmly welcomed, and the integration is proceeding very smoothly. We are committed to making those officers feel like full members of the embassy team, which is what they are.

Mr. Chairman, visa processing has undergone a profound transformation since September 11. We have sharpened our focus on security concerns. We are committed to working closely and cooperatively with the Department of Homeland Security to ensure that the visa process provides the highest level of security possible for the protection of the American people.

I would like to take this opportunity to express my gratitude to my friend and colleague, Under Secretary Asa Hutchinson, and to his truly outstanding team for all of their hard work and sincere efforts in achieving the first step in this new partnership.

I welcome your questions. Thank you.

[The prepared statement of Ms. Harty appears as a submission for the record.]

Chairman CHAMBLISS. Thank you very much.

I want to ask a couple of specific questions about Saudi Arabia, but first, could either of you give me an idea of how many visa applications we have annually from Saudi Arabia?

Mr. HUTCHINSON. Mr. Chairman, I do not have that information. I will be glad to get that to you, probably before the end of the hearing.

Chairman CHAMBLISS. Okay. Last week, we had representatives from Homeland Security, FBI, and TTIC here to talk about the watch list, and we had a lot of conversation about that. Would you just very quickly tell us how the establishment of that watch list

and the information contained within that watch list with respect to the individuals named thereon is going to play into your issuing a visa to somebody from any part of the world?

Mr. HUTCHINSON. Yes. First of all, the consular offices will continue to do their checks. The added value that we hope to bring would be to have a more comprehensive law enforcement check with all of the available databases out there, both from a security and a law enforcement perspective.

So our individuals in the field will have access to their watch list, databases, but then in addition, when questions arise, they will be able to connect with our offices here that will have further capability to vet those individual names or to address the questions that arise; if there is a hit, there is a question about identity, we can address those.

Now, as you mentioned, we hope to have a consolidation of the watch list. We want to move to that very quickly, and obviously, that will make the work much easier whenever you have a consolidated watch list, which will be more expeditious. We are moving toward that, but until then, we will be checking each of those individually through the various agencies.

Ms. HARTY. Mr. Chairman, if I might add something to that, we are very excited and enthusiastic about supporting the new watch list function, specifically because the farther we can move the front line out and away from the borders of this country, the greater is our ability to protect this country. So for the consular officers doing visa adjudication in 210 visa adjudicating posts around the world, the best information that we can get for them—that is, all-source information provided in real time from all of our other colleagues in this effort—gives us a better ability to prevent somebody from even getting to our shore and presenting themselves at a port of entry.

So this watch list really provides us an opportunity to have real time information, all-source information, and stop those people from ever even getting on a common carrier to come to a U.S. port of entry.

Chairman CHAMBLISS. I will just comment that we did not get a good answer because I do not think there is a good answer from those folks who testified the other day, and I would not expect you to answer this right now, but I think it is something you are going to have to work through. We have got to devise some kind of system to make sure that those folks who make application for a visa are in fact who they say they are. And obviously, the watch list is important, but we have got to make sure that we know who is sitting in front of your representatives and whether or not they are on that watch list, irrespective of what name they use. I know that is something that you are going to be working through.

Under Secretary Hutchinson, this year, the Department of Homeland Security instituted the SEVIS database to track foreign students. After September 11, it was clear that we must be vigilant on visa overstays as an anti-terrorism matter. If that is true, why does the MOU give final responsibility of J visas for exchange visitors to the State Department when these very same people are being tracked by SEVIS?

Mr. HUTCHINSON. Thank you, Mr. Chairman.

First, I think this year, we had a very successful effort in monitoring the 600,000 foreign students who reentered our country to go to our academic institutions. We processed them quickly, but at the same time, we were able to stop 190 foreign students from coming into our country who were not properly enrolled in either the SEVIS system or in the university they said they were going to attend and turn them back. So I think it was a very successful effort.

In reference to the J visas—and I would be delighted if Maura would comment on this as well—I believe in these different categories of visas that the State Department, in their role in foreign policy, has the lead in the overall policy area, but when it comes down to individual visas being issued, we would still play the trump card, if I might phrase it that way. So we will still be able to look at each individual issued in different categories and object to it if necessary, even though they take the lead in the overall policy.

Ms. HARTY. I agree completely with that, but I would like to add something that might become a refrain through several of our answers today, sir, and that is that we are committed to doing everything that we do jointly so that on an individual case or on a broader question, even before the MOU was signed and even before we had sort of an obligation in writing to collaborate and cooperate, we were looking for ways to do that.

So on various parts of the J visa programs, there are some foreign policy interests, so that is in fact something that the Secretary of State certainly plays a major role in. But we are committed to doing all of it together and certainly will do so in this case.

Chairman CHAMBLISS. Good.

Mr. HUTCHINSON. Mr. Chairman, could I respond to your first question that we have in Saudi Arabia approximately 130 visas issued daily in Riyadh and 50 daily in Jeddah, so that would be about 180 on a daily basis coming out of that country.

Chairman CHAMBLISS. Secretary Harty, we know that the embassy in Saudi Arabia has received a good bit of criticism over the visa issuance process, and indeed, Secretary Hutchinson referred to some of that and what we are now doing over there. But can you give us some examples of how the MOU will affect decisionmaking for the Saudi Arabian Embassy and how it will change procedures for issuing visas there?

Ms. HARTY. Yes, sir. Thank you, sir.

I am delighted to say that the Visa Express Program that did receive very much criticism is long a thing of the past. I have twice since I was confirmed in this job gone to our posts in Riyadh and Jeddah, once to Dahran as well, to look in part at exactly how our operations are unfolding there. I have talked to every consular officer who adjudicates visas. I was yesterday in touch with our consular general in preparation for the hearing to discuss how our DHS colleagues are doing.

In large measure, sir, we are hoping that our DHS colleagues will be able to provide additional information and additional training to our officers in interviewing techniques, that the Homeland Security colleagues on the ground will be able to help us in fact, to use a tired phrase, connect the dots at the post, to make sure that if there is information available in one part of the mission, the

consular section has that information as it in fact goes through various visa adjudications.

We are, as Under Secretary Hutchinson said, looking at how we do the job in Saudi Arabia as a template for other places where we might go, so we are proceeding judiciously and carefully to make sure that we can add value as many different ways as we can by Homeland Security officers calling on various databases and various other sources of information that might not have always been immediately available to us.

So far, it is working out very, very well, and although the MOU was signed yesterday, they have been there for just about a month now, so they have had some real time to get settled in, to learn their way about the campus, to participate in Visas Viper conversations and to help us together come up with a better overall review of the process and of the visa adjudications.

Section 428 explicitly states that all visa applications should be looked at by Homeland Security representatives before visas are received, so that is another part of what they are doing. I think that over the longer time, we will begin to benefit from their views of possible trends that they might spot and other pieces of information, again, that might not have been available to us before.

Chairman CHAMBLISS. Secretary Hutchinson, with the SEVIS system now being put in place—and I am pleased to hear that you processed that many people that quickly—is that system going to allow you just to locate those individuals who come here, or is it going to allow you to monitor their activities—and by that, for example, we have had a lot of students who have come to the United States under the pretext of studying English, and all of a sudden they switch to chemistry and carry that knowledge back home. Is this type of thing going to be monitored also?

Mr. HUTCHINSON. Yes. The responsibility on the academic institution is to report any anomalies. So if a student does not carry his class load, if he is not going to class, or if he is enrolled in different classes than what he was intended to be, if there is any anomaly, their obligation is to report it.

I would say that the universities have been fairly aggressive in that. We have had very active reporting of any questions but also any anomalies that are there, and they have that responsibility. And that would give us the capacity once we have that information to follow up as to whether there is a legitimate reason, whether there is a problem, whether they are out of status, whether they pose a danger. So that information flow puts a great burden on us to process it and to act upon it, and we are trying to develop that capability.

Chairman CHAMBLISS. Thank you.

Senator Kennedy?

Senator KENNEDY. Thank you, Mr. Chairman.

Welcome, Mr. Hutchinson and Ms. Harty. Listening to both of you, I think—Ms. Harty, how many years have you been in the service now?

Ms. HARTY. I am just in my 23rd year now, Senator.

Senator KENNEDY. Twenty-third year. Well, I think we are lucky to have professional people—not to take away anything from those

who have not come up through the ranks—you had a different experience.

Mr. HUTCHINSON. Two years.

Senator KENNEDY. But I think we are very lucky that Ms. Maura Harty is working in this area, and we thank her for her professionalism. It is a tough and difficult job.

Let me ask you, Mr. Secretary, as you remember, we passed the Border Security Act, and one of the key aspects of that Act was the Central Intelligence Agency working on the watch list, and one of the failings, obviously, in Saudi Arabia is the fact that the CIA would not cooperate because they did not want to, they thought, give away their contacts with Saudi Arabia. And I understand now that you have had good support from the CIA, perhaps better than you have from the FBI. I do not know whether you want to characterize it in any way.

Mr. HUTCHINSON. CIA has been extraordinarily helpful and cooperative in every way.

Senator KENNEDY. I think that is important to know, because that is very, very important. How would you characterize the FBI? Is it getting better—or how do you want to leave it?

Mr. HUTCHINSON. I would say they have been excellent as well, particularly the leadership. They have all been very supportive of the integration effort.

Senator KENNEDY. Can you tell me a bit about the resources that you have? This is a major transition from the Department to the Bureau of Homeland Security. I am interested—it is complicated, it is difficult at best to try to work this out. Do you have the resources? How is the training program? How are you getting what expertise you do have in the visa section over to the Department? It is an enormous undertaking.

I agree with Secretary Powell's assessment that the goal of the visa policy is "to secure borders, open doors, and the challenge is to see that our policies and regulations are accurately evaluated, fully coordinated, fully funded so the Nation's security is protected." I think that that obviously sets the objective, and I am interested to hear from you today a little bit about how that process is working in terms of the funding, in terms of the training, and in terms of the personnel. Where are you on this?

Mr. HUTCHINSON. Renee Harris will be the acting director of the Office of International Enforcement, which will have responsibility for the 428 visa oversight, and she brings a great deal of experience. She has a staff that is working on this as detailed from Immigration and Customs Enforcement. And through the 2004 budget cycle, we will be utilizing our existing resources to carry out these responsibilities. So the three right now that are in Saudi Arabia, additional personnel to follow, are from our existing capabilities.

We will continue to build on that this year, and in the 2005 budget cycle, we will be requesting probably significant additional resources to fund the new responsibilities in this arena.

We are developing a training program in cooperation with Citizenship and Immigration Services utilizing their experience, but a training regime for this new responsibility has already met and developing the protocols and training manuals so that we will be able to effectively train people this year.

Senator KENNEDY. You are satisfied—would you expect that there will be a slippage in terms of the transfer authority from State to DHS? What can we expect in terms of—you don't think we will see delays or backlogs created? Have there been, or do you anticipate that there will be?

Mr. HUTCHINSON. No—well, there is certainly an increased work load because of the individual interview process that State has to absorb, and they are doing an excellent job on it. But in terms of this transfer, I see only really increased opportunity and effectiveness and certainly no additional delays. I think you are really having additional eyes looking at the material, different perspectives, and additional resources. So I think that when there becomes a problem on a visa and whether it is going to be issued or not, we will be able to focus more energy and hopefully get it done more rapidly.

Senator KENNEDY. In overseeing the management and implementation of the visa MOU, assignment of DHS staff to consular offices is an enormous responsibility. How many people will staff this new office—do you know—or can you provide that to me for the record?

Mr. HUTCHINSON. We would be happy to. Again, we are 3 days old now—

Senator KENNEDY. Yes, I understand.

Mr. HUTCHINSON. —so we are developing it in a small fashion, but we do have a program as to how large it will be through the course of this year.

Senator KENNEDY. And do you plan to have representatives from State as part of the new office trained to assist the staff on visa processing issues?

Mr. HUTCHINSON. We certainly hope that we can have, and we have talked about, an exchange of personnel to work closely with each other.

Senator KENNEDY. The MOU calls for many instances of joint responsibility and interagency consultation, interagency recommendation between State and DHS. What kinds of barriers to these joint efforts do you foresee arising?

Mr. HUTCHINSON. Well, I would like to think that we have gotten over our big obstacles, and I think we have been successful thus far. I really believe that the key to success is continuing at Maura Harty's level and my level to have discussions, leadership, and providing guidance to our respective staffs.

Senator KENNEDY. Is this Terror Screening Center, which is I guess part of the Department of Justice, another layer? Does it simplify, or is it another layer that you have to check with? What is your own assessment on that?

Mr. HUTCHINSON. It certainly would not be an additional layer. This would be for the consolidation of the various watch lists that are housed in different places.

Senator KENNEDY. So this would be sort of the go-to place; is that the way you look at it?

Mr. HUTCHINSON. That is true. It is temporarily housed there, and we certainly hope to utilize that and will be one of the largest customers of it.

Senator KENNEDY. Mr. Chairman, thank you very much. This is an enormously important effort and is going to take a lot of effec-

tive management, and we have here two skilled individuals who are strongly committed to it, so we want to give them all the help and support. We will follow this closely and hope we can work closely with you to make it work.

Thank you very much.

Chairman CHAMBLISS. Thank you, Senator.

Senator Cornyn?

Senator CORNYN. Thank you, Mr. Chairman.

Mr. Hutchinson and Ms. Harty, let me preface what I have to say by also expressing my appreciation for the difficult job that you have to do and the challenges that you face. But I want to make sure I understand what the focus of both the Department of Homeland Security and the Office of Consular Affairs is. Is it counterterrorism, or is it enforcement of our immigration laws, or is it both?

Ms. HARTY. Senator, with all due respect, I think I can probably speak for both of us when I say it really is both. It is very hard to disaggregate those two things. The bottom line, what we are trying to do is to push that border out as far as possible, to get information to the folks in the field so they can make the best decisions possible, whether that relates to a person who should not come to America because they are a common criminal or because they are coming here for a much more serious and nefarious reason, which we also obviously would like to stop. So I think it has both angles to it, sir.

Senator CORNYN. What I am referring to specifically is the statistics that we have heard that roughly 40 percent of the people currently in the United States illegally are people who have overstayed their visas, which is not addressed by the laudable undertaking that you have talked to us about today. And we know that roughly 8 to 10 million people live in the United States illegally, and as laudable and important as the efforts that you are undertaking and you are here to describe, Secretary Hutchinson, does what you are doing address that, or are we talking about an additional task entirely?

Mr. HUTCHINSON. Well, there are a lot of factors and responses to that, but clearly what we are doing in strengthening the visa issuance responsibility improves the integrity of the system. For example, if we find information that someone might not be a threat to America, but they have an intent to stay here and overstay their visa, and there is a risk of not returning, we are going to provide that information. So it will certainly address the issue and help strengthen the integrity of our immigration system.

But also, the US-VISIT Program obviously is the most important response to what you are reciting, where a foreign visitor who comes in under a visa checks in, but also has to check out, and therefore, we know if they overstay or violate the visa. That information is essential. So this is part of the strengthening of our visa program, building on the integrity of our immigration system, but the US-VISIT Program is a very important part of it as well.

Senator CORNYN. I am glad you brought up the US-VISIT Program, because that is a program through which we are able to identify people who overstay their visas. If there is someone short of their leaving the country and producing an expired visa, is there

any program currently in effect to identify people who have perhaps melted into the countryside or otherwise come here illegally, to identify who those people are?

Mr. HUTCHINSON. So, if they overstay their visa now, can we identify who they are in this country?

Senator CORNYN. Or where they live.

Mr. HUTCHINSON. It is an ineffective system. There are some ways to try to do that, but it is an ineffective system, and that is the reason for US-VISIT, to give us a greater capability in identifying and having information on those who may overstay their visas.

Senator CORNYN. I want you to understand again that I am not being critical of your efforts—I think they are important, and I think they are headed in the right direction—but I am concerned that we not fool ourselves into thinking that we are dealing with the monumental challenges that confront this Nation when it comes to immigration issues. Putting some people on a watch list is important if we have intelligence that they are either terrorists or a potential threat to this Nation, but if we are going to be serious about enforcing our immigration laws—I worry, for example, about the 300,000 people who are under final orders of deportation; we simply do not know where they are—and also the other challenges that I learned a little more about in the trip that I mentioned in August along the U.S.-Mexican border, where the going rate for human smuggling for a Mexican national is roughly $1,500, for somebody from other parts of the country that might be a particular concern, the going rate is somewhere on the order of 10 times that, but still, we have a hugely porous border notwithstanding our best efforts.

I just want to make sure that our focus, as important as it is, remains on security and does not have intentional impact. For example, when I was in McAllen recently, a number of people raised a concern about the laser visa program, which is part of the US-VISIT Program, so we can identify when people come in and then when they leave; but rather than identifying terrorists, what is happening is that people who have families on both sides of the border conduct business, spend money in the United States, literally own property on both sides of the borders, and this has had perhaps an unintentional economic impact on commerce along the border, rather than identifying terrorists or perhaps threats to our country.

What that says to me is that I think we need to have a vision or a concept of what we are about. Certainly counter-terrorism is the most pressing concern, but all of this just says to me that we need to make sure that our programs are designed to address the threat and not people who perhaps are coming to this country from which we receive a net benefit either because of commerce—they want to come here to work or the like.

In the time I have remaining, let me just ask—I know the lateral repatriation issue, Secretary Hutchinson, has been a big concern in my part of the country. I understand the impulse that motivated it, and that was to try to make sure that immigrants who came across the Arizona desert did not die in the process or, once they were captured, were returned to a place where, if they tried to

come across illegally, they would not be stranded in the desert and perhaps suffer death. But it has caused a lot of concern in Texas, for example, where immigrants who come across from Mexico into Arizona are put on a plane and flown to Harlingen and places like that and then repatriated across the Texas border.

I understand this is a pilot project that ends today, is my notation. Could you speak to the experience or perhaps lessons that you have learned so far and the concerns that have been raised and how you might like to respond to those concerns?

Mr. HUTCHINSON. The first point would be that we probably need to do a better job of communicating with the elected officials who have contacted us and contacted you. I did send a team down to meet with the mayors and the law enforcement officials and explain more appropriately what we are doing, listen to their concerns and get their thoughts.

The pilot project is expiring, and we will evaluate first of all whether this has caused any additional burden on the local community—looking at the arrest record, the emergency room admissions—to see if we have had an impact that we do not intend and would not want to cause on the receiving end.

Second, we want to monitor to the extent we can those that we have repatriated across the border and whether they did return, whether we were successful in causing them to go back to their home cities.

So we are going to monitor the results of this, and we do not want to increase the burden on the local communities there in Texas or anywhere else that we may repatriate the citizens from another area.

I believe the preliminary information is that it has been successful in saving lives, which is pretty good. Second, I think that we have broken up that cycle of just returning them to their human smugglers who send them back across. But we want to look at the burden on the community and make sure that is not burdensome and that we can address it if that is a problem.

Senator CORNYN. Ms. Harty, under current law as I understand it, under the Immigration and Nationality Act, visa revocation is not in itself sufficient for removal of an immigration. Is that your understanding as well?

Ms. HARTY. We have certainly seen instances, sir, where a visa has been revoked or prudentially revoked—that is, at times, we will develop information after the fact about a given individual. We always run that information through our system to see if somebody has already been issued a visa in that name.

There are some times when that revocation is done prudentially because we are not certain beyond a shadow of a doubt that the person who has received the visa is in fact the subject of the new information, but we will prudentially revoke, and then we will make that information available through our partners at DHS so that we can inform them and so that we can inform ports of entry in case this person is not already in the States.

So there are in fact cases where a prudential revocation might not immediately result in somebody being removed from the United States. It may be done prudentially just to make us take a very

careful and considered look at the individual, who may or may not be the subject of the adverse information we have acquired.

We have talked about this concept knowing that it has been the subject of other hearings, and we are going to work very carefully together to make sure we sew up the entire system just as tightly as we can to make sure that both State and DHS understand exactly the same things.

Senator CORNYN. If there are impediments to enforcing our immigration and visa laws like that, which would not authorize the U.S. Government to deport somebody whose visa has expired or been revoked for any reason, I know that I certainly would like to know what we can do to address that.

Finally, let me just say for myself and I am sure for others that we want to do anything and everything we can to work together with you. This is not a game of "Gotcha" or criticizing people who perhaps—as Secretary Hutchinson said, this MOU was born 3 days ago, and we know that DHS was born on March 1. We have a lot of history, a lot of things that need to be addressed, and I know that this Committee is interested in working with you to try to find solutions so the American people can be safe and so that respect for our laws—all of our laws—can be restored.

Thank you.

Chairman CHAMBLISS. Thank you, Senator.

Senator Craig?

STATEMENT OF HON. LARRY E. CRAIG, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator CRAIG. Mr. Chairman, at the outset, let me thank you for holding these hearings.

Over the course of the next several years, if we dog the heck out of the two who are in front of us, with the work they are doing, we might get halfway there. And I speak respectfully of both of you, because it has been my observation over the last good number of years that we really did have a very broken system, and of course, we need not repeat the result of that breakdown. That was just the shocking result of a broken system.

So we are in the midst of trying to repair it, streamline it, and make it work. My constituents want the borders closed, and I try to convince them that that is not practical or realistic. But we are smart enough to manage them and manage them as well as we can with the talents that you display and the resources we give you and the technologies that are available.

The Chairman, Asa, asked you a question a few moments ago, and both of you responded to it, but there is a part of it that you did not respond to that I am curious about—or, maybe it was not as much a part of it. Do officers in the field have direct computer access to the consolidated watch list at the Terrorist Screening Center?

Mr. HUTCHINSON. The Terrorist Screening Center is still being set up.

Senator CRAIG. Will then, then? This is not a classified—this is a, quote, "sensitive" information list.

Mr. HUTCHINSON. I believe the answer is yes; that obviously would be the intent.

Senator CRAIG. Because my guess is that if they do not, if there has to be a filtering process, you are erecting as many barriers as you are trying to tear down.

Mr. HUTCHINSON. You are correct. We recognize that, and we would want the people who are doing the job in the field to have access to the lists that they need to check.

Chairman CHAMBLISS. If I could interrupt you for just a second, that is a critical question right there. I thought we got some pretty good answers the other day on what their understanding is about what they are going to do with this, but it is critical that that information get into the hands of every one of your people on the ground. Otherwise, that watch list is not going to be very meaningful.

Senator CRAIG. It is symbolic, but it is not functional.

Chairman CHAMBLISS. Yes. I wish you would check that to make sure, and if you understand anything different, get back to us, because we need a clear understanding of that.

Mr. HUTCHINSON. If I might elaborate just a little bit, I see the necessity exactly the same way you do, that the people in the field who are looking at the visa applications need to be able to go on line real time and check that Threat Center information. That still means, then—because that is a terrorist watch list that is consolidated—we still need to be able to check additional law enforcement information, we need to further vet. There are going to be questions that come up. But that is a starting place, and they absolutely need to have that capability.

Senator CRAIG. Then, the spinoff from that, of course, is the talent that is in the field and the training, and we know what the GAO audit said.

Ms. Harty, as it relates to that training, your office has come under fire on this issue before, namely, that Consular Affairs has a habit of sacrificing law enforcement, if you will, for public diplomacy. Although Consular Affairs has taken steps to address this problem, I specifically want to know what is being done in the area of consular officer training and biometrics. What is the status of consular officer training? Is the training an ongoing process, or is there a specified completion date?

Ms. HARTY. Thank you for the question, sir.

While I will answer your specific questions now, I will ask with your permission if I could add to the record a document that I have here that is 11 pages long—"Changes to the Visa Application Process Since September 2001"—and it includes information on data sharing, on training, on biometrics, as well as a future look.

Senator CRAIG. Good.

Chairman CHAMBLISS. Without objection, that will be added to the record.

Ms. HARTY. Thank you, sir.

Sir, on October 17, we will expand CONGEN Rosslyn, the basic consular officer training course, by an additional 5 days. It took us a little time to do it, because again, we wanted to do it right.

What we did was address a company in the private sector that in fact trains people on questioning and interrogation techniques. We engaged them and asked them, and they did, travel to several of our major visa issuing posts to look at how we do our business.

We learned from them a number of things that we are now incorporating—or, will on October 17—into our training.

Before that, we instituted another course called Advance Name Check Training—not a sexy title—but so that officers in the field would understand how to manipulate all the data in our consolidated consular database to their very best advantage so that they would also understand the algorithms we have in place for Arabic names, for Slavic names, for Hispanic names, and others, as we continue to develop them.

We have also invited other agencies of Government into this expanded 5 days of the consular officer basic training program, and that will be a living, breathing training program which will change as situations change. As Under Secretary Hutchinson alluded to, we will welcome opportunities to work with DHS to bring their training and their techniques into our processes as well.

We also have a very regular schedule of what we call consular leadership development conferences, as well as advanced consular courses. Those occur throughout the year. They are at mid levels and senior levels of Government. Those are both skills-based and also provide some leadership training.

We are in constant conversation with our officers. We bring them back. We travel ourselves all over the world to make sure that people are in synch with what we are doing. We also have a very, very robust intranet system so that people can see all the time what the new changes are.

And finally, if I might, we have issued 41 standard operating procedures, because I think it is very important for us to put in place standards so that I know, and when I come here and talk to you, I can say I know that the process is being done the same way in Buenos Aires as in Bangkok as in Bangladesh, so that everyone can understand exactly what the metes and bounds are, and naturally, those will be well-coordinated with Homeland Security so that we all know and agree on the same processes.

Senator CRAIG. You have just handed us an 11-page document that you said encompasses the compliance with biometrics requirements that we put into the Enhanced Border Security and Visa Entry Act of 2002. Could both of you briefly speak to that, what you are doing in the biometrics area now to close the loop a bit?

Ms. HARTY. If I might start, sir, I just this morning received a briefing on the first of our installations of collection of biometric data for non-immigrant visa applicants. As you know, by next October, October 2004, we will have to have included a biometrics feature in all non-immigrant visas.

We started over the last 2 weeks in four posts overseas—in El Salvador, in Guatemala, in Frankfurt, and in Brussels—and it has gone swimmingly, sir. We are populating a database which we will share with Homeland Security as soon as that system is ripe. We have been told that that will be before the end of the year.

So we are collecting data now for several reasons. One, it makes sense to do it because we can. Two, every time we do it, we learn more about how to do it. And three, the sooner we get them on line, the better.

The public reaction to it—they have been understanding, they have been a little bit interested in the process. It has been a seam-

less transition to collecting two fingerprints at those four posts. We will learn from those as we go to bigger posts and continue to do it, but we are on our way.

Senator CRAIG. Good.

Mr. HUTCHINSON. Thank you, Senator. We certainly are joining the Department of State in pushing our allies overseas to meet the biometric requirement for the October 2004 deadline that is coming up for visas.

In addition, we of course are implementing the US-VISIT Program that has a biometric feature to it, working very hard so that our air and seaports next January will be a system in which foreign guests with visas will provide a biometric, two fingerprints, which will give us an ability to confirm their identity and also check against various watch lists.

So security addition that will be available with that biometric feature, and of course, that will be expanded as time goes on with the US-VISIT Program.

Senator CRAIG. Great. The last time State reported to this Subcommittee about problems associated with visa issuance, we were assured that many of the loopholes and inadequacies in State policy had either been fixed or were in the process of being fixed—that is, that the United States visa policy was being tightened, not loosened.

However, some of us on this Subcommittee were very concerned with the laxity of L–1 and H–1–B visa provisions in the recent Singapore and Chile Free Trade Agreements. In fact, many of my colleagues were so concerned that the Chairman himself recently introduced legislation that addresses some of the abuses associated with L–1 visa requirements.

My question to you, Ms. Harty, is was the State Department involved in formulating the visa policy found in the Free Trade Agreements, and if so, to what extent does this reflect State's current attitude toward U.S. visa policy?

Ms. HARTY. We are all for tightening up the L–1 visa program and policy, sir, and we would be delighted to work with your staff on that.

With specific reference to those two agreements, I have to admit that there was an attorney advisor from our visa office present, but I am going to have to take the question, sir. I do not want to give you misinformation about the extent of his participation in those conversations. If I might take that question, we will turn it around very quickly.

Senator CRAIG. Well, we would like a full recitation on the extent of the State Department's involvement here in the crafting of that provision of the trade policy. If the U.S. Trade Ambassador is going to get into the visa business, as that agreement or those trade policies clearly were, then we are going to get more involved also. To this Senator, that is unacceptable. That is your job. That is Secretary Hutchinson's job. The Trade Ambassador might well consult with you about certain needs and make recommendations.

Now, when I say that, specifically, the L–1 visa category included in the Chilean and Singapore Free Trade Agreements does not require workers to be citizens of either Chile or Singapore; they must only be working for a company located in each respective country.

However remote the chance a terrorist might come in through such a visa, this general policy seems to me rather unguarded compared to what I am hearing here today. That is why I think that an explanation as to your involvement in it and the vetting of it, if you will, into a final agreement is important for this Committee to understand.

Ms. HARTY. I am happy to provide that, sir, and we will turn that around expeditiously. I would like to add that no visa—no visa—is issued anywhere at any time without a full name check as required. That does not speak to all of your concerns—I know that—and I will get you the information you have requested. But there is no visa issued that is not preceded by a full name check.

Senator CRAIG. Thank you both very much. We appreciate your presence here today.

Thank you, Mr. Chairman.

Chairman CHAMBLISS. Senator Sessions?

Senator SESSIONS. Thank you, Mr. Chairman.

There is no doubt in modern law enforcement that the computer watch lists are just essential. If someone skips bail on a drug charge, people really do not worry that much about it; they put it in the NCIC, and sooner or later somebody picks him up somewhere, maybe in a different State, but sooner or later, they almost always get caught.

So an effective utilization of our computerized data systems and coordination of those systems, making them available to the people most likely to apprehend the people who are wanted, is essential. We are so far from that in immigration it is just stunning. Ninety percent of the contacts once a person is in the United States are with State and local law enforcement, and they have not been given access to these systems, and names are not being put in the NCIC system that is available to them; they do not know that they can even access it.

Now, Secretary Hutchinson, I really want to thank you for your personal leadership and assistance in bringing Alabama and the State troopers up-to-date on that. Fundamentally, that is a big issue that is important for us, and we need to keep making progress on that.

Did you want to make a comment?

Mr. HUTCHINSON. I agree with you. Whenever we have illegal aliens in this country, under a final order of removal, a local law enforcement official who stops them on the highway ought to have that information.

Senator SESSIONS. And they do not have it today.

Mr. HUTCHINSON. They have a limited amount of it. We have—

Senator SESSIONS. Basically, the average trooper, if he runs a name at all, it would be the NCIC; correct?

Mr. HUTCHINSON. Right.

Senator SESSIONS. And that information is not in there.

Mr. HUTCHINSON. We are putting it in NCIC. It is not 100 percent in there. And that is what I am pushing to accomplish, because you are right on the objective—we are—

Senator SESSIONS. So you are making progress.

Mr. HUTCHINSON. We are making progress. First of all, we have the system set up so it can receive the information, the policy

changes at the Department of Justice that were needed, and then we are actually—

Senator SESSIONS. So the policy changes have been approved?

Mr. HUTCHINSON. That is my understanding. I think we have 10 percent. I am pushing to get more of those—

Senator SESSIONS. If not, we would like to know.

Mr. HUTCHINSON. So we are putting them in there; it is just not as fast as I would like it. So we are working to speed that up.

Senator SESSIONS. Thank you.

Briefly, I would like to ask Secretary Harty this question. If an individual comes into an embassy and wants to come to the United States, and there is a suspicion, though not proof, that this individual may be connected to a dangerous terrorist organization, can the consular official there reject that application?

Ms. HARTY. Oh, absolutely, sir; there is no doubt at all.

Senator SESSIONS. Now, Mr. Hutchinson, if an individual comes into this country, and you do not have that information—they are approved for entry—and through investigation or other things, evidence comes forward that a person already admitted to the United States, there is a suspicion, but not proof by a preponderance of the evidence or reasonable doubt, but a reasonable suspicion—which is a legitimate legal standard, as the former United States Attorney Hutchinson knows—that they may be connected to a terrorist organization, can they be removed from the country?

Mr. HUTCHINSON. They can be removed from the country, but certain legal processes have to precede that.

Senator SESSIONS. And if I am not mistaken, the burden of proof is considerably higher on removing a person from the country than on the embassy allowing him to come in in the first place; is that not correct?

Mr. HUTCHINSON. That is correct.

Senator SESSIONS. It seems to me that entry into the United States is by permission—it is a permissive act—and that if for any reason the host country believes a person may be a threat to them, we ought to be able to remove them without proof beyond a reasonable doubt or preponderance of the evidence.

Have you given any thought to asking for a change in that procedure that would reduce such standard?

Mr. HUTCHINSON. Yes.

Senator SESSIONS. I know that we would not want to abuse this. You do not want a visitor to this country being routinely challenged and sent back. But I do not think there is any likelihood that it would be abused. I think it would be a circumstance—if it is connected to terrorism, at least—that we ought to change that standard.

Mr. HUTCHINSON. Yes, we are looking at that. I believe there is a need to address that. I have asked for regulations to be drafted to change that procedure.

Obviously, if someone is in this country and their visa is pulled by the State Department or there is information, they may request asylum, which entitles them to certain legal rights, they may be concerned about rights under the Torture Convention. So they are entitled to a proceeding in court, but we want to make sure that

we can expeditiously move on that, so we are looking at a regulatory change to lessen that burden if appropriate.

Senator SESSIONS. I just think that when we have any nation that allows a person to come here by permission, has a right to rescind that permission, and it is not something we ought to be intimidated about, and it is not like locking an American citizen in jail that you have a high burden of proof for.

There are over 400,000 alien absconders within our borders, we understand, and to me, in another hearing, we can talk a little more about making that available to local law enforcement. You have made a lot of progress. This memorandum of understanding is real progress.

It is frustrating—it seems to me it could be made faster. When these agencies meet, Mr. Chairman, it is like great nations meeting; they have conferences and representatives, and they sign agreements. You would think that if they were all part of the same Government, it would not be so difficult. But great institutional bureaucracies are involved, and a lot of complicated issues are involved.

I thank you for pursuing it. I intend, as Senator Craig says, to continue to push for that kind of reform because I think it is important for our safety.

Thank you, Mr. Chairman.

Chairman CHAMBLISS. Thank you, Senator.

I will address this to both of you. Since State answered the question, Secretary Harty, it may be yours to answer, but it does involve you, too, Secretary Hutchinson.

We held a hearing in July on the visa revocation loophole that allowed a number of potential terrorists into the United States. In the State Department's responses to written questions, the Department wrote that "State is willing to share its ineligibility code with the Department of Homeland Security, which holds the key to why a visa is revoked based on watch list information. But DHS does not accept the code from the State Department."

Can you all explain that? Why is that?

Ms. HARTY. I believe that at the time of that testimony, sir, that was in fact that case, and we have now fixed that system. We have three different ways of making sure that we share the information in a timely fashion, in a way that is user-friendly to both sides.

Chairman CHAMBLISS. Good.

Lastly, we have talked a lot, and Asa, you particularly know that one of my major focuses has been information sharing. We have talked primarily about sharing information from the Federal level down to the State and local level, but there is another component, too. The more we do that and the more that line of communication is opened up, it gives us the opportunity to receive information at the Federal level from the State and local level.

Could you enlighten me as to how we are opening up those lines so that we can receive information from the State and local level to be fed into your system on individuals?

Mr. HUTCHINSON. One of the primary means of doing that would be through the Joint Terrorism Task Forces that are located in each State under the leadership of the Department of Justice. Every law enforcement agency is participating in that. Homeland

security officers are in those Joint Terrorist Task Forces and, most important, local officers are. So that as information is received from local law enforcement, that is the best vehicle. That way, it is made available to the Nation, to the leadership in Washington, but to every district that might have a basis to have that information.

There are other mechanisms through which the information flows in the Department of Homeland Security. It would flow also through immigration and customs enforcement and their contacts with local law enforcement, the border patrol and their relationships. But the most formalized structure—and it needs to be made very effective—would be the JTTFs, Joint Terrorism Task Forces.

Chairman CHAMBLISS. Well, to both of you, let me just say that the challenge you have had and still do have is very awesome and very daunting, but I am very pleased with the progress that you have come here today to report, and I am glad we delayed this hearing for a week, Secretary Hutchinson, number one, to get you back safely, but to allow for the completion of this Memorandum of Understanding, which is huge. I commend both of you for your hard work and dedication, as well as your staff, to getting that done.

This is going to continue to be an issue that we are going to conduct very stringent oversight on, because I think it is so critically important to winning this war on terrorism. We look forward to continuing the dialogue with you and continuing to work with you as we move down the road toward making America safer.

Mr. HUTCHINSON. Mr. Chairman, excuse me. Would you indulge me just to let me join you in thanking our staffs who worked so hard on it, both Maura's staff, but also the staff in the front row here have been very instrumental in bridging the gap between Homeland Security and the Department of State.

Chairman CHAMBLISS. Certainly. If you will, because there will be a record on this, how about just giving us the names of your staff that you would like to include in the record, because we would like to make sure that they understand how much we appreciate their hard work.

Ms. HARTY. We are happy to do that. Thank you so much, sir.

Chairman CHAMBLISS. Great.

We are going to leave the record open for 7 days. There will be written questions, I am sure, that may be submitted by some members who could not be here to each of you, and if you could be very prompt in getting those back, we would appreciate that.

Again, thank you for your good work, thanks for being here today, and this hearing is adjourned.

[Whereupon, at 3:25 p.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Question for the Record Submitted to
Consular Affairs Assistant Secretary Maura Harty by
Chairman Saxby Chambliss
Immigration, Border Security Subcommittee Hearing
"Visa Issuance: Our First line of defense"
September 30, 2003

Question:

1) Do consular officers in the field have direct computer access to the consolidated watchlist at the Terrorist Screening Center, and if not, when will they and to what extent? Is there other national security, law enforcement or lookout database information consular officers will or should have access to in order to adjudicate visas?

Answer:

The agencies involved in setting up the TSC have not formalized a decision on this point. The Department of State is demanding that consular officers at our posts overseas continue to have access to the consolidated watchlist at the Terrorist Screening Center terrorist through the Consular Lookout and Support System (CLASS), just as they do now to TIPOFF data. We want to establish a virtual real-time link between the TSC watchlist and CLASS. By doing so, we can continue to use the special features of the automated visa systems, most notable among them the immediate response time and the sophisticated name searching logic which includes algorithms for the Arabic, Slavic and Hispanic algorithms.

We do not know of a federal lookout database that has national security or law enforcement information pertinent to visa adjudication that is not currently available to consular officers. Specifically State's present TIPOFF database on potential and actual terrorists currently receives data from FBI (includes State and local government sources), CIA, NSA, DoD, DEA, DHS, Interpol, U.S. diplomatic posts, and public sources.

Question for the Record Submitted to
Consular Affairs Assistant Secretary Maura Harty by
Senator Charles Grassley
Immigration and Border Security Subcommittee Hearing
"Visa Issuance: Our first line of defense."
September 30, 2003

Question: [This question is broken into component parts in following pages.]

Assistant Secretary Harty:

First, you stated that you have personally visited many "hot spots" to review the visa issuance process. Please explain to me whether you have identified a change in attitude and practice by consular officers from before September 11, 2001, to the present.

Second, what steps have you taken to ensure that consular officials fully cooperate with Homeland Security officials dispatched to consular posts, given that the Department of Homeland Security has final responsibility for establishing and administering visa policies?

Third, one potential security problem at consulates abroad is the use of Foreign Service Nationals (FSNs). An Inspector General report I requested last year on visa problems pointed out that FSNs were handling visa documents and deciding if the applications were adequate to meet the requirements for issuance. In short, they were doing the jobs of consular officers. The report also found that FSNs were making referrals for applicants, potentially bypassing interviews and avoiding scrutiny. In this context, please answer the following questions:

- Who oversees the FSN program and individual FSNs?
- What role do FSNs play in the visa process?
- What is your Bureau doing to make sure that FSNs do not compromise the visa process?

Finally, I am pleased to hear that visa processing has undergone a profound transformation since 9/11 as the focus on security has sharpened. What challenges do you foresee in visa issuance policies as the State and Homeland Security departments move forward with the Memo of Understanding?

Question for the Record Submitted to
Consular Affairs Assistant Secretary Maura Harty by
Senator Charles Grassley
Immigration and Border Security Subcommittee Hearing
"Visa Issuance: Our first line of defense."
September 30, 2003

Question:

First, you stated that you have personally visited many "hot spots" to review the visa issuance process. Please explain to me whether you have identified a change in attitude and practice by consular officers from before September 11, 2001, to the present.

Answer:

During the nearly one year that I have been on the job I have visited Saudi Arabia three times, Mexico twice, Lebanon, Egypt, Jordan, Abu Dhabi, Syria and Iraq, in addition to major visa processing posts in Europe. I have attended conferences of entry-level officers serving in Latin America, Europe, Africa, South Asia and the Middle East. I have been struck by the dedication and professionalism of my consular and other agency colleagues, who are making extraordinary efforts to do a difficult job well.

Since the events of September 11, 2001, we have sharpened our focus on national security. There is no question that consular officers are making border security and particularly counter-terrorism efforts paramount in visa operations. As the Secretary of State has stated on many occasions, we must do our utmost to protect the borders of our nation while also facilitating legitimate travel. One of the major changes since 9/11 has been our willingness as a government to pay a much higher price for that protection, implementing programs to improve and tighten the visa process even if delays occur. Our goal remains a visa process that is as focussed and effective as possible. We will never forget that job number one is the protection of this nation and its citizens.

Question for the Record Submitted to
Consular Affairs Assistant Secretary Maura Harty by
Senator Charles Grassley
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"Visa Issuance: Our first line of defense."
September 30, 2003

Question:

Second, what steps have you taken to ensure that consular officials fully cooperate with Homeland Security officials dispatched to consular posts, given that the Department of Homeland Security has final responsibility for establishing and administering visa policies?

Answer:

I am proud of the agreement we have reached with the Department of Homeland Security concerning the Memorandum of Understanding on implementation of Section 428 of the Homeland Security Act. As noted in my formal testimony, however, this is only the beginning, or rather a major milestone in a continuation, of a partnership that I expect to grow. Even before the MOU was finalized, I established a liaison office in the Department of State to work specifically with DHS on Section 428 issues. We are in discussions concerning an exchange of liaison personnel at the headquarters level to help facilitate communication and operations, particularly as DHS begins deploying additional personnel overseas. My regular conversations with DHS U/S Hutchinson have been frank and forthcoming. We have an excellent relationship.

I have shared the MOU with consular personnel around the world, and am speaking at consular conferences abroad and at town hall meetings in the Department to ensure that State Department personnel understand the background and the practical consequences of the MOU. I have just returned from a personal review of consular and DHS operations in Riyadh and Jeddah,

where I spent time with the consular and DHS staff. I am really delighted by the spirit of cooperation I have seen there. We are working together to do an important job. I expect that any misunderstandings we may encounter will be worked through quickly in a spirit of teamwork and professionalism.

Question for the Record Submitted to
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Question:

Third, one potential security problem at consulates abroad is the use of Foreign Service Nationals (FSNs). An Inspector General report I requested last year on visa problems pointed out that FSNs were handling visa documents and deciding if the applications were adequate to meet the requirements for issuance. In short, they were doing the jobs of consular officers. The report also found that FSNs were making referrals for applicants, potentially bypassing interviews and avoiding scrutiny. In this context, please answer the following questions:

- Who oversees the FSN program and individual FSNs?
- What role do FSNs play in the visa process?
- What is your Bureau doing to make sure that FSNs do not compromise the visa process?

Answer:

Before addressing the specific questions raised concerning the FSN program, it would be useful to clarify some of the issues touched on in the Senator's introductory remarks. The Department of State Inspector General report in question found that in one post FSNs were reviewing documents associated with resubmission of applications originally denied under Section 221(g) of the INA for inadequate documentation. Cases are refused under Section 221(g) when the applicant is being asked to provide additional documentation or other evidence of eligibility for a visa. This is a formal refusal made by a consular officer and is accompanied by a specific list of items required from the applicant in order to qualify for the visa. When applicants return with the documents requested, FSN

employees may often review the cases to ensure that they are ready for review by a consular officer. Consular officers must still make a final determination of eligibility under the law and adjudicate the visa after a personal review of the evidence submitted. FSNs can never approve or deny a visa, which can only be printed after an officer has logged on to the visa processing system and authorized its production.

We have greatly tightened up the visa referral system and FSNs do not have the right to participate in the referral system. Visa referrals must be made in writing by an American officer and approved by the American chief of the section or agency, also in writing. The OIG review expressed concern that in many cases the referrals were being made based upon FSN contacts without creating a formal record of the FSN's involvement in the case. Since this report was issued, CA has revised guidance to the field concerning referrals to make the referral form a standard form used worldwide, require that the applicant being referred be personally known to the referring officer and require that the referring officer explicitly state on the referral form that the applicant poses no threat to US national security and that expeditious processing of their application is in the US national interest. I further plan to instruct posts to scan for the permanent record all referral forms for future reference.

The Foreign Service National program is an integral part of the Department of State personnel system. FSNs are hired and managed under standards and procedures established by law and regulations, and are ultimately supervised by American personnel.

In general, FSN positions are designed to meet two needs in visa operations:

1. Provide support for clerical and administrative processes to allow American citizen consular officer resources to be devoted to tasks that require consular officer action, most notably the adjudication of visa applications and management of internal controls.
2. Provide continuity to facilitate transition between Foreign Service personnel when transfers occur. This is particularly true with senior level FSNs, who may be able to help pass along local contacts and specialized information concerning local conditions when new officers arrive.

The activities which FSNs may not perform include:

- Adjudication of visa cases (approval or refusal);
- Interview of visa applicants for purposes of adjudication;
- Final approval of Security Advisory Opinion requests;
- Administration of oaths;
- Review of details of name check results;
- Certification of true copies of documents for visa purposes;
- Daily reconciliation of issuances and refusals;
- Inventory of controlled consular materials, including daily reconciliation of these items;
- Daily reconciliation of consular fee collections;
- Approval of special or expedited processing for emergent cases;
- Approval of waivers of personal appearance or documentary requirements;

- Requests for waivers of ineligibility;
- Revocation of visas;
- Spoilage of visas;
- Correction of biographic details on visas which have already been print authorized;
- Termination of immigrant visas;
- Referral of cases for fraud investigation;
- Access to classified material; or,
- Other activities of a sensitive national security or internal controls nature.

FSNs participate in the visa process through positions in NIV and IV sections, Fraud Program Units and as cashiers. In smaller posts, these positions may be combined.

Management Controls in Consular Processing

Specific guidance on internal controls is contained in Chapter 600 of the Consular Management Handbook, Volume 9 of the Foreign Affairs Manual and in various instructions provided to the field. Procedures have been established for:

- Receipt, inventory and daily reconciliation of controlled consular supplies such as NIV foils;
- Cash collection and accounting;
- Control and accounting of consular hardware and software;
- Oversight and control of automated systems (discussed in more detail below);
- Access controls to consular working space;
- Line-of-sight supervision of consular space;
- Separation of duties to ensure proper accountability;
- Oversight of the medical process (particularly for immigrant visas); and
- Review of consular management reports.

The following provides some examples of the management controls over FSN work.

FSN Access to CA Automated Systems

FSNs have restricted access to functions of our automated systems. For example, they can perform data entry but they cannot view the results of the lookout checks.

The assignment of access to the visa systems by passwords is highly controlled and monitored remotely by Washington-based experts.

Audit Trails and Accountability

All data and significant events relative to the processing of every visa case are captured in the Consular Consolidated Database, normally in association with the user ID, date and time. This is true for work done by FSNs as well as by consular officers. This data is retained indefinitely.

FSNs are not allowed physical access to USG government facilities after hours without appropriate authorizations and American supervision. Systems managers use network security features to restrict FSNs to log on to systems only during normal working hours and at workstations designation as valid work sites for FSNs.

Visa Production

FSNs can physically print a visa only after it is approved and electronically sent to print by an officer. If an FSN marks a visa for reprinting or reentry due to an error, an officer must approve the need for this action and electronically resend permission to print before the FSN can proceed.

Question for the Record Submitted to
Consular Affairs Assistant Secretary Maura Harty by
Senator Charles Grassley
Immigration and Border Security Subcommittee Hearing
"Visa Issuance: Our first line of defense."
September 30, 2003

Question:

Finally, I am pleased to hear that visa processing has undergone a profound transformation since 9/11 as the focus on security has sharpened. What challenges do you foresee in visa issuance policies as the State and Homeland Security departments move forward with the Memo of Understanding?

Answer:

Our first significant challenge will be to work closely with DHS to meet our respective responsibilities under the Enhanced Border Security Act. We are mandated to add biometrics to visas and DHS is mandated to improve the entry/exit system. Through the US VISIT program directed by DHS, these two efforts are brought together. We did not wait for the conclusion of the MOU to begin to work out visa policy issues with DHS. We did so early in the planning stages of US-VISIT. Consequently, we have already begun biometric collection in six posts overseas and have devised a means of sharing this data reliably with DHS for use in border inspection. I am confident that when DHS inaugurates US-VISIT at US airports in January 2004 that you will find effective teamwork between our two agencies.

Question for the Record Submitted to
Consular Affairs Assistant Secretary Maura Harty by
Senator Edward M. Kennedy
Immigration and Border Security Subcommittee Hearing
"Visa Issuance: Our first line of defense."
September 30, 2003

Transferring Visa Authority: As you may know, I did not support the transfer of jurisdiction over visa issuance policy from the State Department to DHS. This authority comes with tremendous responsibility and to transfer it to a new agency with little experience in foreign policy matters and visa issuance could jeopardize America's borders instead of securing them. I remain concerned that DHS does not have the requisite staff, expertise and training to fully and effectively carry out their duties with respect to this MOU.

Question:

a. I understand that there were intense negotiations between State and DHS over the MOU. I am sure that there will be disagreements as the terms of the MOU are implemented. How will disagreements in implementation between the agencies be resolved? How will disagreements with respect to a particular case be resolved?

Answer:

The MOU provides the framework for interactions between the two Departments on visa matters. The negotiating teams on both sides realized that they could not anticipate every issue that might arise. As we worked through the MOU, questions and issues were resolved at the lowest possible management level. Questions the teams could not resolve were referred to me and U/S Hutchinson for discussion and resolution. A small number of specific issues were taken to Secretaries Powell and Ridge. We are optimistic that we will be able to work out questions concerning implementation and particular cases in a similarly collaborative manner. Toward that end, paragraph 9a of the MOU provides that each Department may designate persons to

serve as liaisons between the headquarters of the two Departments. In the event that disagreements arise, the following language was inserted into the MOU:

> **Dispute Resolution.** Disagreements concerning the interpretation or implementation of this MOU will be resolved at the lowest level possible. Failing that, matters will be referred successively to higher authorities.

We are working with the Office of International Enforcement (OIE) of DHS to develop a dispute resolution mechanism.

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Question:

b. What agency has final authority over the denial of a visa? What agency has final authority over the decision to grant a visa?

Answer:

Under the terms of the MOU, these simple questions have complex answers. If a consular officer decides to refuse a visa, DHS has no authority to change this decision. However, if a consular officer decides to issue a visa, the Secretary of Homeland Security has independent authority to instruct the consular officer to refuse such visa in accordance with law. He can also instruct a consular officer to revoke a visa. This authority may not be delegated to DHS officers overseas, but may be delegated to DHS headquarters staff. The MOU specifies in this regard that:

> A DHS employee assigned to an overseas post and performing section 428(e) functions may recommend to the chief of the consular section or the most senior supervisory consular officer present that a visa be refused or revoked. If the chief of section or

supervisory consular officer does not agree that the visa should be refused or revoked, the post will initiate a request for a security or other advisory opinion and the DHS employee will be consulted in its preparation. No visa will be issued in the interim. No advisory opinion will be issued thereafter without the full consultation of DOS and DHS. Nothing in this subparagraph prejudices the authority of the Secretary of Homeland Security to direct refusal of the visa at any time in accordance with the procedures specified in paragraph 5 of this MOU.

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Question:

c. Does Consular Affairs have sufficient resources in both funding and personnel to implement all post-9/11 security initiatives or requirements?

Answer:

The Department will submit its FY 2005 budget soon, which furthers our robust plans to implement Congressional intent for border security. This will continue our emphasis on security enhancements to the visa process, which include expanded biometrics collection and anti-fraud initiatives, full implementation of the Hague Convention on Intercountry Adoptions, continued implementation of the next generation U.S. passport, expansion of call centers for improved information for the public, meeting the need for additional staff to implement these initiatives, and improved systems and administrative support to our offices around the world.

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Question:

d. Will the State Department continue to operate the TIPOFF list?

Answer:

No. This change in our operations is prompted by Homeland Security Presidential Directive No. 6 of September 16. This directive instructed the Attorney General to establish an organization to consolidate the government's approach to terrorist screening and directed the heads of all Federal departments to provide to the Terrorist Threat Integration Center (TTIC) at CIA all available information related to suspected terrorists. Following the signing of the HSPD, the Secretary of State, the Attorney General, the DCI, and the Secretary of Homeland Security signed the MOU to create the Terrorist Screening Center (TSC) at the FBI. In accordance with the MOU, the TIPOFF function of filtering data to produce names for watchlisting will be transferred to TTIC; the watchlist database itself will be maintained by the TSC, which will make the watchlisted names available to consular officers, law enforcement officers, and any other organizations with a

need to screen against terrorists. The State Department will have representatives both at TTIC and at the TSC, but will no longer maintain the separate database known as TIPOFF once TTIC and TSC are fully operational. In accordance with the directive, State has been assured that it will receive the same or better service from the new entities than it has received during the nearly 17 year collaboration between State's Bureau of Consular Affairs and Bureau of Intelligence and Research - a necessary prerequisite vital to our ability to appropriately adjudicate visa applications around the world in a timely fashion.

Question for the Record Submitted to
Consular Affairs Assistant Secretary Maura Harty by
Senator Edward M. Kennedy
Immigration and Border Security Subcommittee Hearing
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September 30, 2003

Interview Requirement: After the State Department began implementing the regulation requiring interviews for all visa applicants, my office received a flood of calls describing very long delays and backlogs in visa issuance. In some instances, there have been delays as long as 7 weeks. Before, it took only a few days. Our economy depends on billions of dollars spent by consumers from abroad. Many individuals with legitimate visa applications, like foreign students and business travelers, are discouraged from coming to the U.S.

Question:

a. Does the State Department currently have the staff, resources, and facilities to conduct more visa interviews? What additional resources do you need to avoid more delays in the processing of visa applications?

Answer:

Demand for nonimmigrant visas dropped from over 10 million in FY-01 to 6.9 million in FY-03. As a result, we generally have the staff in place to conduct more interviews. Many of our facilities have been downsized over the years, causing real challenges in accommodating physical plant realities to new interviewing requirements. We are and will continue to work through these challenges although it will certainly take time and significant capital expenditures at some posts. However, special security advisory opinion requirements put in place after September 11 in collaboration with other USG agencies have, in large measure, greatly contributed to a process that, in many cases is longer and less predictable than in the past. In addition, in order to meet the specific biometrics requirements of the Enhanced Border Security Act as well as general workload demands, we have included an additional 161

consular positions in the FY-04 budget request and an additional 138 positions for FY-05. All 299 of these are new positions, with 131 of them to replace consular associates, who will no longer have adjudication authority.

As we look ahead we must also develop a strategy to mitigate the risk associated with the uncertainty of NIV demand and reliance on MRV fee derived revenue. This might include retention of other, less volatile, fees such as the IV fee for direct funding of operations, and a greater balance of appropriated funding.

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Question:

b. Has the State Department taken concrete measures to mitigate the potential impact of the increased visa interview requirement?

Answer:

The Department has worked closely with those posts which have had to increase the number of applicants interviewed to prevent significant interview backlogs from developing. We have granted some limited, but significant, exceptions to the interview policy to 13 posts, mostly in Europe and Asia. This relief will naturally only last until the October 2004 legal requirement for biometrics in all visas, at which time few applicants will be exempted from interviews. Additional staff is being added at a number of posts, and facilities will have to be remodeled where necessary to accommodate more applicants.

As of October 21, 2003, waits are currently longer than 30 days at 19 of our 210 visa adjudicating posts. These waiting periods are almost all due to unexpected staffing gaps or other factors

that existed before the new interview policy went into effect on August 1 and we working to fill those gaps. At many posts the waiting times for interviews have gone down since August 1, now that peak season is past in many countries.

We have taken steps to ensure that applicants with an urgent need to travel, particularly students who must start class by a specific date, are accommodated to the greatest degree possible. For instance, early in the summer we instructed posts to give priority to scheduling appointments for student visa applicants. We recently reiterated those instructions.

I am pleased to note that, in a recent trip to six Middle Eastern countries, many foreign interlocutors indicated that the summer of 2003 was easier on their nationals than that of the previous summer. Having said that, name check delays, often held up in the interagency process, continue to plague us and to sow the seeds of discontent and disappointment in our performance. We will continue to work with all other agencies in the USG to ensure quicker turnaround times for specialized name checks.

Question for the Record Submitted to
Consular Affairs Assistant Secretary Maura Harty by
Senator Edward M. Kennedy
Immigration and Border Security Subcommittee Hearing
"Visa Issuance: Our first line of defense."
September 30, 2003

Interview Requirement: After the State Department began implementing the regulation requiring interviews for all visa applicants, my office received a flood of calls describing very long delays and backlogs in visa issuance. In some instances, there have been delays as long as 7 weeks. Before, it took only a few days. Our economy depends on billions of dollars spent by consumers from abroad. Many individuals with legitimate visa applicants, like foreign students and business travelers, are discouraged from coming to the U.S.

Question:

c. What other changes to the visa issuance process does the State Department foresee in the next year and what is it doing now to educate the traveling public?

Answer:

We anticipate two major changes over the next year -- the incorporation of biometrics in our visas as required by the Enhanced Border Security and Visa Entry Reform Act of 2002 (EBSVERA) and the suspension of the several exceptions to the interview requirement imposed on August 1st. The Act requires that not later than October 26, 2004, our visas include biometric identifiers. The Department, in consultation with NIST, DOJ, and DHS, has determined that index fingerprints and digital photographs will be the biometrics used for all our visas, both immigrant and nonimmigrant. We will phase in electronic collection of fingerprints at our 211 visa adjudicating posts over the next year. We have already started collecting fingerprints at six posts—Frankfurt, Brussels, Guatemala, San Salvador, Montreal, and Ottawa. The biometric

requirement will, of course, necessitate the personal appearance of all visa applicants, even those excluded from the interview requirement, at our embassies and consulates.

We have distributed to the field a full deployment schedule for biometric collection, along with information for the press and public. Our embassies and consulates are publicizing the new requirement widely before they initiate biometric collection. CA is also conducting an active outreach effort in the United States, focusing on the academic, scientific, and business communities to explain changes in the visa process.

Looking a bit further down the line, the Department has been informed that DHS and the Department of Justice would like to expand biometric collection from two to eight or ten fingerprints. We are in intense conversation with our partner agencies to ensure that we are all appropriately meeting the nation's security needs. If and when we move to a greater biometric collection, there will be some additional implementation implications for posts abroad which we will work to address as they arise.

SUBMISSIONS FOR THE RECORD

Statement of
The Honorable Saxby Chambliss
United States Senator
Georgia

September 30, 2003

PRINTABLE VERSION

Statement for Chairman Saxby Chambliss
Immigration and Border Security Subcommittee Hearing
Visa Issuance: Our first line of defense for homeland security
September 30, 2003

In November of 2002, Congress passed The Homeland Security Act to establish the Department of Homeland Security, incorporating the immigration functions of the former INS. The Act also transferred visa issuance authority from the Department of State to the Homeland Security Department. This was a significant transfer of authority, because it clearly envisions visa issuance as a critical stage in border security for our nation. All nineteen of the September 11th hijackers came to the United States on visas. With improved information sharing, we can stop a potential terrorist before he gets to our borders by denying him a visa in the first place.

Just yesterday, the President transmitted a Memorandum of Understanding, or MOU, between the State and Homeland Security on who exactly will be in charge of visa issuance functions. This MOU is a product of months of negotiations between the Departments to spell out the intent of Section 428 of the Homeland Security Act, which covers visa issuance procedures. Importantly, the MOU details the coordination that is necessary between the two Departments when a decision is made to issue or deny a visa. A decision that must be made with a sharp eye towards our homeland security.

A key issue in the passage of the Homeland Security Act was putting control of the visa issuance process specifically under the Border and Transportation Security Directorate in order to keep the functions of immigration services separate from the functions of border security. The old INS system was broken, so Congress split up the agency to make it more accountable. We must keep it that way if our homeland security is to remain vigilant. I know Undersecretary Hutchinson will work with Director Aguirre ("Ah-gear-a") and Assistant Secretary Harty on immigration services. This is important work, but the point is that in a post - 9-11 world, visa issuance must be a border security job.

In a July hearing this Subcommittee held, we urged Homeland Security to adopt and formalize policies in order to stop immigration-related threats to our nation's security. I am pleased that our efforts have at last brought us to the point of

having an agreement on visa issuance authority. That is a necessary first step, and this Subcommittee will continue to work with both Departments to make sure border security measures are implemented and adhered to in order to protect Americans from future attacks.

I welcome Undersecretary Hutchinson and Secretary Harty. We'll have plenty of questions to ask you both about the Memorandum of Understanding and about other homeland security functions. As you know, we have spent a good amount of time this year discussing the role of information sharing, for instance with the visa revocation problem. Today we look forward to talking about the fuller picture of coordination for visa issuance as a border protection measure in order to better ensure our nation is safe.

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PRINTER FRIENDLY VERSION

United States Senate
Committee on the Judiciary
Testimony of Assistant Secretary of State Maura Harty
Visa Issuance: Our First Line of Defense
September 30, 2003

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to address you on a subject that all of us agree is crucial: preventing terrorists from entering the United States. The Department of State's visa work abroad constitutes the "forward based defense" of the United States against terrorists and criminals who seek to enter the country to harm us. We have no higher responsibility and we are determined to do this work in the most thorough and comprehensive manner possible. In this historic time of change, the Department of State and the Department of Homeland Security have come together to establish procedures that will provide a sound basis for maintaining an effective, efficient visa process that secures America's borders from external threats while continuing to promote legitimate travel to the U.S. We worked long and hard together on a framework that gives the Secretary of Homeland Security the policy role contemplated by the Homeland Security Act while maintaining the Secretary of State's clear chain of command over consular officers and relying on the foreign policy and visa processing expertise of the Department of State and its consular officers. The language in the MOU's opening intent paragraph best describes how State and DHS intend to collaborate in implementing the MOU:

"The Secretary of State and the Secretary of Homeland Security will work cooperatively to create and maintain an effective, efficient visa process that secures America's borders from external threats and ensures that our borders remain open to legitimate travel to the U.S. Such travel is important to our international, economic and national values and interests."

What does this mean operationally? Our broad organizing principle in drafting the MOU was to recognize and respect the different expertise of the two departments consistent with the law granting the DHS authority over visa policy, particularly as it relates to homeland security issues. The Secretary of Homeland Security will establish visa policy, review implementation of that policy and have the final responsibility to issue or approve visa guidance, including regulations, Foreign Affairs manual provisions and cables to all diplomatic and consular posts except in certain areas that are reserved to the Secretary of State. DHS will generally have responsibility to determine the documentary requirements for visa application and qualification, the ability of visa applicants to apply outside their countries of origin or residence, and the use of personal appearance waivers that would allow a consular officer to waive a personal interview. These procedures will be designed in consultation with the Department of State, and will be informed by State's knowledge of what is practical abroad. Existing visa guidance will remain in place until changed in accordance with the MOU.

Advisory Opinions and Security Advisory Opinions will continue to be sent to State by consular officers abroad and answered by the State Department's Visa Office, but DHS will have the deciding authority in the event of a disagreement between agencies consulted and, of course, can require that a visa be denied in accordance with law. DHS will make the major decisions relevant to the Visa Waiver Program, with the Secretary of State's participation and advice, in the same manner as the Attorney General did before under the law creating the VWP. The establishment of standards and procedures for deciding whether nationals of countries that the Secretary of State has designated as State Sponsors of Terrorism pose a threat to the US, and therefore cannot be issued visas, will generally rest with DHS, though we have agreed that they will be designed in conformance with the facts as they apply to the applicant pool in each individual country. One size does not fit all here as the MOU explicitly recognizes.

The Secretary of State will have responsibility over certain visa decisions, including decisions of a foreign policy nature. For example, he will be responsible for identifying who is covered by our obligations to permit travel to and from the United Nation's Headquarters in New York for visa classification purposes, identifying treaties of Commerce and Navigation for the purpose of qualifying for an investor visa, and identifying legitimate international exchange programs for visa purposes. He will also be responsible for establishing visa validity periods and fees based on reciprocity. In the case of visa validity periods, however, he will consult with Homeland Security before lengthening them, and Homeland Security will have authority to determine that certain persons or classes of persons cannot benefit from the maximum validity period for security reasons. The Secretary of State will also exercise all the foreign policy-related grounds of visa denial enumerated in Section 428 and the additional provision, not specifically enumerated, under which we deny visas to persons who have confiscated the property of American citizens without just compensation.

The MOU establishes guidelines for assignment of DHS personnel at our missions abroad, their duties once assigned, and the interactions and authorities they will have with consular officers and the visa process once they arrive overseas. The MOU reflects the recognition that the officers DHS assigned should add important value to the visa process by bringing to bear specific homeland security and counter-terrorism experience or training, broad knowledge of immigration law, experience or training in investigative interviews and identifying fraudulent documents, and, ultimately, foreign language ability and specific area knowledge. DHS will establish specific criteria for assignments abroad that will guide them in deciding where to send personnel, but has already taken steps to ensure a DHS presence in Saudi Arabia where visa applications must be reviewed by DHS. Assignments will be established in accordance with NSDD-38 procedures under the authority of the Chief of Mission.

What role does the MOU envision for DHS personnel abroad? They will act as coordinators of source information involving threats to the U.S., particularly focusing on

terrorist threats, and be fully integrated into post committees such as the "Visas Viper" group designed to identify such threats. They will have the ability to review visa applications, whether non-immigrant or immigrant, of classes of applicants who present security threats. In Saudi Arabia they will review all applications. They will provide training and intelligence support to our consular officers, and they may recommend refusals or revocations of visas to them as the need arises. They may also conduct investigations with respect to consular matters which fall under the jurisdiction of the Secretary of Homeland Security. Should there be a disagreement between a DHS officer and a consular officer over a refusal or revocation recommendation that cannot be resolved at post, an advisory opinion request, in which the DHS officer will participate, will be sent to the Department of State for consultation and resolution with DHS. Consular systems and records, though maintained by the State Department, will be fully available to DHS under guidelines that guarantee their proper use and appropriate confidentiality.

The MOU recognizes that the Secretary of State must have control over officers in his chain of command. DHS officers assigned visa duties abroad may provide input related to the evaluations of consular officers doing visa work, but the evaluations themselves will be written by State Department consular supervisors. Direction to consular officers will come from their State Department supervisors, and all officers assigned abroad, including DHS, come under the authority of the Chief of Mission. The Departments of State and Homeland Security are both committed to effective coordination of our respective responsibilities with one another, and to the timely review of the procedures established in the MOU to ensure their effectiveness in our common goal of safeguarding the United States from foreign threats.

You may ask why it took six months to negotiate this MOU. The simple answer is because we wanted to get it right the first time. The vast complexity of visa law, regulation and policy and the complexity of consular management at more than 200 visa issuing posts world wide required careful and painstaking analysis to ensure that we crafted an MOU that would address the congressional intent of Section 428 of the Homeland Security Act. And we took care to do so in a way that we believe will create and maintain an effective, efficient visa process that secures America's borders from external threats and ensures that our borders remain open to legitimate travel to the U.S.

But the MOU is not the end product; it is only the beginning of this new partnership with the Department of Homeland Security. Long before we completed the MOU we were already forging a new relationship. I established a liaison office staffed with two senior officers, one of Ambassadorial rank, to coordinate daily with DHS on matters of joint concern. As a result, we have coordinated closely and cooperatively on a number of initiatives, including the new requirements for personal appearance for visa applicants and the Visa Waiver Program Waiver, and we continue to coordinate weekly on the new entry-exit system known as US-VISIT. Just last month, DHS teams arrived in Saudi Arabia to begin their integration into our consular operations in Riyadh and Jeddah. They were warmly welcomed, and the integration is proceeding smoothly. Our liaison officers here, in conjunction with their DHS counterparts, are in frequent contact with our

respective offices in Saudi Arabia to coordinate the integration and to ensure that DHS officers are full members of our Embassy team there. We anticipate this will be the successful model upon which to base integration of DHS officers in consular sections at other posts as designated.

Visa processing has undergone a profound transformation since 9/11 as we have sharpened our focus on security concerns. I hope I have conveyed to you just how intensely focused the Bureau of Consular Affairs is in our counter-terrorism mission. I also hope I have conveyed to you just how committed we are to working closely and cooperatively with the Department of Homeland Security (DHS) to ensure that the visa process offers the highest level of security possible for the protection of the American people. I would like to take this opportunity to express my gratitude to my dear friend and colleague, Under Secretary Asa Hutchinson, and to his outstanding team for all of their hard work and sincere efforts in achieving the first step in this new partnership. I welcome your questions.

United States Department of State

Assistant Secretary of State
for Consular Affairs

Washington, D.C. 20520

Dear Senator Chambliss:

I want to thank you sincerely for your kind offer during the hearing on Tuesday to enter into the Congressional Record the names of State Department personnel who negotiated the Memorandum of Understanding with the Department of Homeland Security. This was truly a cooperative effort on all parts, and we are grateful to our colleagues in the Department of Homeland Security, especially Under Secretary Hutchinson, for their collegial and collaborative efforts.

Key members of State's consular team who worked with their DHS counterparts to address Section 428 of the Homeland Security Act are:

Ambassador Susan Jacobs, State Liaison with DHS
Ms. Janice Jacobs, Deputy Assistant Secretary for Visa Services
Ms. Catherine Barry, Managing Director, Visa Office
Mr. Stephen K. Fischel, Director, Office of Legislation, Regulation, and Advisory Opinions, Visa Office
Ms. Catherine Brown, Assistant Legal Advisor for Consular Affairs, Office of the Legal Advisor
Ms. Mary McLeod, Attorney Advisor, Office of the Legal Advisor
Ms. Patricia Murphy, Senior Advisor to the Assistant Secretary for Consular Affairs

Again, let me thank you and please do not hesitate to call me if I can of further assistance.

Sincerely,

Maura Harty

The Honorable
Saxby Chambliss
United States Senate

Statement of Under Secretary Asa Hutchinson

Border and Transportation Security Directorate

Department of Homeland Security

Before the Senate Committee on the Judiciary,

Subcommittee on Immigration and Border Security

September 30, 2003

Good afternoon, Chairman Chambliss, Ranking Member Kennedy and distinguished members of the Committee. I appreciate the opportunity to appear before you today and am pleased to announce that the Memorandum of Understanding (MOU) between the Department of State and the Department of Homeland Security (DHS) that will implement Section 428 of the Homeland Security Act (HSA) has been signed by Secretary Ridge and Secretary Powell. (A copy has been provided to your staff.) The MOU transfers the responsibility for visa policy and oversight to the Department of Homeland Security pursuant to the HSA.

When Congress created the Department of Homeland Security and specifically DHS's new role in the visa process, it charged the Secretary with responsibility for establishing and administering rules, in accordance with section 428, governing the granting of visas or other forms of permission, including parole, to enter the United States. As the lead for DHS on section 428, I believe our role in the visa process is one of the most important missions of DHS and the Border and Transportation Security (BTS) Directorate.

The effectiveness of the new DHS role in visa security will rest in large part on how effective a partnership DHS can craft with the Department of State. I am pleased that Secretary Powell and Secretary Ridge have signed the MOU implementing section 428 of the Homeland Security Act and the President has submitted the report to Congress needed to implement this historic agreement. The MOU represents a truly significant and historic change in the visa process. By signing the MOU, both DHS and State have pledged to work cooperatively to create and maintain an effective, efficient visa process that secures America's borders from external threats while ensuring that our doors remain open to legitimate travel. The MOU has been the subject of many months of discussions between State and DHS, not only at the working level, but also through personal discussions I have had with my esteemed colleague, Assistant Secretary Maura Harty. I wish to thank Assistant Secretary Harty for her personal commitment and the commitment of the Department of State to working closely with us on the implementation of this agreement in the future.

The MOU affirms our commitment to work as partners with State in improving the security of our visa system. We view the visa process as the "forward-based defense" of the United States against terrorists and criminals who seek to enter the United States with the intention to do harm. Security in the visa process is three-fold: it requires sound visa policy, operational support overseas and at home, and enhanced information-sharing and integration, so that those adjudicating or reviewing visa applications have all available tools and information to make a sound decision in any individual case.

In the area of policy, DHS will now establish most visa policy, have final approval over most Department of State initiated guidance, review implementation of visa policy, and ensure that homeland security requirements are fully reflected in the visa process. When we speak of visa policy, we refer not only to policy decisions that affect the visa process as a whole, but also visa guidance that may affect individual visa determinations. DHS visa guidance will include federal regulations, Foreign Affairs Manual provisions (including all interpretive and procedural notes), and State Department cables to diplomatic and consular posts.

In carrying out its responsibilities related to visa policy that protects homeland security, the Department of Homeland Security will respect the Secretary of State's role in leading and managing the consular corps and its functions, managing the visa process and executing the foreign policy of the United States.

The Office of International Enforcement (OIE), an independent office within my directorate, will oversee management and implementation of the visa MOU and manage the assignment of DHS personnel to consular posts. This new office reports directly to me and I have designated Renee J. Harris to be Acting Director of OIE. OIE will perform a variety of functions, including reviewing and implementing visa guidance in areas of interest to DHS, and will handle operational duties related to the section 428 process for BTS. I have also firmly committed to working with the Bureau of Citizenship and Immigration Services in developing visa policy.

A good working relationship with the Department of State on visa issues has been established, not only here in Washington, but also at the U.S. Embassy in Riyadh and Consulate in Jeddah. The law requires that DHS personnel be assigned to Saudi Arabia to review 100% of visa applications once the visa MOU becomes effective. DHS deployed a team to Saudi Arabia at the end of August to establish offices in Riyadh and Jeddah. The Saudi team has been working with their State Department colleagues to craft procedures and policies for the review of Saudi visa applications. DHS and State are developing protocols and standard operating procedures for review and referral of visa applications filed in Saudi Arabia and these protocols will be used as a model for procedures at future posts where DHS may be assigned. The Saudi team has already provided valuable assistance and expert advice to consular staff at Riyadh, confirming two fraud cases and providing training to consular officers on fingerprinting techniques and fraudulent documents.

Beyond Saudi Arabia, the law authorizes DHS to assign personnel to diplomatic and consular posts where visas are issued. We are in the process of reviewing the next phase of deployment and assignment of DHS personnel to selected consular posts. Overseas, DHS will be fully integrated into U.S. diplomatic missions and subject to the authority of the Chief of Mission in the same manner as other executive branch employees serving abroad. DHS officers assigned to visa issuing posts will perform certain functions, including providing expert advice and training to consular officers regarding specific security threats relating to adjudication of a visa application, reviewing

visa applications (either on initiative of DHS or referral from consular officer adjudicating application), and conducting investigations with respect to consular matters under the jurisdiction of DHS.

An effective visa system also requires information sharing on a number of levels. Within DHS, BTS, OIE, BCIS and the Information Analysis and Infrastructure Protection (IAIP) Directorate staff participate in the Visa Security Information Integration (VSII) working group that will support implementation of the MOU. The VSII specifically focuses on system and information integration needed to support the visa process. The DHS officer at a consular post must have access to any and all information on potential terrorists and individuals with criminal intentions towards the United States to perform their mission. This effort, of course, will be coordinated with the newly announced Terrorist Screening Center (TSC) and the Terrorist Threat Integration Center (TTIC). Within DHS, the IAIP Directorate, headed by Under Secretary Frank Libutti, is responsible for the DHS role in the TSC and TTIC.

DHS recognizes the importance of maintaining a visa process that allows legitimate travelers to continue to travel to the United States, whether for work, pleasure, or family reasons. However, DHS is aware that among the millions of visa applications filed annually, there will be cases that will not present clear cut answers and that will require further scrutiny and vetting. We remain committed to open, secure borders and will continue to balance these interests while ensuring that homeland security requirements receive the priority they deserve in the visa process. We look forward to

working with other DHS components, our law enforcement partners, and the Department of State to ensure that collectively, we develop a visa system that provides the security that the American people expect and deserve.

Thank you for the invitation to testify today on this important issue, and I look forward to any questions you might have.

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