

CHECKING TERRORISM AT THE BORDER

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CHECKING TERRORISM AT THE BORDER

THURSDAY, APRIL 6, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL TERRORISM
AND NONPROLIFERATION,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:09 a.m. in room 2172, Rayburn House Office Building, Hon. Edward R. Royce (Chairman of the Subcommittee) presiding.

Mr. ROYCE. This hearing will come to order.

The title of this hearing today is "Checking Terrorism at the Border."

Terrorists conspiring to attack the United States often defraud and manipulate our immigration system. And the 9/11 Commission found that 15 of the hijackers that attacked the United States could have been stopped had we more diligently enforced our immigration laws. As one of today's witnesses will testify, there are dozens of terrorists who defrauded our immigration system, including many since 9/11, to remain in this country. This includes individuals affiliated with al-Qaeda, and affiliated with Hezbollah.

Last week this Subcommittee held a hearing on the attempts by terrorists to acquire shoulder-launched missiles that can down an airliner. Our homeland faces a very determined terrorist enemy, and our immigration policies and practices, I am afraid, remain a very porous defense.

Indeed, one of our witnesses, an individual experienced as a top security official in the immigration field, will tell us in frank terms that our immigration officials aren't taking seriously their responsibility to counter terrorism. United States Citizenship and Immigration Services (USCIS), the agency that establishes the immigration status of millions of applicants every year, remains deeply flawed, which a Government Accountability Office report highlighted just last month.

USCIS is riddled with fraud and corruption, we will hear from one witness, and the critical information needed to protect national security remains stovepiped with information-sharing being frustrated. This puts those deciding immigration applications in the very difficult position of not having access to key records held by other U.S. Government agencies, including the FBI and the CIA. And frankly, when you can't check the terrorist watch list, that creates an opening for terrorists. Moreover, there are too many uninvestigated complaints against USCIS personnel who issue green cards or work visas or asylum and other immigration stand-

ings representing grave vulnerabilities. Some of these personnel themselves have not been adequately investigated before being given the responsibility of frustrating attempts by terrorists and criminals to acquire the documentation needed to operate freely in the United States.

One of today's witnesses will tell of U.S. immigration documents being issued by foreign intelligence operatives. That is why I offered a successful amendment to the House immigration enforcement bill, to ensure that law enforcement is a top USCIS priority.

A big part of the problem is that those deciding applications are under enormous pressure to reduce the backlog. The Department of Homeland Security Inspector General in November, in documenting the Agency's poor management controls, found that it "continues to operate under production pressures." Now, that is the jargon for "move the applications as fast as you can." The March GAO report seconded that finding, noting that "production goals" are put over rooting out the type of fraud that terrorists commit in their planning. The system, it is clear, is rigged to approve immigration applications, and the system is rigged to shortchange security. This report also found that "a number of individuals linked to a hostile foreign powers intelligence service were found to have been employed as temporary alien workers on military research." USCIS says it supports the ideal of "keeping America's doors open, but well guarded." The doors are open for sure, but I don't see the security counter-balance, despite the lessons of 9/11.

It is timely to examine these issues now, as Congress debates immigration policy. The Senate may soon pass guest worker legislation. This policy in which illegal immigrants are given legal status will place tremendous new burdens on a deeply-flawed USCIS. The President's budget request includes \$247 million for USCIS to implement a guest worker program. Guest worker program or not, and I hope not, more money without fundamental USCIS reform and the will to protect national security will accomplish nothing. I say that because of the Abouhalima case, in which that gentleman, in 1986, was able to legalize his status, claiming he was a seasonal agricultural worker; and once that was rubber-stamped, he then used that opportunity to obtain the documents to travel back to Afghanistan, where his handlers, al-Qaeda, trained him in putting together the bomb that he would use in 1993, when he drove a van under the World Trade Center and set off the first attack against the World Trade Center.

Proponents of this controversial proposal should understand the concerns that many of us have on the security front: Hoisting this new demand that millions of applicants onto this flawed agency would break its back, and dangerously compromise our national security. A reading of the GAO report suggests that USCIS performance is not improving. As Chairman of the Subcommittee on International Terrorism and Nonproliferation, I urge my colleagues and the American public to consider these serious shortcomings as we confront very resourceful terrorists who will do our nation as much harm as allowed.

I will now turn to the Ranking Member for any statement he may wish to make.

Mr. Sherman.

Mr. SHERMAN. Thank you, Mr. Chairman, for organizing this hearing.

As we know, several of the 9/11 hijackers, after gaining entry to the U.S. using visitor's visas, were able to extend their stays in the United States by obtaining student's status and other so-called immigration benefits from the INS.

Now, the INS has ceased to exist under those letters. But the current Homeland Security arm of the former INS that granted those immigration benefits to the 9/11 hijackers, the U.S. Citizen and Immigration Services, the USCIS, is the focus of this hearing.

I am glad that you have asked to join with us today Michael Maxwell, the former Director of USCIS Office of Security and Investigations. He was, in effect, the top internal affairs officer of USCIS. He no longer has that job. He will tell us that he was forced out, because he brought to light several security problems inside the Administration.

And Mr. Chairman, I want to commend you personally for seeing that the role of Congress doing oversight of the Administration takes precedent over partisan concerns or which party you or I or the Administration may be in. Because no Administration of either party will function well without the kind of Congressional oversight I hope we see here today.

Now, many of Mr. Maxwell's obligations, while very disappointing, are not a huge surprise, given the reputation, much of it deserved, that the Department of Homeland Security has acquired in its brief history, and that the INS acquired in its long history. I know, at least in my Congressional office, and I think in just about everyone else's Congressional office, in my term in Congress I have received more complaints about the INS than all other Federal agencies combined. And now, of course, those complaints come from the various Department of Homeland Security agencies that have taken over for the INS.

Mr. Maxwell will tell us that 4 years after 9/11, and after all of the 9/11 Commission and all of the work on information sharing, watch list databases, after all that, more than 40 percent of USCIS benefit adjudicators—these are the people who approve or disapprove immigration applications—40 percent of the decision-makers do not have access to basic criminal and national security information in the database used by the Agency.

You know that there is the symbol of justice being blind, where you see a blindfold over justice. But imagine 40 percent of your adjudicators actually wearing a blindfold instead of looking at the database to determine whether people are listed in the criminal or national security database.

Why is this? Because the adjudicators themselves have not undergone a background investigation. And Mr. Maxwell's former office has only a handful of people dedicated to doing the background checks, so we haven't even checked the checkers. And we have instead decided to blindfold them.

Even more troubling, however, is Mr. Maxwell's contention that there are more than 500 current complaints alleging criminal behavior against USCIS employees involved in the process of immigration petitions and applications. Complaint alleging people have taken bribes, have improperly assessed sensitive information. From

what I gather from Mr. Maxwell's testimony, which I have read but I look forward to hearing him provide, and from my staff meeting with them, some of these involve potential assistance to terrorists.

Most troubling of all of the allegations, that foreign intelligence officials have been able to infiltrate USCIS.

Mr. Maxwell alleges that these complaints go uninvestigated, or significantly underinvestigated, due to the lack of personnel dedicated to his former office. I believe that he will allege that top officials at USCIS and top officials at the Department of Homeland Security are aware of these allegations, and are simply unable to unwilling to do anything about them.

Mr. Maxwell has many additional complaints. Some may relate to turf battles within an agency, but this goes way beyond turf battles, to whether or not our national security is being guarded by the very agency established, the Department of Homeland Security, the very agency established to protect us. And I can commend Mr. Maxwell for coming forward.

I also want to welcome our other distinguished witness, Janice Kephart. She is a former 9/11 Commission staffer, also a former Senate staffer. She was responsible for the Commission's treatment of the travel of al-Qaeda terrorists who conducted attacks at the World Trade Center and the Pentagon.

As all of us know, the 9/11 Commission was a model of bipartisan cooperation and professional dedication. And she should be proud to be part of that effort.

I want to take an opportunity to make one more point. This country has a significant debate about immigration, but that is chiefly a debate about illegal immigration. No matter what you think about illegal immigration, we need to properly process legal immigrants. And we need to make sure that any change that we make in our immigration law does not overwhelm USCIS.

It is not enough to adopt good policy, and that will be contentious here in Congress; it has to be a policy that the Agency is capable of administering. And as we will see today, the Agency has great difficulty administering even the present law.

Now, in addition to the Agency, as we will see today, often letting the wrong people stay in this country for extended periods of time, the Agency has a highly-blemished record in terms of customer service. It may claim to have a customer service mentality, but in my dealings with the Agency I have seen situations where a husband and wife are told that they must live in separate countries for decades. That would be a human rights abuse if any other country did it, or at least we would so comment. All because the Agency is incapable of simply making decisions in a reasonable amount of time.

So I look forward to learning how we can make USCIS an agency that we can be proud of. And I think we have got a long way to go.

Mr. ROYCE. We will ask if there are any other opening statements, and we would ask that they be brief, because we are going to have recorded votes come up.

Mr. Tancredo.

Mr. TANCREDO. Mr. Chairman, in that case I will certainly reduce the amount of time I was going to use in an opening state-

ment to just say thank you for having this hearing. Others have looked into this, but I don't believe as effectively as they should have, other Committees.

I believe that there has been a reluctance on the part of others to actually get in depth into this issue for fear that there might be some embarrassment to the Administration or the USCIS itself.

When we recognize the severity of the concerns that have been brought before us, then it is apparent, certainly to me, and I am so happy to say to you as the Chairman, that it doesn't matter where these things go, we have to pursue them.

And so I look forward to the testimony, Mr. Chairman. And I thank you again for having the guts to have this hearing.

Mr. ROYCE. Thank you, Mr. Tancredo. Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman. I also want to commend you, and the Ranking Member, for holding this hearing. And I specifically thank Mike Maxwell for the very important testimony he is going to bring to this Committee.

I can testify from personal experience with the Houston CIS office that the problems that Mr. Maxwell uncovered as head of security for the agency as a whole, I saw personally in the Houston office.

The head of the Houston CIS office and the top ICE agent in Houston actually participated in a town hall meeting, called for illegal aliens in April 2004, and reassured them that the Administration was not going to enforce the immigration laws. And that any illegal alien in Houston did not have to worry about being deported.

I complained about it. Nothing was done to tell the people of Houston that the rule of law, our laws were going to be enforced. There is massive marriage fraud going on throughout the country. The Houston office, we have got examples, as I know Mr. Maxwell also will talk about, individuals being married, dozens and dozens of times, using the marriage loophole and fraudulent identities to bring criminal aliens into the United States.

I also want to point out, Mr. Chairman, that in my Subcommittee—I serve on the Appropriations Committee, and I am grateful for you having me here—one of my Subcommittees has jurisdiction over the Department of Justice and the FBI. And last week I confirmed again with the FBI Director that the FBI is aware of, they wouldn't say exactly how many, but a number of individuals from countries with known al-Qaeda connections who are changing their identities. They are changing their Islamic surnames to Hispanic surnames, adopting false Hispanic identities, and using these false identities and speaking Spanish, pretending to be illegal immigrants and hiding among the flood of illegals coming over our border, and disappearing into the country.

Further, Mr. Chairman, I also learned from Federal law enforcement authorities that many of these individuals from countries with known al-Qaeda connections adopting false Hispanic identities are white-collar professional people who are in positions that are needed in small rural communities in the United States—bankers, lawyers, engineers, architects. And these Islamic individuals pretending to be Hispanic crossing into the United States, unmolested,

are disappearing into these small rural communities, and vanishing.

It is a matter of deep concern to the country when we have unfortunately, when the Administration tells us, for example, that there are no Mexican military incursions in the United States. Yet I have been given a, this is a plastic wallet card issued to border patrol agents on how to deal with Mexican military incursions.

The truth, it is very important for the American people to get to the truth. And Mr. Maxwell's testimony and the work of this Committee is essential in that effort if we are going to protect the United States in an era when terrorists are sneaking in over our borders, pretending to be Hispanic.

Also, as we will hear today, the country will learn that Osama bin Laden's cousin could either walk across the border pretending to be Hispanic, or as we will hear today, he could come right through an office of CIS and adopt a false identity. And odds are CIS would never know it.

And it is extraordinarily important testimony, Mr. Chairman. And I thank you for bringing this to the attention of the American people.

Mr. ROYCE. Thank you, Mr. Culberson. Let me introduce the witnesses now.

Ms. Janice Kephart is a nationally-recognized border security expert. She specializes in the nexus between immigration and counterterrorism policy. She has authored and co-authored widely-acclaimed reports on these issues. Ms. Kephart served as a counsel to the National Commission on Terrorist Attacks Upon America, otherwise known as the 9/11 Commission.

She is a key co-author of the 9/11 Commission Staff Report, "9/11 and Terrorist Travel," released in August 2004. Ms. Kephart has testified before Congress several times on a variety of national security matters.

Prior to her work on the Commission, Ms. Kephart served as counsel to the Senate Judiciary Subcommittee on Terrorism, Technology and Government Information. In that position she also conducted oversight of Department of Justice counterterrorism programs, as well as the Immigration and Naturalization Service.

Mr. Michael Maxwell is the former Director of the Office of Security and Investigations within the U.S. Citizenship and Immigration Services of the Department of Homeland Security.

As the OSI Director, Mr. Maxwell was responsible for leading and managing a comprehensive security program for an agency of over 15,000 employees, in over 200 facilities worldwide, as well as its internal investigations and international operations branch.

Mr. Maxwell joined DHS in 2002, with over 15 years of experience in law enforcement, and in security operations ranging from leading a municipal police force as its chief, to participating in national security operations throughout the world, both with the U.S. Government and as a contract employee of the FBI.

Mr. Maxwell is a seasoned lecturer in the subjects of security planning and management, executive protection, law enforcement management, and special operations medicine.

At this time, I ask that Mr. Maxwell and Ms. Kephart please stand and raise your right hand to take the oath.

[Witnesses sworn.]

Mr. ROYCE. Let the record show that each of the witnesses answered in the affirmative.

I remind witnesses that Members have reviewed your testimony, so your written reports will be entered in the record, and I would ask you to summarize. And Ms. Kephart, if you would begin, then we will go to Mr. Maxwell.

**TESTIMONY OF MS. JANICE KEPHART, PRINCIPAL, 9/11
SECURITY SOLUTIONS, LLC**

Ms. KEPHART. Thank you, Mr. Chairman. If I may enter into the record as well my report on immigration and terrorism I published last September, which is the basis for much of the reason you invited me here today.

Mr. ROYCE. Without objection.

Ms. KEPHART. Thank you. Mr. Chairman Royce and Ranking Member Sherman, I am indeed proud to have had the honor to work for the 9/11 Commission. And I thank you for the opportunity this morning to discuss terrorist travel in USCIS. It is my first Congressional opportunity to discuss USCIS and immigration fraud, and I am deeply grateful to you for holding this hearing today.

From the outset, let me make it clear that I, like many, consider the benefits and wealth of human potential that immigration brings to our country to be one of our greatest strengths as a nation. But to do so well, our borders must have integrity. To have integrity, we must scrutinize effectively those who seek to come here and stay here. September 11 taught us that secure borders are a matter of national security.

Let me turn to terrorist travel, the reason I was invited here today.

First, all terrorists share in common the need to get to their destination; and second, the need to stay at their destination as long as it takes to carry out whatever mission they are tasked with.

But there is a hitch. Travel operations are risky business for terrorists. They must pass through borders to get to where they are going. In addition, they prefer the guise of legality so they can operate under the radar of law enforcement. To do so, they must submit to government authorities that could find out who the terrorist is, and the danger that terrorist poses. That vulnerability for the terrorist should be an opportunity for governments to stop or hinder terrorist travel.

And our studies show that when we stop terrorist travel, operations are often stopped as well. But the way the system works now, we don't take advantage of the opportunity. Instead, the system still encourages abuse.

The opportunities to interdict terrorists inevitably exist, because nearly all terrorists I have studied use fraud in some manner to acquire their legal immigration status. The results are that we naturalize them. We give them legal permanent residency. We give them changes in status, religious worker status, asylum, and many other benefits that permit terrorists to come to our country and stay here for long periods of time.

The report I was asked to testify about today covers the immigration histories of 94 indicted and convicted terrorists who operated in the U.S. between the early 1990s and 2004, including six of the 9/11 hijackers.

The report covers all varieties of terror organizations, not just al-Qaeda, along with all the varieties of terrorist activities conducted here. And these activities include raising money through crime or charities, recruiting, procuring dual-use items, or actually committing an operation. Most of these require longer stays than a tourist is usually granted, thus making application for an immigration benefit likely.

Among the report-specific findings, of the 94 foreign-born terrorists who operated in the U.S., the study found that two-thirds, 59, committed immigration fraud prior to, or in conjunction with, taking part in terrorist activity. Of the 59 terrorists that violated the law, many committed multiple immigration violations, 79 instances in all.

In total, 34 individuals were charged with making false statements to an immigration official, 17 applied for asylum. Fraud was used not only to gain entry to the U.S., but to embed in the U.S., in this case getting immigration benefits.

Once in the U.S., 23 terrorists became legal permanent residents, often by marrying an American. There were at least nine sham marriages.

In total, 21 foreign terrorists became naturalized U.S. citizens. And all four 9/11 pilots abused the vocational student status in one manner or other.

The two Trade Tower pilots, Marwan al Shehhi and Mohammed Atta, applied for a change of status from tourist to vocational student in the fall of 2000. Their identical applications requested nine more months than necessary for their schooling, requesting an end date of September 10, 2001. This misrepresentation should have been discernable by the adjudicator.

In addition, both men used the filing of the application to erroneously talk their way back into the United States in January, 2001.

Ziad Jarrah, the pilot of Pennsylvania Flight 93, came to the U.S. as a visitor, but started attending flight school full time on the very first day he arrived here, violating his status. He reentered the U.S. six subsequent times, each time a violation, and each time nobody knew because the school didn't report him, and Jarrah never applied for a change in status.

And Hani Hanjour, the Pentagon pilot, could not get a visa as a tourist in 2000, but got one as a student. He arrived, and never showed up for school.

So what are the lessons learned? Terrorists will continue to try to come to the United States. To do so will require immigration-related plans, and often under a false guise of legality. Sham marriages, student status, and political asylum can all lead to legal permanent residency. Legal permanent residency is almost a certain guarantee of naturalization in my study.

These abuses will continue unless we design a system that can snuff out the abuse, and penalize it.

And what I want to emphasize here is that no border initiative, no matter what name it takes, will truly move this nation toward a more secure border unless all elements of the border apparatus, whether those in place to deal with legal or illegal persons, have mechanisms in place to deter, detect, and interdict those who seek to do us harm.

So what do we need to do? My recommendations are outlined in my written testimony, but here are some of the main points.

All immigration applications must require biometrics to verify identity. And I can't emphasize that enough.

Adjudicators must have access to electronic traveller histories containing each point of contact with the border system. We need better training and clearer guidelines for adjudicators. They need adequate resources for timely adjudications of applications. We need a fraud fee on all applications, whether it be a visa or an immigration benefit, to fund anti-fraud activities.

Robust fraud detection, deterrents, and interdiction worked out of a better and more robust fraud detection unit at USCIS. And what I did not mention in my written testimony, administrative sanctions against perpetrators who have substantive findings of fraud against them, and where the penalty is a time where they are banished from immigration benefits for a period of time.

Thank you so very much, and I am happy to answer questions.

[The prepared statement of Ms. Kephart and a portion of the material submitted for the record follow:]

PREPARED STATEMENT OF MS. JANICE KEPHART, PRINCIPAL, 9/11 SECURITY SOLUTIONS, LLC

INTRODUCTION

Good afternoon and thank you for the opportunity to discuss *terrorist travel* and the *national security role of U.S. Citizenship and Immigration Services* (USCIS) with you today. My testimony stems from a basic commonality amongst all terrorist travel: that (1) terrorists need to get to their destination and (2) stay for however long the mission requirement is in order to be successful. It therefore becomes a mission of all elements of the U.S. border apparatus—such as the visa application to the port of entry through immigration benefits—to have mechanisms in place to deter, detect and interdict the fraud and illegalities that terrorists must inevitably use to push their way through the U.S. border apparatus. My testimony is based on the following work:

- As a counsel to the Senate Judiciary Subcommittee on Technology, Terrorism and Government Information prior to 9/11 where I conducted counterterrorism investigation and oversight inquiries of legacy INS;
- As a counsel on the 9/11 Commission “border security team” which produced the *9/11 Final Report* border facts and draft lessons learned and recommendations;
- As the author of the immigration portions of 9/11 staff report, *9/11 and Terrorist Travel*; and
- As the author of a September 2005 Center for Immigration Studies report, “Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel.”

At the Commission, I was responsible for the investigation and analysis of the INS and current DHS border functions as pertaining to counterterrorism, including the 9/11 hijackers' entry and embedding tactics once in the United States, such as the filing for immigration benefits and acquisition of identifications. My current work includes developing policy and operational solutions against terrorist travel and towards a more comprehensive border strategy that brings all the various elements of our U.S. border apparatus at DHS and the State Department into a closer working relationship.

Please note that the views I present here today are my own, and do not necessarily reflect those of the 9/11 Commission. I want to thank both Chairman Royce and Ranking Member Sherman for holding this hearing. I am particularly pleased to be able to discuss the national security role of USCIS, as the issues regarding immigration benefits were such a seemingly small part of the overwhelming travel information that we developed at the 9/11 Commission that I have not heretofore had the opportunity to address Congress on this matter. So thank you for putting the spotlight on USCIS and my work in regard to terrorist abuse of immigration benefits.

It is my hope that this Committee will continue to exercise its oversight authority on the important issue of terrorist travel and overall border security from the vantage point of international relations. I hope this Committee will help insure that our Government works with our partners on both sides of our borders and overseas, as well as Interpol, which is making great strides in addressing issues of terrorist travel with their watch notices and lost and stolen passport data now being shared with US and other border inspectors around the world.

IMMIGRATION BENEFITS POLICY—AN OVERVIEW

I hope that our discussion today moves us closer to agreeing on how to solve some of the problems that have plagued our immigration benefits adjudications for decades, many of which can be largely resolved by making sure that we implement the lessons learned as a result of the tragic events of September 11, 2001. Only then are we truly in a position to better assure the national security of the American people.

From the outset, let me make it clear that I, like many, consider the benefits and wealth of human potential that immigration brings to this country to be one of our greatest strengths as a nation. However, I also believe that we owe it to all Americans to maintain the integrity of our borders. To do so, we must scrutinize effectively those who seek to come here and stay here. September 11 has taught us that secure borders are a matter of national security.

Further, we will not have cohesive, coherent policies divested of special interests until we can acquire grassroots support for the good work our federal government should be doing to *encourage legal immigration and discourage illegal immigration in light of the lessons learned from 9/11 and other terrorist abuses of our immigration system*. This should not be a difficult rallying call to the American people. The fact is that nearly all Americans agree that legal immigration enriches the United States. Polls also indicate that a high percentage of Americans do not approve of illegal immigration. Therefore, as we move forward with our policies on border security and immigration, we should consider employing a simple formula: **does this policy provide for a more secure border apparatus while improving legal immigration or discouraging illegal immigration?** Where the answer is “yes” to this question, the solution is worth pursuing.

This formula could generate the set of policies that could drive forward real solutions that enables our border system to acquire respect. When our borders are respected, the American people will begin to see that the border system is providing the security they deserve and rightly demand. In the immigration benefits context, this means taking measures to deter, detect and prevent identification and document (USCIS calls this benefit) fraud—whether sought for economic or criminal/terrorist reasons—while encouraging, facilitating and streamlining legitimate legal immigration.

Today I plan to discuss with you: (1) the 9/11 hijackers’ embedding tactics; (2) the results of my September 2005 study on the embedding tactics of 94 other terrorists; (3) recommendations for vastly reducing fraud and addressing national security concerns which should, in and of itself, manifest a more streamlined legal immigration processing.

Lessons learned from the findings in sections (1) and (2) should include:

1. the importance of USCIS in the national security agenda;
2. the need for timely adjudications;
3. based on
 - a. clear law and guidelines;
 - b. forensic document information;
 - c. shared biometrically based traveler / visitor/ immigration histories
 - d. robust fraud detection, deterrence and interdiction conducted by trained professionals; and
 - e. followed up by trained law enforcement professionals in either the criminal (ICE) or administrative (USCIS) arenas.

4. adequate line-item budget to support the mission; and
5. legislative policy support for the mission.

9/11 HIJACKERS' EMBEDDING TACTICS

In *9/11 and Terrorist Travel*, my able colleagues and I discussed in depth the many varieties of terrorist travel tactics. These include fraudulent manipulations of passports, terrorist “calling card” indicators, abuse of a lax Saudi visa adjudication process, and a solid understanding of how to acquire immigration benefits such as a change of status from tourist to student, or a tourist extension of stay. We also discuss how one 9/11 pilot abused the vacuum of information between the State Department consular officers responsible for adjudicating information and immigration benefit application information, a loophole largely closed today with the Student and Exchange Visitor Information System (SEVIS). Another pilot absconded from the immigration benefits system altogether, never seeking to change his tourist status to student despite attaining his pilot’s license while in the United States. Two other pilots sought to change their status from tourist to student, enabling them to subsequently re-enter the United States under confusing legal guidelines. Another hijacker sought to extend his stay, did so too late, but was approved anyway.

The 9/11 hijackers also acquired a total of 28 state-issued identifications or drivers’ licenses (with four additional issued as duplicates)¹, six of which we know were used at ticket counters on the morning of 9/11.²

Below is a narrative, roughly chronological, explaining the various 9/11 hijackers’ encounters with immigration benefits, at that time housed in legacy INS, and today housed at the USCIS. The material here is pulled—and to the extent possible, summarized—from the *9/11 Final Report and 9/11 and Terrorist Travel*.

Seeking an extension of tourist length of stay

Nawaf al Hazmi was one of two “muscle” hijackers that came to the United States on January 15, 2000 to go to flight school to prepare for the 9/11 operation. He and his colleague (**Khalid al Mihdhar**) would become subjects of a watchlist hunt in late summer 2001, but in early 2000 they came into LAX from Bangkok and received the standard six-month stay that all visa-holding tourists receive.

On July 12, 2000, although failing flight school, **Nawaf al Hazmi** filed to extend his stay another six months in the United States, which was due to expire on July 14, 2000. At this point he was under orders from 9/11 mastermind **Khalid Sheikh Mohamed (KSM)** to stay in the United States. His passport contained a suspicious indicator of extremism, but neither the border inspectors at LAX nor immigration benefits adjudicators knew of this indicator; in fact, no one in intelligence paid attention to it until after 9/11.³

On June 18, 2001, nearly a year after the **al Hazmi** filed his application, the INS approved the extension of stay to January 15, 2001. As I wrote in *9/11 and Terrorist Travel*: “technically, the application was late, since the INS received it in July 2000, after his length of stay had expired; they therefore should not have adjudicated it. However, even with this late adjudication **al Hazmi** was still an overstay as of January 16, 2001. **Al Hazmi** never knew that his extension had been approved—the notice was returned as “undeliverable” on March 25, 2002.”⁴

Seeking a change of status from tourist to student—and not

Ramzi Binalshibh was originally slated to be one of the four 9/11 pilots. He tried four times to obtain a visa to come to the United States; in May and July 2000 in Germany, back in Yemen in September 2000, and once more in Berlin in November 2000. What is interesting about Binalshibh is that he thought, despite his failed attempts to come in legally, that he may be able to enter and stay if he could marry an American woman. He even corresponded via email with a woman in California for a short time. **Mohammed Atta, the operational ringleader of 9/11 and the pilot of American Airlines Flight 11—North Tower World Trade Center,**

¹ *9/11 and Terrorist Travel: Staff Report of the National Commission on Terrorist Attacks Upon the United States*. Franklin, TN: Hillsboro Press, Sept. 2004, p. 44. *9/11 and Terrorist Travel* is available in book form from Hillsboro Press. Available at http://providence-publishing.com/Merchant.mvc?Screen=PROD&Store_Code=PP&Product_Code=9ATT&Category_Code=FTANR. It contains corrections to the web version of the staff monograph, along with glossies of the travel documents in the appendices of the report. (I do not receive any royalties from its sales.)

² *9/11 and Terrorist Travel*, p. 43.

³ *9/11 and Terrorist Travel*, p. 17.

⁴ *9/11 and Terrorist Travel*, p. 34.

however, likely considered it too risky, and told Binalshibh to stop the correspondence.⁵

In early 2000, **Atta, Ziad Jarrah (pilot of United Airlines Flight 93—Pennsylvania)**, and **Binalshibh** returned to Germany from Afghanistan. Binalshibh and Atta, stopped to visit with the 9/11 plot mastermind **KSM** on their return. KSM had spent three years in the United States as a student in North Carolina, and was familiar with both U.S. culture and U.S. border functions. In 1983, KSM enrolled first at Chowan College, a Baptist school in Murfreesboro, North Carolina, and then at North Carolina Agricultural and Technical State University in Greensboro. There one of his classmates was Ramzi Yousef's brother, who himself later became an al Qaeda member while Yousef planned the 1993 World Trade Center and Bojinka plots with KSM. Not swayed in the least bit by American culture or democratic ideals, he told his captors in 2003 that even during his U.S. stay in the 1980s he considered killing the radical Jewish leader Meir Kahane when Kahane lectured in Greensboro. KSM graduated with a mechanical engineering degree in December 1986 and then left the United States permanently, (although he did receive a visa to visit the United States in July 2001 that was never used).⁶

Binalshibh states that it was at this early 2000 meeting that **KSM** provided details about how to get in and live in the United States to Atta, Jarrah and himself. **Marwan al Shehhi (pilot of United Airlines Flight 175—South Tower World Trade Center)** also met with KSM.⁷ We know that Al Qaeda trained their troops in terrorist travel, including how to deceive border personnel and others about their affiliation by changing both their radical behaviors and their appearance upon departing Afghanistan.⁸

Once back in Germany, the four began searching for appropriate flight schools. **Atta** did his homework, requesting information via email from 31 various U.S. flight schools.⁹ **Jarrah** decided that he should learn to fly in the United States.¹⁰ And that is what he did. From the day of his first entry in June 2000 on a tourist visa, he proceeded to become a full time student at the Florida Flight Training Center in Venice, Florida until January 31, 2001. He never did not seek a student visa, nor ever seek to file an immigration change of status with legacy INS once in the United States. Instead, he used his tourist visa to re-enter the United States six times from June 2000 until his last entry on August 5, 2001.

The failure to seek the change of status made him inadmissible and subject to removal each of the subsequent six re-entries. However, because neither the school nor Jarrah complied with notice requirements under the law, no one knew Jarrah was out of status. Both Jarrah and the school remained under the radar of potential immigration enforcement. Further complicating potential enforcement action was that at the time there was no student tracking system in place and the school certification program was highly flawed.¹¹

The following I lifted out of my work in 9/11 and Terrorist Travel:

On July 3, 2000, **al Shehhi** and **Atta** enrolled at Huffman Aviation to take flight lessons. Neither violated his immigration status: attending flight school was permitted as long as their entrance to the United States was legal and they sought to change their status before the expiration of their length of stay in late November and early December. As required by Huffman, both began training as private pilots.¹²

On September 15, 200 Huffman Aviation's Student Coordinator assisted **Atta** in filling out the student school form I-20M, required by the INS to demonstrate school enrollment. **Al Shehhi** also received an I-20M signed by this coordinator. Both **Atta's** and **Shehhi's** I-539 applications to change their immigration status from tourist (B-1/B-2) to vocational student (M1) were mailed to the INS. Both applications requested that their status be maintained until September 1, 2001. The contents of the applications are substantially the same, including the same financial statement of support, bank statement, and lease. Also in September, the two took flying lessons at Jones Aviation in nearby Sarasota, Florida. They spent a few hours a day flying at Jones, struggling as students because of their poor English. They were aggressive, even trying to take over control of the aircraft from the instructor on occasion. They failed their instrument rating tests there, and returned to

⁵ *The 9/11 Commission Final Report*, (authorized edition), p. 519, note 52 to Chapter 7.

⁶ *The 9/11 Commission Final Report*, pp. 145–150.

⁷ *The 9/11 Commission Final Report*, p. 496, notes 97, 98 to Chapter 5.

⁸ *The 9/11 Commission Final Report*, p. 519, notes 99, 100 to Chapter 5.

⁹ *The 9/11 Commission Final Report*, p. 519, notes 103 to Chapter 5.

¹⁰ *The 9/11 Commission Final Report*, p. 519, notes 102 to Chapter 5.

¹¹ *9/11 and Terrorist Travel*, p. 17.

¹² *9/11 and Terrorist Travel*, p. 17.

Huffman.¹³ They eventually passed their tests at Huffman, and started logging in hours in the air.

As is well known from the Justice Department's OIG report, for a variety of reasons pertaining to processing at immigration service centers, **Atta** and **al Shehhi** actually had their applications to change their status from tourist to vocational student approved and then received by Huffman Aviation on March 11, 2002.¹⁴ That report concludes, in part, as follows:

OIG Conclusions Regarding the Delay in Sending the I-20 Forms to Huffman Aviation

Huffman Aviation received its copies of Atta's and Alshehhi's I-20 forms in March 2002, more than a year and a half after the forms were submitted to the INS in September 2000 and approximately seven months after the I-539 change of status applications were approved in July and August 2001.

We found that the delay in sending the I-20 forms to Huffman Aviation was attributable to several causes. First, the INS did not adjudicate Atta's and Alshehhi's I-539 change of status applications for approximately 10 months. The INS has historically placed a low priority on the adjudication of I-539 applications, and the adjudication of these applications was significantly backlogged in 2001.

Second, after Atta's and Alshehhi's applications were approved in July and August 2001, ACS did not receive the I-20 forms from the INS for approximately two months after adjudications. Processing was delayed for many weeks due to disorganization in the INS's system for mailing the I-20s to ACS.

Third, ACS processed Atta's and Alshehhi's I-20 forms quickly upon receipt in September 2001 but did not mail the forms to Huffman Aviation for almost 180 days. ACS's actions were consistent with its understanding of its contract at the time and were consistent with its handling of other I-20 forms processed by ACS at the time. However, we found evidence that the INS had intended for the I-20s to be mailed to schools within 30 days not after 180 days.

Adjudication of Atta's and Alshehhi's I-539s

In addition to investigating what caused the delay in the INS's processing of the I-20s that were sent to Huffman Aviation on March 11, 2002, we evaluated whether the INS properly approved Atta's and Alshehhi's change of status applications.

The adjudication of I-539 change of status applications consists primarily of a review to ensure that the applicant has submitted the proper documents and the proper fee. *This process is not designed to screen for potential criminals or terrorists; it is designed to ensure that applicants can demonstrate that they have the financial resources to support themselves while in the United States.* INS employees at all levels told the OIG that the INS's philosophy with respect to applications for INS benefits, and specifically the change of status benefit, is that *applicants are presumptively eligible for the benefit unless they affirmatively demonstrate that they are not eligible.*¹⁵

An extension of stay request at the Miami Immigration District Office

One of the most interesting anecdotes from the 9/11 terrorist travel story is **Atta's** May 2, 2001 attempt to obtain an extension of stay for another 9/11 colleague, who I believe was likely **Jarrah**. The two (with a third) probably stood in line at the Miami Immigration District Office for hours, just getting seen before lunch that day. INS district offices adjudicate all types of immigration benefits, and what **Atta** wanted was for his companion to receive the same eight-month length of stay that **Atta** had (wrongfully) received in a January 2001 entry where he was erroneously permitted to enter, and then erroneously given a longer length of stay than permitted under the law. The officer who adjudicated Atta's request was an airport inspector on her first tour of duty in an immigration benefits office and remembered the encounter vividly when I interviewed her.

The shorter version of the story as I relate it in *9/11 and Terrorist Travel* is as follows:

¹³ *9/11 and Terrorist Travel*, p. 19.

¹⁴ Department of Justice Office of the Inspector General "The Immigration and Naturalization Service's Contacts With Two September 11 Terrorists: A Review of the INS's Admissions of Mohamed Atta and Marwan Alshehhi, its Processing of their Change of Status Applications, and its Efforts to Track Foreign Students in the United States," May 20, 2002.

¹⁵ <http://www.usdoj.gov/oig/special/0205/chapter4.htm#VI>

The inspector recalled taking both passports to see if they had genuine visas. She also looked at the I-94 arrival records in the passports. Atta's companion had received a six-month stay as a tourist, with an end date of September 8, 2001. She also noticed that Atta had been admitted as a tourist for eight months. During this time, Atta was quiet. She told Atta, "Someone gave you the wrong admission and I'm not giving your friend eight months."

The inspector then went to her supervisor, informed him that Atta had been granted an incorrect length of stay, and asked permission to roll it back to six months. The supervisor agreed. The inspector then tore the I-94 record out of Atta's passport, and created a new I-94 for six months, which allowed Atta to remain in the United States until July 9, 2001. On the record she wrote: "I-94 issued in error at MIA [Miami International Airport]. New I-94 issued." The inspector then took a red-inked admission stamp, rolled the date back to January 10, and stamped Atta as a B-2 tourist. She wrote in a length of stay until July 9, 2001, and handed Atta back his passport and new I-94 record. Atta took the documents, said thank you, and left with his companions.¹⁶

The result of this inspector's good work was that instead of Jarrah being legally in the country along with Atta until 9/10/01, Atta had to leave in July prior to the expiration of his legal length of stay. It was to no avail, but it was another missed opportunity for law enforcement.

*I authored the following material on **Hani Hanjour (pilot American Airlines Flight 77—Pentagon)** for 9/11 and Terrorist Travel. It was not included in the final product because its content pre-dated Hanjour's affiliation with the 9/11 plot. However, because it makes for an interesting case of how Hanjour manipulated immigration benefit adjudications throughout the 1990s up until his last U.S. visa application, it is here in full.*

This is this content's first release to the public. (My 9/11 Commission colleague, Tom Eldridge did the visa portions of this piece.) I have not included the footnotes, as the Commission interviews used for these portions were covered by a nondisclosure agreement with the State Department.

Until we have all applications biometrically based to verify and freeze identities and all immigration histories available to all personnel—from visa adjudications through immigration benefits—the confusion and fraud in our immigration benefits system, as demonstrated below, will continue.

Hani Hanjour, Pilot of American Airlines Flight 11

Hani Hanjour was born August 30, 1972, in Taif, Saudi Arabia. He is the first 9/11 hijacker to acquire a U.S. visa and come to the United States. He enters four times prior to September 11, seeking a U.S. education three of those four times. Hanjour is the only hijacker to have a lengthy familiarity with the United States prior to the operational build-up for the plot. There is no indication, however, that Hanjour was made part of the operational plot until sometime before his last entry into the United States in December 2000.

Hanjour's first two visas and entries, in 1991 and 1996.

Immigration records for Hanjour indicate that he acquires B2 (tourist) visas for his first two entries into the United States in Saudi Arabia in September 1991 and March 1996. Hanjour enters the United States on these visas within a month of acquiring them on October 3, 1991 and April 2, 1996. There is no record as to when Hanjour leaves after his first entry in October 1991. He is given a six-month stay.

Records do indicate that when Hanjour returns in April 2, 1996, he is given a six-month length of stay as a tourist. Hanjour's March 1996 tourist visa is issued with a notation on the application stating "prospective student, school not yet selected". On June 7, 1996, Hanjour files an INS I-539 application to change status from tourist to an academic student to attend the ELS Language Center in Oakland, California until May 20, 1997. The application is quickly approved twenty days later, on June 27, 1996.

Well before his length of stay is up, Hanjour leaves the United States again in November 1996.

Hanjour's 1997 visa and entry

Hanjour's second two visas and entries from Saudi Arabia are on one-year academic visas, one into Atlanta on November 16, 1997, and the last into Cincinnati on December 8, 2000.

¹⁶9/11 and Terrorist Travel, pp. 30–31.

On his November 1997 application, Hanjour spells his last name “Hanjoor.” It is not uncommon to see Arabic names spelled in various ways. Hanjour answers “no” to the question “Have you ever applied for a U.S. visa before, whether immigrant or nonimmigrant?” He also answers “no” to the question “Have you ever been in the U.S.A.?” Because there is evidence that Hanjour has been in the United States on a B2 (visitor) visa twice before, it appears that Hanjour’s application contains at least one false statement.

It is difficult to establish the intent behind these false statements. The application does bear a signature that appears identical to the signature on Hanjour’s two 2000 visa applications. However, the application form also indicates that it is prepared by “Siddiqi/ Samara Travel.” Thus, the false statements may have been inadvertent, due possibly to a travel agent who filled out the form before Hanjour signed it.

In addition to the false statements, Hanjour also leaves some portions of the application blank. For example, although Hanjour lists his occupation as “student” and he does not fill in the field asking for the “name and street address of present employer or school.” (We do not know whether he was asked the name of the school he wanted to attend in the US.) Not surprisingly, Hanjour also leaves blank the question “Are you a member or representative of a terrorist organization?”

The consular officer who adjudicates Hanjour’s 1997 visa application interviews him on November 2, 1997. This officer says that the decision to interview a Saudi citizen in Jeddah was a “case-by-case” decision, but that they would interview 50–60 percent of Saudis who applied in Jeddah during this time period. The officer said their colleagues advised them of this interview policy after they arrived in Jeddah. The interviews often were cursory, a comparison between the person applying and the photo they submitted, plus a few questions about why the applicant wanted to go to the United States. Because the officer who interviews Hanjour cannot read or speak Arabic, he relies on local embassy staff or an American colleague to help him conduct interviews. Similarly, the officer relies on experienced local staff to spot any anomalies in an application. The officer told us that they interviewed Hanjour during “the low season,” possibly indicating that they had more time to conduct interviews.

It is not uncommon to request the applicant to provide additional documentation before a certain visas could be granted. For example, a student applicant was required to present an INS form I–20 and proof of funds sufficient to pay for the education. If the applicant wanted to go to the United States to attend flight school—something common in Jeddah because Saudi Airlines was headquartered there—consular officers would request to see a letter from a bank showing the amount in the applicant’s bank account in order to establish whether they could, in fact, afford to pay for the schooling.

The officer did not specifically recall many details of their interview of Hanjour on November 2, 1997, but was able to reconstruct some aspects of it contemporaneously from notes on the visa application. During the course of the interview, the officer wrote down on the face of the application “has cash,” “trav alone,” and “wants to go to flight school.” The officer told us that he believed he must have looked at a bank statement from Hanjour in order to conclude he “has cash.” The officer also believed based on his review of the application that, during his interview of Hanjour, he established that he was traveling alone, and that his spoken English ability matched the requirements of his student visa.

The officer said they would not have known about Hanjour’s prior travel to the U.S. unless it was reflected in his passport. The officer also said they could not understand why Hanjour would have sought to cover up prior travel to the U.S. “It’s perplexing that they would hide that because it works in their favor,” the officer said. The officer did say, though, that a Saudi who had been to the United States twice before, as Hanjour apparently had been, and who then applied to go to the U.S. for English studies would have “raise[d] an eyebrow” because a student visa applicant must demonstrate they have made reasonable progress in their studies. The officer said they did deny visas to underperforming Saudi students on some occasions.

The officer also said that it was not uncommon for Saudis to have third parties prepare their visa applications, and not uncommon for those third parties to make mistakes. It was not unusual for Saudis to not fill out their applications completely, including failing to sign their application, so that Hanjour’s failure to answer the question about being a member of a terrorist organization was not unusual in his experience. In general, the officer told us, they felt they could make visa adjudications with only the basic biographical information

Saudis typically provided. However, the officer made a point of telling us that “it bothered me; it disturbed me” to accept so many incomplete applications from Saudis. When they raised it at post, they were told by the local staff, “well, we have always done it this way.”

Finally, the officer checked the CLASS database for any derogatory information on Hanjour. There were no “hits.” Thus, based on a review of Hanjour’s documents, his interview with him and his check of the CLASS name check database, the consular officer issued Hani Hanjour an F-1 (student) Visa of 12 month’s duration.

After being issued the one-year academic F1 visa on November 2, 1997, Hanjour travels on November 16 of that year to the United States on that visa and is granted a two-year length of stay. The visa is for attendance at the ELS Language Centers in Florida. On June 16, 1998, however, Hanjour decides to attend flight school. He files a second I-539, this time seeking a change of status from an F1 academic student to a M1 vocational student to attend the Cockpit Resource Management Airline Training Center in Scottsdale, Arizona from July 30, 1998 to July 29, 1999. Eight months later, the INS requests supporting evidence. By April 1999, having already attended the flight school and received a commercial pilot license from FAA without ever acquiring INS approval to change his status to an M1, Hanjour departs again in December 1999. This I-539 will not be approved until January 16, 2001. By this point, Hanjour has already acquired a new academic visa and re-entered the United States for his last time.

These entries on Hanjour are lifted from 9/11 and Terrorist Travel:

September 10. Hani Hanjour again applied for a B1/B2 (tourist/business) visa in Jeddah, Saudi Arabia. Hanjour submitted a new passport issued on July 24, 2000. He stated on his application that he would like to stay for three years in the United States, an answer that triggered concern in the minds of consular staff that he was at risk of becoming an immigrant to the United States if he were granted the visa. A consular employee who screened Hanjour’s application forwarded him to a consular officer for an interview. Hanjour told the consular officer that he was going to attend flight training school in the United States and wanted to change his status to “student” from “tourist” once he arrived in the United States. “Look, you have spent enough time in the States” to know what you want to do there, the officer told Hanjour. Based on Hanjour’s prior travel to the United States, the officer said to him, he did not qualify for a tourist visa in order to go to the U.S. and find a school “because he had been in the States long enough to decide what he wanted.” For these reasons, the officer denied Hanjour’s application under INA section 221(g).¹⁷

September 25. Hanjour returned to the Jeddah consulate and, apparently having listened to what the consular officer told him, submitted another application for a student visa. This time, Hanjour stated a desire to attend the ELS Language Center in Oakland, California. A consular official—probably the intake screener—wrote a note on his application indicating that Hanjour had been denied a visa under section 221(g) on September 10. The same consular officer who had interviewed Hanjour in connection with his September 10 application also processed this one. He recalled to us that Hanjour or someone acting on his behalf submitted an INS school enrollment form, or I-20—required to qualify for a student visa—to the consulate late on September 25, 2000. “It came to me, you know, at the end of the day to look at it. I saw he had an I-20, and it [his visa] was issued.”¹⁸

State Department electronic records indicate that this approval allowed Hanjour to “overcome” his September 10 visa denial, another indication that multiple applications can be considered “one case.” State Department records erroneously recorded the visa issued to Hanjour as a B-1/B-2 (business/tourist) visa when, in fact, it was an F (student) visa that was printed and put in Hanjour’s passport. In addition, Hanjour had already received an approved change of status to attend this same English language school in 1996. But that approval was granted by the INS in the United States, and the State Department had no record of it. The consular officer told us that if he had known this information, he might have refused Hanjour the visa.¹⁹

¹⁷9/11 and Terrorist Travel, pp. 18–19.

¹⁸9/11 and Terrorist Travel, p. 19.

¹⁹9/11 and Terrorist Travel, p. 20.

There is nothing more important to a terrorist than getting where he needs to go and being able to stay there long enough to carry out his or her instructions. We call this “embedding.” As I wrote in *9/11 and Terrorist Travel*, “while the rhetoric continues to focus on the critical mission of terrorist entry, virtually no attention is being given to the most recent information about terrorist travel and to the mission . . . of preventing terrorists who get in from staying in.”²⁰

*Overview of Report Findings*²¹

The inadequacies of our Citizenship and Immigration Services agency continue to make embedding relatively easy. Religious worker visas are known to carry a 33 percent fraud rate.²² Political asylum and naturalization are two of the benefits most rampantly abused by terrorists. And even when naturalization is acquired, we do not require the new U.S. citizen to renounce his or her country of origin, or hand in old passports. One well-known terrorist and naturalized U.S. citizen, Abdulrahman Alamoudi, now spending 23 years in prison for illegal financial dealings with the Libyan government (which included a plot to assassinate a Saudi prince), was able to hide much of his travel abroad from U.S. immigration inspectors for years by using his old passports for travel while he was visiting countries outside the United States.

My September 2005 Center for *Immigration Studies* report, *Immigration and Terrorism: Moving Beyond the 9/11 Staff Report*, covers the immigration histories of 94 terrorists who operated in the United States between the early 1990s and 2004, including six of the September 11th hijackers discussed above. The report included persons with a clear nexus to terrorist activity, with nearly all of these individuals indicted or convicted for their crimes. The report was built on prior work done by the 9/11 Commission and the Center for Immigration Studies, providing more information than has been previously been made public.

The findings show widespread terrorist violations of immigration laws and abuse of the U.S. immigration benefits system. In fact, 11 of the violations noted in the report were persons who had acquired immigration benefits before or around 9/11, but whose terrorist plots within the United States occurred after 9/11. Violations were rampant with plots to blow up a shopping mall in Ohio, for example, along with surveillance of financial buildings in northern New Jersey/New York and North Carolina.

The findings also show that not just Al Qaeda violates our immigration laws—the study cuts across a variety of terrorist organizations.

Many of these terrorists may have been affiliated with one or more terrorist organizations, but 40 individuals are associated with al Qaeda, 16 with Hamas, 16 with either the Palestinian or Egyptian Islamic Jihad, and six with Hizballah are specifically identified. Three are unaffiliated but of a radical Islamist background; one each is affiliated with the Iranian, Libyan or former Iraqi governments; one each is associated with the Pakistani terrorist groups Lashkar-e-Taiba and Jaish-e-Mohammad; and the affiliations of eight others indicted or detained on terrorism-related charges are unknown.²³

The report highlights the danger of our lax immigration system, not just in terms of whom is allowed in, but also how terrorists, once in the country, used weaknesses in the system to remain here. The report makes clear that USCIS must be an integral player in border security, raising the bar on its usual persona as merely a customer service agency to one of having a critical role in national security—the last chance to say no to a terrorist who seeks to stay here longer under U.S. immigration laws.

The summary of findings in the report is as follows (*these are lifted verbatim from the report*):

- Of the 94 foreign-born terrorists who operated in the United States, the study found that about two-thirds (59) committed immigration fraud prior to or in conjunction with taking part in terrorist activity.

²⁰ *9/11 and Terrorist Travel*, p. 164.

²¹ Janice L. Kephart, “Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel,” Center for Immigration Studies (Sept. 2005).

²² USCIS Fraud Detection and National Security Benefit Fraud Assessment statistic.

²³ Janice L. Kephart, “Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel,” Center for Immigration Studies (Sept. 2005), p. 11.

- Of the 59 terrorists who violated the law, many committed multiple immigration violations—79 instances in all.
- In 47 instances, immigration benefits sought or acquired prior to 9/11 enabled the terrorists to stay in the United States after 9/11 and continue their terrorist activities. In at least two instances, terrorists were still able to acquire immigration benefits after 9/11.
- Temporary visas were a common means of entering; 18 terrorists had student visas and another four had applications approved to study in the United States. At least 17 terrorists used a visitor visa—either tourist (B2) or business (B1).
- There were 11 instances of passport fraud and 10 instances of visa fraud; in total 34 individuals were charged with making false statements to an immigration official.
- In at least 13 instances, terrorists overstayed their temporary visas.
- In 17 instances, terrorists claimed to lack proper travel documents and applied for asylum, often at a port of entry.
- Fraud was used not only to gain entry into the United States, but also to remain, or “embed,” in the country.
- Seven terrorists were indicted for acquiring or using various forms of fake identification, including driver’s licenses, birth certificates, Social Security cards, and immigration arrival records.
- Once in the United States, 16 of 23 terrorists became legal permanent residents, often by marrying an American. There were at least nine sham marriages.
- In total, 20 of 21 foreign terrorists became naturalized U.S. citizens.²⁴

A Note on Hizballah

Recent news reports about the affiliation of Iran with Hizballah and concerns that U.S. military action against Iran could trigger Hizballah attacks against U.S. troops in Iraq and civilian targets within the United States warrant mention in the immigration context here. Below I relate two known Hizballah schemes for entry and stay in the United States: one uses USCIS benefits, and the other is illegal entry which is outside the purview of this hearing, but worth mentioning within the light of the current pending immigration legislation and debate.

Sham marriage. From January 1999 through January 2000, **Said Mohamad Harb**, one of the key figures in Hizballah’s North Carolina cigarette smuggling operation run by **Mohamad Hammoud**, which raised millions of dollars for Hizballah, helped secure three fraudulent visas and three sham marriages. He was able to “legally” bring his brother, brother-in-law, and sister into the United States so that they might become legal permanent residents.

The two men each obtained a nonimmigrant visa from the U.S. embassy in Cyprus; though given one- and two-week lengths of stays for conducting business in the United States, each married a U.S. citizen immediately after his arrival and therefore was allowed to stay indefinitely. In the case of **Harb’s** sister, a male U.S. citizen was paid to meet her in Lebanon and then travel with her to Cyprus, where their marriage enabled her to acquire an immigration visa. In June 2000, **Harb** also attempted to give an immigration special agent a \$10,000 bribe so that another brother could enter the United States.²⁵ All the conspirators were convicted of all counts against them, including the immigration violations.

Alien smuggling. Hizballah is well known for its illegal smuggling tactics into the United States.

Around February 2001, **Mahmoud Youssef Kourani**, a Hizballah operative who pled guilty to terrorism charges in Detroit in April 2005, entered the United States illegally. Kourani left Lebanon to travel to Mexico after bribing a Mexican consulate official in Beirut with \$3,000 to obtain a Mexican visa. Once in Mexico, he sought entry into the United States. He succeeded: he illegally entered the United States across the southwest border by hiding in a car trunk.²⁶

In November 2003, a federal grand jury indicted **Kourani** on charges of conspiring to provide material support to Hizballah, a designated foreign terrorist organization. The indictment alleges that **Kourani** was a “member, fighter, recruiter,

²⁴ Janice L. Kephart, “Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel,” Center for Immigration Studies (Sept. 2005), p. 7.

²⁵ USA v Hammoud, et al. WDNC 00–CR–147. “Superseding Indictment.” Mar. 28, 2001.

²⁶ USA v. Kourani. EDMI 03–CR–81030. “Government’s Written Proffer in Support of its Request for Detention Pending Trial.” Jan. 20, 2004.

and fundraiser for Hizballah who received specialized training in radical Shiite fundamentalism, weaponry, spy craft, and counterintelligence in Lebanon and Iraq.” It also claims that **Kourani** recruited and raised money for Hizballah while in Lebanon.²⁷ Government documents also state that **Kourani** alone sent back about \$40,000 to Hizballah.

Salim Boughader Mucharrافية is the well-known Lebanese-Mexican smuggler who is the only known smuggler our 9/11 team could identify at the time we published our *9/11 and Terrorist Travel* staff report in August 2004 as linked to suspected terrorists. Convicted in Mexico, he was then extradited to the United States for trial here.

Until his arrest in December 2002, **Boughader** smuggled about 200 Lebanese Hizballah sympathizers into the United States. Most of these sympathizers were young men, sent by their families to make money to send back to Lebanon. One client, **Boughader** said, worked for a Hizballah-owned television network, which glorifies suicide bombers and is itself on an American terror watch list. Although we do not know whether **Kourani** used **Boughader’s** services, the methods **Kourani** used to enter the United States are the same methods **Boughader** used on behalf of his clients.

According to extensive Associated Press reporting on **Boughader**, he told reporters “If they had the cedar on their passport, you were going to help them. That’s what my father taught me. . . . What I did was help a lot of young people who wanted to work for a better future. What’s the crime in bringing your brother so that he can get out of a war zone?”²⁸

RECOMMENDATIONS

Benefits adjudications, like visa issuance and port of entry admissions, need to be as secure and as timely as possible. Fraud and national security concerns get in the way of timely adjudications, bogging down legitimate applications and have a twofold effect: (1) legitimate applicants are not adjudicated in a timely manner while many legitimate potential applicants are discouraged from applying while (2) illegitimate applicants take advantage of the vulnerabilities of the system. By ramping up a number of areas, including fraud detection, deterrence and interdiction alongside providing better information and clearer guidelines to adjudicators within a program office wholly dedicated to fraud and working in cooperation with law enforcement officers at ICE and elsewhere, we can look towards a much more efficient and secure process. Those that should be receiving benefits will then begin to receive benefits in a timely manner, and those that should not receive benefits will not, and those that should be criminally prosecuted, will make their way to federal court.

Both the 9/11 Final Report and my “Immigration and Terrorism” report discuss many recommendations, all of which I support and urge this committee to look at closely. Some of these are below. I have also added a few.

- **Assure that USCIS is treated as an equal partner in a national border security agenda.** The attack of 9/11 was not an isolated instance of al Qaeda infiltration into the United States. In fact, dozens of operatives from a variety of terror organizations have managed to enter and embed themselves in the United States, actively carrying out plans to commit terrorist acts against U.S. interests or support designated foreign terrorist organizations. For each to do so, they needed the guise of legal immigration status to support them.

As we move forward, those who come to stay and embed themselves into communities throughout the United States will continue to rely on a false guise of legality. More aggressive culling of applications for national security risks will help prevent terrorists from attaining enhanced immigration status on the front end. However, it must therefore be a prerequisite for any strategy that seeks to attain border security to include the United States Citizenship and Immigration Service (USCIS) in fraud prevention and national security agendas.

- **Require all applications to be biometrically based. Identities must be verified in person and documents reviewed for fraud. Forensic document examiners should be made available to every immigration benefits office.** Two Benefit Fraud Assessments (BFAs) have been conducted to date. The Religious Worker BFA found a fraud rate of 33% and the Replacement Permanent Resident Card BFA found a fraud rate of 1%. The likely rea-

²⁷ USA v. Kourani, EDMI 03–CR–81030. “Indictment.” Nov. 19, 2003.

²⁸ Pauline Arrillaga and Olga Rodriguez, “Smuggler pipelines channel illegal immigrants into U.S. from nations with terror ties” The Associated Press (July 2, 2005)

son: religious worker petitions are not biometrically based, permanent resident cards are. Biometrics are essential for freezing identity. Once that is done, the problem of multiple applications under multiple aliases is reduced dramatically, and other immigration and criminal history becomes much easier to link with the applicant.

- **Assure that immigration benefits adjudicators have access to entire traveler histories, which over time should be person-centric (not file-centric).** The nearly 30 immigration databases, while not necessary to create a single one, should be streamlined and most definitely fully networked so anyone working in the border apparatus will have access to full and complete traveler/ visitor/ immigration histories.
- **All petitioners should be subject to security background checks, with real-time access to federal, state, and local law enforcement information upon request.** The more access that is given to the national security or law enforcement information that exists on a foreign national, the less we will need to rely upon unwieldy name-based watchlists. The more security measures the United States incorporates into its own adjudications of immigration benefits *before* they are granted, the more success the United States will have in rebuffing terrorists who seek to embed here and spending inordinate government resources in reversing bad benefits decisions.
- **Commit to enforcing the law with better and more resources.** Better resources include clearer guidelines for processing immigration benefits in order to eliminate the arbitrary decision-making that inevitably takes place in their absence. In addition, comprehensive immigration reform must entail, in the long run, not only streamlining the overly complex immigration laws, but also providing sufficient human and technological resources to enforce the law on the border *and* in USCIS immigration benefits centers.
- **Enhance the USCIS Office of Fraud Detection and National Security (FDNS) by giving FDNS a continued line item budget for conducting long term and real time fraud assessments, and pattern analysis of fraud.**

Note: I personally requested a briefing from this unit after publication of my CIS report in October 2005. Over the course of a number of meetings I came away satisfied that FDNS was ramping up adequately to address fraud.

USCIS is a service (*not enforcement*) bureau to address long-term issues pertaining to backlogs and fraud in immigration benefits adjudications. A unit dedicated to fraud detection (with enforcement handled by ICE) is new to this arena, and absolutely essential and supported by the findings and recommendations in GAO Report 02-66 of January 2002, "Immigration Benefit Fraud: Focused Approach is Needed to Address Problems." FDNS today is the "organizational crosswalk" that acts on behalf of USCIS and DHS, as the primary conduit to and from the law enforcement and intelligence community on potential fraud and national security concerns posed by immigration benefit applicants.

ICE and FDNS—while it took much negotiation and time—do have a working relationship and joint anti-fraud strategy. Roles in this strategy are defined:

USCIS via FDNS is to detect and analyze suspected fraud, while ICE is to follow up referrals for possible criminal investigation and presentation for prosecution. This includes a USCIS referral process and a fraud tracking system with case management as well as analytic capabilities that are currently under development. In the future, all incoming cases will be bounced against USCIS' new Fraud Detection and National Security Data System (FDNS-DS). If fraud is detected and verified but not accepted for investigation by ICE (as most will not reach the threshold for criminal prosecution) the benefit is denied, a lookout is posted in TECS, and the alien placed in removal proceedings. At present, FDNS is using its reactive tool to connect the dots, SC CLAIMS.

USCIS has already recruited, hired, trained, and deployed 160 FDNS officers throughout the Country. In the first year of operation (FY05) alone, USCIS identified 2,289 suspected fraud cases. Most are former adjudicators that possess immigration benefit law and policy-related expertise that criminal investigators do not possess. This is extremely valuable when conducting inquiries and investigations of employment and religious worker-based petitions, which are highly technical in nature. In addition to performing fraud-based systems checks and analyses, and conducting administrative inquiries/investigations, FDNS officers perform background check and national secu-

rity-related duties, and are USCIS' primary conduit to/from the enforcement and intelligence community. While there are millions of applications and fraud is known to be rampant in applications, this is a solid start.

In addition, the DHS OIG recommended in its July 2005 draft report entitled "Review of U.S. Citizenship and Immigration Services' Alien Security Checks," that USCIS "implement the Background Check Analysis Unit in the Office of Fraud Detection and National Security." DHS has recognized the need to expand FDNS' mandate beyond fraud detection.

- **Establish a fraud fee.** Fraud is so rampant throughout the border apparatus that it only makes sense that all applications (including visa issuance) should support its detection and deterrence. The less fraud, the faster the legitimate applications can be processed, making the entire system operate with necessary integrity and without severe backlogs. The value of FDNS is to provide the expertise and referrals for large fraud cases while taking care of the smaller cases in-house (after the proper procedures are followed per agreement with ICE).
- **Integration of anti-fraud efforts across USCIS, ICE, DOS and DOL.** For example, DOS needs to be able to verify claimed persecution, employment experience, academic credentials, and relationships associated with immigrant and nonimmigrant petitions adjudicated by USCIS. All four agencies need to share information so that fraud cannot replicate itself throughout the system. Already developed are national and three regional interagency immigration benefit fraud task forces. Currently, an ICE special agent is collocated with FDNS-HQ and with each USCIS' Center Fraud Detection Unit.

CONCLUSION

USCIS' mission should no longer be simply considered to be reducing horrendous backlogs. Rather, USCIS must have a proactive role in adjudicating legitimate applications in a timely manner and detecting, deterring and interdicting fraudulent applications—with a priority on applications that pose a national security concern, such as the terrorists outlined in this testimony.

With proper mission support by Congress and the administration, USCIS can change its current posture. It will take work to reverse the years of inadequacies and failures, but modern technology, well trained adjudicators, a good working relationship with federal law enforcement partners, clearer laws and guidelines, and a commitment to streamline traveler histories with biometrics will all help move USCIS forward to where it needs to be to truly serve foreign nationals who seek to come and stay in the United States for legitimate purposes, and stop those who seek to abuse our freedoms and do us harm.

I believe we can do it. But USCIS needs your support and help to make it happen.

Immigration and Terrorism

Moving Beyond the 9/11 Staff Report
on Terrorist Travel

By Janice L. Kephart

*OH GOD, you who open all doors, please open all doors for me, open all venues for me,
open all avenues for me.*
— Mohammed Atta

Center for Immigration Studies

Executive Summary

This report covers the immigration histories of 94 terrorists who operated in the United States between the early 1990s and 2004, including six of the September 11th hijackers. Other than the hijackers, almost all of these individuals have been indicted or convicted for their crimes. The report builds on prior work done by 9/11 Commission and the Center for Immigration Studies, providing more information than has been previously been made public.

The findings show widespread terrorist violations of immigration laws. The report highlights the danger of our lax immigration system, not just in terms of who is allowed in, but also how terrorists, once in the country, used weaknesses in the system to remain here. The report makes clear that strict enforcement of immigration law – at American consulates overseas, at ports of entry, and within the United States – must be an integral part of our efforts to prevent future attacks on U.S. soil.

Among the findings:

- Of the 94 foreign-born terrorists who operated in the United States, the study found that about two-thirds (59) committed immigration fraud prior to or in conjunction with taking part in terrorist activity.
- Of the 59 terrorists who violated the law, many committed multiple immigration violations — 79 instances in all.
- In 47 instances, immigration benefits sought or acquired prior to 9/11 enabled the terrorists to stay in the United States after 9/11 and continue their terrorist activities. In at least two instances, terrorists were still able to acquire immigration benefits after 9/11.
- Temporary visas were a common means of entering: 18 terrorists had student visas and another four had applications approved to study in the United States. At least 17 terrorists used a visitor visa — either tourist (B2) or business (B1).
- There were 11 instances of passport fraud and 10 instances of visa fraud; in total 34 individuals were charged with making false statements to an immigration official.
- In at least 13 instances, terrorists overstayed their temporary visas.
- In 17 instances, terrorists claimed to lack proper travel documents and applied for asylum, often at a port of entry.
- Fraud was used not only to gain entry into the United States, but also to remain, or “embed,” in the country.
- Seven terrorists were indicted for acquiring or using various forms of fake identification, including driver’s licenses, birth certificates, Social Security cards, and immigration arrival records.
- Once in the United States, 16 of 23 terrorists became legal permanent residents, often by marrying an American. There were at least nine sham marriages.
- In total, 20 of 21 foreign terrorists became naturalized U.S. citizens.

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- **Faraj Hassan** was arrested and charged with naturalization fraud in June 2004 after being granted refugee status from Syria in 1993. He worked for the Benevolence International Foundation that was considered a strong source of funding for Al Qaeda.²⁴²
- Three terrorists involved in the Feb. 26, 1993, World Trade Center bombing, **Ramzi Yousef**, **Sheik Omar Abdel Rahman**, and **Biblat Alkai**, all sought political asylum. Yousef, mastermind of the bombing, was initially arrested with fraudulent travel documents upon entry at JFK International Airport in August 1992. Yousef claimed political asylum and was released pending a hearing.²⁴³ Alkai, also a key witness in the Meir Kahane murder, filed for both "temporary protected status" using a fake birth certificate and fake immigration entry record in August 1991, and for political asylum in May 1992 falsely claiming a prior illegal entry.²⁴⁴ Sheik Rahman, who issued the fatwa for Anwar Sadat's assassination and was also convicted for his role as the spiritual leader of the 1995 conspiracy to bomb New York City landmarks, had a long history of immigration violations and fraud, including a March 1992 political asylum claim to prevent his pending deportation.²⁴⁵
- **Mir Aimal Kans**, who killed two people outside CIA headquarters on Jan. 25, 1993, became an illegal overstay in February 1991. In February 1992, he simultaneously sought both political asylum and amnesty under a 1986 law. While the applications were pending, he was able to obtain a Virginia driver license and work as a courier.²⁴⁶
- **Ibrahim Parlak** of the Kurdistan Worker's Party applied for political asylum upon his arrival to the United States in 1991. In 1992, he was granted asylum and LPR status the following year. In October 2004, he was charged with inciting terrorism and providing material support for terrorist activities. He

was also charged with lying on his INS applications for failing to disclose his membership in the Kurdistan Worker's Party along with his prior aggravated felon record from Turkey.²⁴⁷

Conclusion

The attack of 9/11 was not an isolated instance of al Qaeda infiltration into the United States. In fact, dozens of operatives, mostly before, but also a few after 9/11 (other than the 9/11 hijackers) have managed to enter and embed themselves in the United States, actively carrying out plans to commit terrorist acts against U.S. interests or support designated foreign terrorist organizations. For each to do so, they needed the guise of legal immigration status to support them. Al Qaeda has used every viable means of entry. The longer the duration of the permissible length of stay granted by the visa or the adjustment of status to permanent residency or naturalization, the easier the terrorist could travel both within and without the United States. No matter what the terrorist organization or mission, it is clear from this study that terrorists will continue to try to come to the United States to carry out operations, and their instructions will continue to include immigration-related plans. Until we have a system designed to weed out terrorists, their plans on how to stay in the United States will likely succeed.

Those who come to stay and embed themselves into communities throughout the United States will continue to rely on a false guise of legality. Sham marriages and student status that lead to legal permanent residency and an almost certain guarantee of naturalization will likely continue to be some of the most egregious immigration abuses by terrorists. More aggressive culling of applications for national security risks will help prevent terrorists from attaining enhanced immigration status on the front end. However, it must therefore be a prerequisite for any strategy that seeks to attain border security to include the United States Citizenship and Immigration Service (USCIS) in fraud prevention and national security agendas.

Center for Immigration Studies

Risk management as well as targeting and pattern analysis will help assure that tight resources are used more efficiently to target immigration benefit applications that may pose a national security risk. In addition, law enforcement agencies with criminal jurisdiction, such as the Bureau of Immigration and Customs Enforcement (ICE) and FBI-run Joint Terrorism Task Forces, must consider such investigations as priorities. Once it is discovered that a naturalized citizen is a terrorist, denaturalization should be automatically put in motion with a streamlined appeals process that harnesses the talents of both ICE and DOJ legal expertise.

To address fraud effectively, immigration benefits adjudicators must have access to comprehensive, biometrically based immigration histories that include information from the moment an individual first applies for a visa at a U.S. consulate or presents a passport at a port of entry through every subsequent request for an immigration benefit. USCIS needs to have a fully electronic applications process with biometrics embedded into each application and required on site interviews. Adequate human resources will be necessary to fulfill such a mandate while efficiently processing applications. Well-trained fraud specialists should be available at every immigration benefits center with access to the Forensic Document Lab. The practical result is that USCIS should not have to rely solely on fees for upgrading its data systems, technologies, security vetting procedures and other necessary national security tasks. Budgets must be allocated.

Also critical are security background checks, with real-time access to federal, state, and local law enforcement information upon request. The more access that is

given to the national security or law enforcement information that exists on a foreign national, the less we will need to rely upon unwieldy name-based watchlists. The more security measures the United States incorporates into its own adjudications of immigration benefits *before* they are granted, the more success the United States will have in rebuffing terrorists who seek to embed here.

Underpinning practical improvements at USCIS must be a commitment to enforce the law with better and more resources. Better resources include clearer guidelines for processing immigration benefits in order to eliminate the arbitrary decision-making that inevitably takes place in their absence. In addition, comprehensive immigration reform must entail, in the long run, not only streamlining the overly complex immigration laws, but also providing sufficient human and technological resources to enforce the law on the border *and* in USCIS immigration benefits centers.

These recommendations should not be considered in a policy vacuum. Comprehensive immigration reform that includes review of all elements of our immigration security infrastructure (seven fragments dispersed through six agencies) must be vigorously debated and addressed now. However, that does not mean that we should wait to provide sorely needed technological, informational, and human resources to our frontline personnel at U.S. consulates abroad, at our ports of entry, and our borders. Severe deficiencies have existed in these areas for years that must be redressed now; what we still lack are the metrics to determine exactly what measures will provide the best value on tight border budgets. We must find a way to acquire that information to assure our border system provides the value the American people deserve and have the right to demand.

Mr. ROYCE. Thank you, Ms. Kephart. Mr. Maxwell.

TESTIMONY OF MR. MICHAEL J. MAXWELL, FORMER DIRECTOR, OFFICE OF SECURITY AND INVESTIGATIONS, U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Mr. MAXWELL. Good morning, Chairman Royce, Ranking Member Sherman, distinguished Members of the Subcommittee. Thank you for the opportunity to appear today to discuss immigration security vulnerabilities facing the United States.

I am here before you because as Director of the Office of Security and Investigations, or OSI, it was my job to ensure that security of the USCIS, including its facilities, information, classified technology, communications, personnel, and so on. As the only law enforcement unit within USCIS, OSI was also responsible for resolving allegations of corruption and of criminal wrongdoing by USCIS employees.

Mr. Chairman, having spent almost 2 years as Director of OSI, I can tell you without hesitation that it is not only USCIS employees who have been corrupted. Written allegations set forth by USCIS employees, interviews conducted as recently as yesterday with USCIS low-end employees and high-level managers, internal USCIS communications and external investigative documents prepared by independent third agencies compiled and delivered to this Congress over the last year, make it abundantly clear that the integrity of the United States immigration system has also been corrupted. And the system is incapable of insuring the security of our homeland.

USCIS and DHS leadership have, in some cases, actively participated in corrupting the system. At a minimum, they have turned a blind eye toward the corruption, and they have refused, time and time again, to act when confronted with national security vulnerabilities my team or others identified in the immigration process.

These breaches compromise virtually every part of the immigration system itself, leaving vulnerabilities that have been, and likely are being, exploited by criminals and adversaries of the United States.

Each time my team discovered a new vulnerability, we brought it immediately to the attention of the appropriate USCIS or DHS headquarters officials. I want to make it clear that in every instance, I went to my chain of command within DHS to rectify these national security vulnerabilities.

Only when that command was shown to be incapable, unwilling, or worse was I left no choice but to come forward and seek protection as a whistle-blower. I am therefore grateful to all in Congress who have been willing to listen and to take action.

Despite the fact that each identified threat, as you will see, has national security implications, USCIS leadership consistently failed or refused to correct them. Instead, top officials chose to cover them up, to dismiss them, or to target the employees who identified them, even when a solution was both obvious and feasible.

I have considered my testimony carefully. I do not make these assertions without documentation to support them. Over the past 8 months I have received multiple document requests from Con-

gress, and have complied through my attorneys, producing thousands of pages of documents.

More recently I have provided many of the same documents to the FBI, the GAO, and the DHS Office of the Inspector General. On multiple separate occasions I offered to provide Director Gonzalez a full set of these documents, but on each occasion he declined my offer.

OSI's mandate from former USCIS Director Eduardo Aguirre was to regain the public's trust in the Immigration Service. Between May and December 2004, with the support of Director Aguirre, I began to recruit top-notch security and law enforcement experts. By May 2005, I had been authorized a staffing level of 130 full-time employees and contract workers, including 23 criminal investigators.

In the end, however, that authorization was never realized by OSI, as I would find out later that the Human Resources Department at USCIS had arbitrarily stopped all hiring of criminal investigators once Director Aguirre left for his tour of duty as U.S. Ambassador to Spain and Andorra. With this level of continuous internal obstruction preventing OSI's meaningful progress, by August 2005, my staffing matrix was reduced from 130 to fewer than 50 personnel.

USCIS senior leadership blatantly disregarded the written orders of Director Aguirre, and unilaterally decided that OSI should not be adequately staffed. By the time of my resignation in February 2006, Human Resources had not posted one additional vacancy for investigative positions within OSI, nor have they to this day.

In fact, OSI's authorized staffing level was reset so low that not only were we unable to open investigations into new allegations of employee corruption, our ongoing national security investigations involving allegations of espionage and those with links to terrorism were jeopardized.

Under the authority of Acting Deputy Director Divine and Chief of Staff Paar, OSI's investigative staffing level was frozen. OSI was authorized no more than six criminal investigators in the field, initially responsible for managing a backlog of 2,771 internal affairs complaints, including 528 criminal allegations.

A number of these cases involved allegations of employees being influenced by foreign governments or providing material support to terrorists.

As law requires, OSI refers all national security cases to the FBI when they reach a certain investigative threshold. While I cannot discuss these ongoing investigations in an open forum, I can tell you about some investigations OSI closed, and those we were unable to investigate due to lack of resources.

As you know, the USCIS employees who process applications for immigration benefits are supposed to ensure that the applicant is not a terrorist or a criminal. The database they use to do this is called the Enforcement Communications System, or TECS. TECS is essentially a gateway into the criminal and terrorist database of some two dozen law enforcement and intelligence agencies, including the FBI, the Drug Enforcement Administration, Immigration and Customs Enforcement, Customs and Border Protection, and others.

USCIS employees are granted different levels of access to TECS, depending on how in-depth of a background investigation they have undergone. Those who have undergone a full background investigation are likely to be granted access to level-three TECS records. Due to the sensitivity of data in TECS level three, USCIS employees are required to log in and out of the system so their access can be tracked.

OSI has seen too many allegations recently where it appears a Federal employee or a contract worker may have entered TECS or permitted someone else to enter TECS illegally in order to provide information to someone not authorized to view or use that sensitive law enforcement material. In fact, OSI recently got its first criminal conviction in a case involving a USCIS employee who accessed TECS in order to warn the target of a DEA narcotics investigation about the investigation itself.

In a second case, it is alleged that an individual who works for USCIS permitted a relative to access TECS, print law enforcement records from the database, and then leave the building with those records. We do not know what records this person accessed or why, despite the fact that there are indicators that raised foreign intelligence concerns. This allegation is not being investigated, because OSI's six, and soon to be five, criminal investigators are already stretched to their limit.

Consider for a moment the damage that can be done to national security by just one USCIS employee co-opted by a foreign intelligence agency with the ability to grant the immigration benefit of their choosing, to the person of their choosing, at the time of their choosing. Now imagine if that employee were being influenced by a highly capable foreign intelligence agency known to partner, train, or provide material support to terrorist organizations.

Consider the ramifications of one co-opted asylum officer granting asylum to individuals from countries of concern with impunity, safe in the knowledge that OSI lacks the resources to proactively watch for indicators or investigate allegations. There simply is no deterrent effect whatsoever at USCIS that might make an employee believe that the cost of wrongdoing may be greater than the benefits.

Additional documents attached to my statement show that USCIS leaders are deceiving investigators and Congress with regard to information-sharing and the ability, or should I say the inability, of immigration officers to obtain negative national security information before they grant immigration benefits.

They know our system, and are using it against us. Those are the words of a senior executive from USCIS as we flew home from Iraq in October 2004, while discussing his imminent retirement, his concerns about the immigration system, and his reference to known terrorists applying for immigration benefits.

On no less than nine occasions in the past year, the DHS Office of the Inspector General and Government Accountability Office have reported major failures in the immigration system. They have raised the national security red flags with regard to cyber-security, terrorist attacks, criminal fraud, and penetration by foreign intelligence agents posing as temporary workers, all while the bad guys

are patiently working within the framework of our legal immigration system, at times with the explicit help of USCIS employees.

What the reports reveal is an immigration system designed not to aggressively deter or detect fraud, but, first and foremost, an immigration system that, when in doubt, will grant the immigration benefits. Ours is a system that rewards criminals, facilitates the movement of terrorists, supports foreign agents, and with each will come their tools of the trade.

Let me cite just an example or two. Currently the immigration headquarters asylum division has a backlog of almost 1,000 asylum cases that is not reported to you as Members of Congress, to the Inspector General, or the American people. This backlog includes two kinds of asylum claimants: Individuals who claim they have been falsely accused by their home government of terrorist activity, and individuals who have provided material support to a terrorist or a terrorist organization.

These asylum claimants, most of whom fall into the second category, are in the United States right now. Some have been awaiting a decision on asylum since late 2004 on whether the Secretary of Homeland Security will grant them a waiver of inadmissibility for providing material support to terrorists. In other words, they are here now, and short of a policy from headquarters stating otherwise, following a credible fear interview, these individuals are presumably released into the general population with employment documents.

As of September 2005, the USCIS headquarters fraud detection national security unit has an unreported backlog of 13,815 immigration benefits cases, including national security cases. This backlog of national security cases is particularly disturbing when put in the context of USCIS's definition of how to resolve a national security case.

According to an FDNS policy dated March 29, 2005, and included as an attachment to my written statement, USCIS can now resolve "a national security case simply by requesting the derogatory national security information from the law enforcement or intelligence agency that has it." The actual delivery of the requested information is completely irrelevant to the process. Immigration officers, by policy, are not permitted to deny an application based solely upon the knowledge that a law enforcement agency is holding negative national security information about an applicant.

If the adjudicator cannot identify a statutory ground for a denial—that is, they can't get their hands on the information—he or she must grant the benefits. Again, documentation will show this exact scenario has played itself out on more than one occasion.

While the statements I have made today may shock the conscience of some, they cannot come as a surprise to USCIS senior leadership, leadership that has been warned repeatedly of national security vulnerabilities in the asylum, refugee, citizenship, information technology, and green card renewal systems by me personally, by the GAO, and by the Inspector General. Time and again they have ignored warnings of systemic weaknesses wide open to exploitation by criminals, terrorists, and foreign agents.

When faced with irrefutable proof of new vulnerabilities, they, themselves, in writing, referred to longstanding or "rampant

fraud,” and vulnerabilities that had gone unaddressed for more than a year. They knowingly misled Congress, the Inspector General’s Office, the GAO, and perhaps most disheartening, the American public.

The immigration process itself is flawed. And without a major paradigm shift in leadership, management, and organization, the process will continue to fail the American citizenry, and the immigrant population deserving the opportunity to obtain status here, like both of my parents.

In closing, Mr. Chairman, I sit before this Committee, my faith that someone, somewhere, will do the right thing within DHS shaken. I know there are more good men and women in the Agency who would like nothing more than to do their part in fixing this broken system. Until just weeks ago, I wanted to be part of the solution myself.

I have run this issue to ground, and kept my word to those who matter most, the American public. I have upheld my oath to the Constitution and provided information to the FBI, the GAO, the Inspector General, and to Congress.

I am no longer employed by DHS, and I hope the retaliation will end. For even though I am no longer employed there, I am told by concerned employees at USCIS that senior management has now taken to attacking my credibility in private meetings behind the walls of headquarters.

However, based on the response I have seen this far by USCIS and ICE employees, I am hopeful that people will continue to come forward, preferably to the OIG or GAO, to report legitimate concerns. And that with your help, someone will finally be able to force serious change on an agency that has needed it desperately for years.

I will close my statements, and be happy to take your questions.
[The testimony of Mr. Maxwell follows:]

PREPARED STATEMENT OF MR. MICHAEL J. MAXWELL, FORMER DIRECTOR, OFFICE OF SECURITY AND INVESTIGATIONS, U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Good morning Chairman Royce, Ranking Member Sherman, and distinguished Members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss immigration-related national security vulnerabilities facing the United States.

My name is Michael Maxwell and, until February 17 of this year, I was Director of the Office of Security and Investigations (OSI) at US Citizenship and Immigration Services (USCIS). I would like to begin by expressing my thanks to the men and women of OSI who stayed the course from day one, despite extraordinary pressure to take the easier path, and who remained loyal to the ideals of national security, integrity, and sacrifice. You would be hard-pressed to find a more dedicated group of professionals in either the public or the private sector, and I am proud to have served with them.

THE USCIS OFFICE OF SECURITY AND INVESTIGATIONS

U.S. Citizenship and Immigration Services (USCIS) is the component of the Department of Homeland Security (DHS) that processes all applications for immigration status and documents—known as “immigration benefits”—including lawful permanent residence (the beneficiaries of which are issued “green cards”), U.S. citizenship, employment authorization, extensions of temporary permission to be in the United States, and asylum, that are filed by aliens who are already present in the United States. USCIS also processes the petitions filed by U.S. citizens, lawful permanent residents, and employers who seek to bring an alien to the United States, either permanently or on a temporary basis.

The Office of Security and Investigations was created by former USCIS Director Eduardo Aguirre to handle all the security needs of the agency, including:

- The physical security of the more than 200 USCIS facilities worldwide;
- Information security and the handling and designation of sensitive and classified documents;
- Operations security, for both domestic and international operations;
- Resolution of all USCIS employee background investigations;
- Protective services for the Director of USCIS and visiting dignitaries; and
- Internal affairs, among other duties.¹

OSI's mandate from Director Aguirre was to "regain the public trust in the immigration service" by identifying, reporting, and resolving any security vulnerabilities that would permit the successful manipulation of the immigration system by either external or internal agents.

Between May and December of 2004, with the support of Director Aguirre, I began to recruit top-notch security experts, mostly from other Federal agencies. By September of 2004, OSI had in place a small team of professionals who would plan and successfully execute the first ever naturalization ceremonies to be conducted in a war zone overseas for members of the United States Armed Forces.² Following an agency-wide initiative I led in early 2005 to evaluate the few existing USCIS security systems and resources, Director Aguirre authorized, in writing, the immediate hiring of 45 new personnel for OSI, including 23 criminal investigators to investigate allegations of employee corruption and wrongdoing.³ By May of 2005, I had been authorized a staffing level of 130 full-time employees and contract workers.⁴ My only option for bringing staff on board, however, was to transfer them laterally from other DHS components, because the Human Capital Office of Administration refused to post any new vacancy announcements, apparently because they did not approve of a law enforcement component within USCIS.

In August of 2005, not long after the departure of Director Aguirre, my staffing matrix was effectively cut from 130 to fewer than 50 personnel worldwide. USCIS Senior Leadership, as represented on the Senior Review Board (SRB),⁵ which must approve all significant expenditures, as well as the Human Capital Office of Administration, blatantly disregarded the written orders of former Director Aguirre and unilaterally decided that OSI should not be adequately staffed.⁶

In fact, with the approval of Acting Deputy Director Robert Divine, originally appointed by President Bush as Chief Counsel and the highest-ranking political appointee at USCIS following the departure of Aguirre's Deputy Director, Michael Petrucelli, OSI's authorized staffing level was set so low that, not only were we unable to open investigations into new allegations of employee corruption with clear national security implications, our on-going national security investigations involving allegations of espionage and links to terrorism were jeopardized. OSI staff consisted primarily of:

- Six criminal investigators—one or two of whom were detailed to the DHS Office of Internal Security at any given time because of their expertise in national security investigations—to handle a backlog of 2,771 internal affairs complaints, including 528 that were criminal on their face and ranged from bribery and extortion to espionage and undue foreign influence;

- Six personnel security specialists to handle a backlog of 11,000 employee background investigations that had developed before OSI was created, plus the background investigations of all the new employees being hired to help eliminate the application backlog;

- Nine physical security specialists to secure over 200 USCIS facilities worldwide; and

- One supervisory security specialist to ensure the continuity of operations (COOP) in the event of an attack or other crisis that impacts USCIS personnel or processes.

The same senior leaders who absolutely refused to allow OSI to obtain the necessary resources to fulfill its mission also refused, time and time again, to act when confronted with major national security vulnerabilities my team and I identified in the immigration process. Each of the security breaches described below was brought immediately to the attention of top-level officials at USCIS. These breaches compromise virtually every part of the immigration system, leaving vulnerabilities that have been and likely *are being* exploited by enemies of the United States. Despite

¹ See Attachment 1: Statement of Mission and Jurisdiction of OSI.

² See Attachment 2: Meritorious Civilian Service Award.

³ See Attachment 3: Memorandum from Maxwell to Aguirre, 03/09/05.

⁴ See Attachment 4: OSI Staffing Matrix as of 08/05.

⁵ See Attachment 5: Members of the SRB as of 01/19/06.

⁶ See Attachment 6: SRB overrules Director's orders.

the fact that each identified threat has significant national security implications, USCIS leadership consistently failed—or refused—to correct them. Instead, top officials chose to cover them up, to dismiss them, and/or to target the employees who identified them, even when the solution was both obvious and feasible.

As a former police chief and national security specialist, I do not make these charges lightly. Over the past eight months, I have provided, through my attorney, thousands of pages of unclassified documents, including most of those attached to this statement, to Members of this Subcommittee and other Members of Congress. More recently, I have provided the same documents to the FBI, the GAO, and the DHS Office of Inspector General. On three separate occasions, I offered to provide Director Gonzalez a full set of these documents, but on each occasion, he declined my offer.

These documents, and others of which I have personal knowledge but am not at liberty to release or to discuss in an open forum, prove not only the existence of the national security vulnerabilities I will discuss today, but also the fact that senior government officials are aware of the vulnerabilities and have chosen to ignore them. More troubling is the fact that these same officials actually ordered me to ignore national security vulnerabilities I identified, even though my job was to address them. When I refused these orders, I was subjected to retaliation—some of which was as blatant as revoking my eligibility for Administratively Uncontrollable Overtime (AUO), which totaled 25 percent of my salary, on the very day that I was scheduled to brief the Immigration Reform Caucus;⁷ and some of which was more nefarious, like the challenge to my authority to authorize access to Sensitive Compartmented Information (SCI), in a move that I have no doubt would have led to the revocation of my own Top Secret/SCI clearance, had I not resigned when I did.

INTERNAL AFFAIRS

Mr. Chairman, written allegations set forth by USCIS employees, interviews conducted as recently as yesterday with USCIS line employees and high level managers, internal USCIS communications, and external investigative documents prepared by independent third agencies, compiled and delivered to this Congress over the last eight months, make clear that the integrity of the United States immigration system has been corrupted and the system is incapable of ensuring the security of our Homeland.

As the office responsible for internal affairs, OSI received 2,771 complaints about employees between August 2004 and October 2005. Over 1800 of these were originally declined for investigation by the DHS Office of the Inspector General and referred to OSI. Most of the remaining complaints were delivered to OSI by the ICE Office of Professional Responsibility once they gave up jurisdiction over USCIS complaints. The majority of all complaints received by OSI are service complaints (e.g., an alien complaining that he did not receive his immigration status in a timely way) or administrative issues (e.g., allegations of nepotism).

However, almost 20 percent of them—528 of the 2,771—allege criminal activities. Alleged crimes include bribery, harboring illegal aliens, money laundering, structuring, sale of documents, marriage fraud, extortion, undue foreign influence, and making false statements, among other things. Also included among these complaints are national security cases; for example, allegations of USCIS employees providing material support to known terrorists or being influenced by foreign intelligence services.⁸ Complaints with clear national security implications represent a small share of the total, but in cases such as these, even one is too many.

OSI is required to refer such cases to the FBI when they reach a certain threshold, since the Bureau has primary jurisdiction over all terrorism and counterintelligence investigations. In virtually all the cases we refer to the FBI, though, OSI is an active investigative partner. In fact, OSI agents have led or facilitated remote and sometimes classified national security operations; we have led national security interviews; we have participated in national security polygraph interviews; and we have developed behavioral analyses as investigative tools.

OSI also details its agents to the DHS-Headquarters Office of Security when the latter lacks sufficient resources to investigate these types of national security allegations, as we have criminal investigators with training and experience in both counterterrorism and counterintelligence operations. In fact, one of our investigators is currently detailed to the DHS Office of Security.⁹ For operational security reasons, these investigations had to be compartmentalized from all USCIS manage-

⁷ See Attachment 7: Eligibility for AUO revoked.

⁸ See Attachment 8: Weekly Internal Affairs Report, 02/17/06.

⁹ See Attachment 9: Email regarding detail to Office of Security.

ment except the Director, Deputy Director, or Chief of Staff. At times, we reported directly to Admiral Loy, when he was Deputy Secretary, and later to Deputy Secretary Jackson.

As you would expect, we always prioritize complaints that appear to implicate national security. One of the most frustrating parts of my job, though, was the fact that we simply did not have the resources to open investigations into even the relatively small number of national security cases. While I cannot discuss on-going investigations in this open forum, I can tell you about some of the allegations OSI did not have the resources to investigate.

As you know, the USCIS employees who process applications for immigration status and documents are supposed to ensure that the applicant is not a terrorist or criminal. The database they use to do this is the Treasury Enforcement Communications System, or TECS. TECS is essentially a gateway into the criminal and terrorist databases of some two dozen law enforcement and intelligence agencies, including the FBI, the Drug Enforcement Administration, Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), which controls access to TECS, the intelligence community, and others. USCIS employees are granted different levels of access to TECS depending on how in-depth of a background investigation they have undergone. Those who have undergone a full background investigation are likely to be granted access to Level 3 TECS records, which include terrorist watch-lists, information about on-going national security and criminal investigations, and full criminal histories. Due to the sensitivity of the data, USCIS employees are required to log in and out of the system so their access can be tracked.

OSI has seen far too many allegations recently where it appears that an employee or a contract worker may have entered TECS—or permitted someone else to enter TECS—in order to provide information to someone else. In fact, OSI recently got its first criminal conviction in a case involving a USCIS employee who accessed TECS in order to warn the target of a DEA investigation about the investigation.

More alarming, however, is an allegation that has not yet been investigated in which a Chinese-born U.S. citizen who works for USCIS permitted a family member to access TECS, print records from it, and then leave the building with those records. We do not know what records this person accessed or why, and yet this allegation is not being investigated because OSI's criminal investigators are already stretched to their limits.

Consider for a moment the potential repercussions of these types of investigations. One USCIS employee, co-opted by a foreign intelligence entity, with the ability to grant the immigration status of their choosing, to the person or persons of their choosing, at the time and location of their choosing. This threat represents a clear and ongoing danger to national security. The possibilities are even worse when you consider the nexus that this subcommittee knows to exist between countries with highly capable intelligence services and state sponsors of terrorism.

It may seem farfetched to think that a USCIS employee would be co-opted by a foreign intelligence agency. The fact is, however, that the new Director of USCIS, Dr. Emilio Gonzalez, in early 2006 at an open and unclassified session of a senior leadership meeting of almost two dozen senior managers mentioned two foreign intelligence operatives who work on behalf of USCIS at an interest section abroad and who are assisting aliens into the United States as we speak.

RESTRICTED TECS ACCESS

While there obviously is a problem at USCIS with unauthorized access to the TECS database, ironically, there also is a problem with insufficient access for USCIS employees who are deciding applications. The records accessible through TECS are grouped into four categories:

- Level 1 records are those from the user's own agency (i.e., Level 1 USCIS users would have access only to USCIS records);
- Level 2 records include all Level 1 records plus a sizeable share of the criminal records from the other law enforcement agencies (i.e., Level 2 USCIS users would have access to USCIS records, plus certain records from CBP, the FBI, the DEA, and so on);
- Level 3 records include Level 1 and 2 records, plus national security records, terrorist watch-lists, threats to public safety, and information about on-going investigations;
- Level 4 records include records from the three other levels, plus case notes, grand jury testimony, and other highly sensitive data that are provided only on a need-to-know basis.

Clearly, USCIS employees need access to the Level 3 records in order to properly vet applicants for immigration status and/or documents and ensure that known terrorists and others who present a threat to national security or public safety are not able to game the immigration system. On the other hand, because of the sensitive nature of some of these records, including on-going national security cases, it is important that access to Level 3 records be restricted to employees who themselves have been thoroughly vetted.

Thus, when DHS was created in January 2003, CBP, as the manager of TECS, entered into an agreement with USCIS that requires employees to undergo full background investigations (BIs) before they may be granted Level 3 TECS access. The agreement included a two-year grandfather period during which legacy Immigration and Naturalization Service (INS) personnel who had had access to Level 3 TECS records at the INS would continue to have access so that USCIS would have time to complete BIs on new employees and upgrade those on legacy employees when necessary.

USCIS leadership, however, decided not to spend the money to require full BIs on new personnel or to upgrade the BIs on legacy personnel. Thus, when the grandfather period ended in January 2005, CBP began restricting access by USCIS employees with only limited BIs, so that these employees can access only Level 1 (USCIS) records or, in some cases, Level 2 (USCIS plus limited criminal histories) records through TECS. They cannot access the national security, public safety, or terrorist records they need to process applications.

Other than a few sporadic meetings among USCIS senior staff and, once in a while, with some CBP officials, to talk about how many employees might have restricted access, USCIS leadership largely ignored the problem during the first nine months of 2005, despite complaints from the field and warnings from within Headquarters. Backlog elimination was the top priority of the agency, so employees were pressured to keep pumping out the applications, regardless of whether they had the ability to determine if an applicant was a known terrorist or presented some other threat to national security or public safety.

In early October 2005, the problem drew congressional and media attention. The Public Affairs office assured reporters that employees have access to all the records they need, while Acting Deputy Director (ADD) Robert Divine, Chief of Staff (CoS) Tom Paar, and Don Crocetti, the director of the Fraud Detection and National Security (FDNS) office, were frantically trying to figure out the difference between Level 2 and Level 3 TECS records in order to determine what critical information employees were missing.

During a late-night meeting in the second week of October, Crocetti acknowledged that Level 2 access leaves employees completely blind to sensitive national security, public safety, and terrorist records, along with information about on-going investigations. Deputy Director of Domestic Operations Janis Sposato told the group that 80 percent of all applications are processed through TECS at Level 3 as part of an automated background check system. She noted that some unknown portion of the remaining 20 percent are processed by the more than 1,700 employees with only Level 2 or below access, so critical national security indicators may have been missed. ADD Robert Divine's response to this information was, "I guess we've finally reached that point: Is immigration a right or a privilege?" In the ensuing debate, Divine and Acting General Counsel Dea Carpenter insisted that immigration to the United States is a right, not a privilege.

USCIS employees processed 7.5 million applications in FY 2005, so 1.5 million applications (20 percent) did not go through the automated background check system. If 1,700 out of 4,000 employees (43 percent) do not have Level 3 TECS access, then, not taking into account that those without Level 3 access may be able to process cases faster because they have to resolve fewer "hits" from TECS searches, those 1,700 employees processed some 645,000 applications. Furthermore, each application generally involves more than one individual and so requires more than one TECS search.

At the conclusion of that late-night meeting, ADD Divine ordered Crocetti to lead the negotiations with CBP to resolve the TECS issue. Since then, Crocetti, sometimes accompanied by Divine and CoS Paar, has been meeting with CBP officials to convince them to extend the grandfather period and restore access to those employees who have been cut off and to waive in (without full background investigations) contract workers hired to eliminate the immigration application backlog. Granting contract workers who have not been vetted access to national security records would itself result in a significant security breach, since it could put sensitive national security information in the wrong hands and has already been shown to be a criminally negligent policy on the part of USCIS.

An increasing number of USCIS employees have had their access to TECS restricted since the grandfather period expired over one year ago, in January 2005. To date, not one employee with a deficient background investigation has been scheduled for an upgrade and no agreement to restore access has been reached with CBP.

To make matters worse, the ADD and the CoS have actively ensured that USCIS does not have the personnel it will need to upgrade employees' background investigations. OSI is responsible for processing background investigations on employees (the Office of Personnel Management (OPM) does the actual investigation and then sends it to OSI to resolve any inconsistencies and make a final determination on granting clearance).

Shortly after OSI was created, in the fall of 2004, we inherited a backlog of 11,000 pending BIs on USCIS employees that INS and then ICE had failed to finalize. In light of the fact that we have had a total of six personnel security specialists to process BIs over the past year, it is astonishing that we have managed to reduce the backlog to about 7,000. Because of the hiring frenzy driven by backlog elimination, however, OPM currently is sending OSI new BIs at a rate of 3.5 for every one that OSI clears.

I presented at least eight proposals over the last year to increase the number of personnel security specialists to address this backlog, but all were denied by the Senior Review Board. CoS Paar approved 15 additional positions for OSI in mid-November 2005, but Human Capital refused to post the vacancies until after I resigned, and they have continued to delay the process so that none of the positions has yet been filled. Even if those five positions eventually are filled, that will be a total of 11 people to handle the 7,000 backlogged BIs, plus the BIs for new employees hired to eliminate the backlog, plus up to 5,000 upgraded BIs on current employees whose access to TECS has been or could soon be restricted. The Chief of Staff and Deputy Director have been warned in writing on numerous occasions of this point of failure and both ignored the warnings. When the new Director of USCIS, Emilio Gonzalez, became aware of this situation, his immediate response was to order me to hire 17 personnel security specialists—above my authorized staff level—just to address the TECS access issue. *The very next day, however, CoS Paar overturned the Director's order and prohibited me from hiring any additional staff.*

IRRESPONSIBLE POLICIES

Information from various sources indicates that criminals and, potentially, terrorists are being granted immigration status and/or documents or being permitted to remain in the United States illegally through a variety of irresponsible policy decisions by USCIS leadership, the consequences of which they are well aware:

- 1) *Background Checks on Aliens*—USCIS Operation Instruction 105.10 instructs employees that “if no response is received to an FBI or CIA G-325 [name check] request within 40 days of the date of mailing [the request card] the application or petition shall be processed on the assumption that the results of the request are negative.”¹⁰ This policy flies in the face of the legal eligibility requirements for immigration status and of repeated public assurances by USCIS leadership that employees always wait for background check results before deciding any application for immigration status and/or documents. This Operation Instruction is listed on the USCIS website as current policy.

Since resigning from the agency, I have been told by USCIS employees, and had it confirmed by managers, that, not only are they instructed to move forward in processing applications before they receive background check results, but also that some have been instructed by supervisors, including legal counsel, to ignore wants and warrants on applicants because addressing them properly—i.e., looking into the reason for the want or warrant to determine if it may statutorily bar the applicant from the status or document for which he has applied—slows down processing times.

Moreover, I was told as recently as three weeks ago that USCIS District Offices and Service Centers are holding competitions and offering a variety of rewards, including cash bonuses, time off, movie tickets, and gift certificates, to employees and/or teams of employees with the fastest processing times. The quality of processing is not a factor; only the quantity of closed applications matters, and it is important to note that it takes a lot less time to approve an application than to deny one, since denials require written justifications and, often, appeals.

¹⁰ See Attachment 10: Operation Instruction 105.10.

- 2) *Fingerprint Checks on Applicants for U.S. Citizenship*—OSI was notified that employees were not following DHS regulations that prohibit a naturalization exam from being scheduled before the fingerprint check results are returned by the FBI. This is a critical problem because there is a statutory 120-day window after the naturalization exam during which a final decision on the application for citizenship must be made. If a decision is not made during that window, for whatever reason, the alien may petition a court for a Writ of Mandamus, which orders USCIS to decide the application immediately. When I approached ADD Divine about this issue, he indicated that he was aware of the problem. He said that, as Chief Counsel, he had discussed this issue numerous times with USCIS senior staff, including then-Director of Domestic Operations Bill Yates. *Divine said he had concluded that since the fingerprint results come back before the 120-day window closes in 80 percent of cases, the other 20 percent represent an “acceptable risk.”*

Senior USCIS leadership at Headquarters meets every week for what are called “WIC” meetings. A detailed memo prepared for each of these meetings and distributed widely throughout the Federal government lists the activities that each unit within USCIS is involved in for the coming weeks and summarizes past activities. The WIC memo for the week of March 13, 2006 includes an item regarding “American-Arab Anti-Discrimination Committee (ACD) ‘120 Day Cases’ in District Court,” which says that the Department of Justice (DOJ) sees the current USCIS practice of scheduling the naturalization interview before receiving fingerprint results as a violation of regulations. It concludes that, while DOJ “understands the Congressional and Presidential mandates on processing times and backlog reduction that [US]CIS labors with,” DOJ fervently wishes that USCIS would stop violating its own rules, since the practice is tough to defend in court.¹¹

- 3) *Employment Authorization Documents*—A USCIS regulation (8 C.F.R. 274a.13) states that, if an application for adjustment to lawful permanent resident (LPR) status is not decided within 90 days, the applicant is entitled to file an I-765 application for an employment authorization document (EAD). This policy has led to large-scale fraud. The current processing times for an application for LPR status range from just under 6 months (the Nebraska and the Texas Service Centers each have one form of application for LPR status that is currently being processed within 6 months) to 60 months at the four service centers and from six months to 33 months at the larger district offices, so virtually all applicants—whether they are eligible or not and whether they are lawfully present in the United States or not—are able to obtain a legitimate EAD (applications for which both the service centers and district offices have only short processing times).

Under this policy, illegal aliens can simply file a fraudulent application, wait 90 days, and then ask for an EAD. Once they have the EAD, they can apply for a legitimate social security number and, even under the REAL ID Act, they can legally obtain a driver’s license because they have an application for LPR status pending. With a social security number and a driver’s license, they can get a job. According to the Government Accountability Office (GAO), an estimated 23,000 aliens were granted EADs on the basis of fraudulent applications for LPR status between 2000 and 2004. *When asked by the GAO to comment on the fraud resulting from this policy, USCIS leadership indicated that fairness to legitimate applicants outweighs the need to close security loopholes.*¹²

To make this situation worse, information I have just received in the past few days suggests two additional problems with the processing of I-765s, the application form for an EAD. First, it appears that the Texas Service Center has developed an “auto-adjudication” system that can process I-765s from start to finish without any human involvement at all. In other words, there is no point in the process when a USCIS employee actually examines the supporting documentation to look for signs of fraud. Instead, the I-765 application is processed automatically when the underlying application for LPR status has been sitting on the shelf for 90 days.¹³

The second issue, identified during the same review that uncovered the “auto-adjudication” system, is just as troubling. Staff at the National Benefits Center in Lee’s Summit, Missouri, acknowledged that there is a way to bypass the normal application process and manually insert any number of applications into the computer

¹¹ See Attachment 11: Memorandum for WIC Members, March 13, 2006, p. 4.

¹² “Additional Controls and a Sanctions Strategy Could Enhance DHS’s Ability to Control Benefit Fraud,” Government Accountability Office, GAO-06-259, March 2006, pp. 22, 27.

¹³ Attachment 12: National Benefits Center documents (sensitive; for Members only).

system (CLAIMS3) so that the standard application screening process is circumvented. Independent investigators are currently attempting to determine how many applications have been improperly processed in this way and by whom.¹⁴

- 4) *Fingerprint Check Waivers*—A memo to Regional Directors from Michael Pearson, then head of Field Operations, sets out USCIS policy on the granting of waivers of the FBI fingerprint check requirement for aliens who “are unable to provide fingerprints,” because of, among other things, “psychiatric conditions.” The policy states:

The determination regarding the fingerprinting of applicants or petitioners who have accessible fingers but on whose behalf a claim is made that they cannot be fingerprinted for physiological reasons can be far less certain. Unless the ASC manager is certain of the bona fides of the inability of the person to be fingerprinted, the ASC manager should request that reasonable documentation be submitted by a Psychiatrist, a licensed Clinical Psychologist or a medical practitioner who has had long-term responsibility for the care of the applicant/petitioner [emphasis added].

In my 16 years in law enforcement, I have never heard of someone being exempt from fingerprinting due to a psychiatric condition. Moreover, I cannot fathom circumstances under which an ASC manager would be sufficiently qualified to determine the bona fides of the request for a waiver. At the very least, this policy should affirmatively require proof from a licensed professional, rather than just suggesting it if the manager cannot decide for himself.

- 5) *Refugee/Asylee Travel Documents*—As of late September 2005, USCIS employees handling applications for refugee/asylee travel documents were not comparing the photograph of the applicant for the travel documents with the original photograph submitted by the refugee or asylee and stored in the Image Storage and Retrieval System (ISRS). Thus, an illegal alien who can obtain biographical information about a legitimate refugee or asylee (from a corrupt immigration attorney, for example) can submit an application for travel documents using the real refugee/asylee’s name and other biographical information, provide his own photograph, and be issued travel documents with his picture, but the name of an alien with legitimate USCIS records. The illegal alien can then obtain other documents based on the stolen identity established by the travel documents.

When USCIS leadership was made aware of this fraud scheme, a Domestic Operations representative responded by acknowledging that this “is a known vulnerability” they have been looking at “for the past year or so.”¹⁵ This same individual clarified for ADD Divine that recent assurances Divine gave to Secretary Chertoff concerned verifying the identity of applicants related to I-90 adjudications, not refugee/asylee travel documents. Ironically in light of the issue in the paragraph below, ADD Divine noted that this issue “has particular poignancy as [USCIS] face[s] a flood of filings by Katrina victims seeking to replace documents.” All parties acknowledged implicitly that requiring employees to compare the applicant’s photo with the photo of the refugee/asylee that is stored in the Image Storage and Retrieval System (ISRS) would end fraud of this type.

USCIS Director Gonzalez contends that the *Standard Operating Procedures (SOP)* do, in fact, require such a comparison, so the problem is solved. Interestingly, the *Adjudicator’s Handbook* does not have such a requirement, but the bottom line is that the comparisons are not being done, regardless of what the SOP says. Employees have told me recently that, rather than actually changing the SOP, supervisors simply send out emails ordering employees to change the way they perform certain tasks, so as to speed up the work.

- 6) *Green Card Replacement*—In mid-December 2005, the ICE Office of Intelligence sent a memo to the USCIS Fraud Detection and National Security unit about a fraud scheme that ICE had uncovered that is similar to the one above.¹⁶ This scheme involved the I-90 application for a replacement/renewal green card (for lawful permanent residents)—the same application about which ADD Divine had reassured Sec. Chertoff. In this scheme, illegal aliens steal the identity of a lawful permanent resident. Each illegal alien then uses the LPR’s name and Alien Registration Number to file an I-90 application for a replacement Permanent Resident Card (“green card”) with the

¹⁴ Ibid.

¹⁵ See Attachment 13: Email exchange regarding Cameroon national.

¹⁶ See Attachment 14: ICE memo and report (the latter is LES for Members only).

illegal alien's photo, fingerprints, and signature. Incredibly, USCIS actually captures the illegal aliens' photos, fingerprints, and signatures in the Image Storage and Retrieval System (ISRS), but employees fail to compare any of them with the photo, fingerprints or signature of the original applicant. ICE identified this as a vulnerability with "severe national security implications."

- 7) *Mandatory-Detention Aliens*—A policy memo sent to Regional and Service Center Directors by the now-retired head of Domestic Operations, *Bill Yates*, instructs Service Centers NOT to serve a Notice to Appear (NTA), which initiates removal proceedings, on aliens who appear to be subject to mandatory detention under section 236(c) of the Immigration and Nationality Act (INA).¹⁷ Instead, employees are instructed to decide the application, prepare and sign an NTA (unless they exercise prosecutorial discretion and decide to allow the convicted criminal to continue living in the United States illegally), and place a memorandum in the file explaining that they are handing the case over to ICE. Section 236(c) of the Immigration and Nationality Act requires that removable aliens who have been convicted of certain serious crimes be detained pending their removal (i.e., "mandatory-detention aliens"). Service Center employees and senior leadership at Headquarters confirm that this memo represents current USCIS policy.

The memo presents two separate issues: (1) whether this policy results in aliens who are subject to mandatory detention based on criminal convictions being allowed to remain free in American communities; and (2) the applicability and scope of prosecutorial discretion.

(1) *There is evidence that criminal aliens are being allowed to remain at large in U.S. communities as a result of this policy.* Part of the problem is that ICE officials (at least in some parts of the country) apparently have decided that ICE should be paid by USCIS each time it does its job and serves an NTA. A search for a missing alien file (A-file) that was being sought by an agent on the Joint Terrorism Task Force (JTTF) in the USCIS Philadelphia District Office recently resulted in the discovery of a stash of some 2,500 A-files of aliens whose applications for status and/or documents had been denied, but whose cases had not been turned over to ICE to issue NTAs because USCIS personnel at that office decided to hide the files rather than pay ICE to serve all those NTAs. According to the agent who found them, a majority of the files were for aliens from countries of interest.¹⁸ That means that aliens from special interest countries who do not qualify for legal status for whatever reason are still in the United States illegally, and there has been no effort to remove them from the country.

(2) The memo on prosecutorial discretion to which the Yates memo refers was issued by then-INS Commissioner Doris Meissner in response, according to the memo, to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. That law included several provisions aimed at getting criminal aliens off the streets and out of the country, including section 236(c) of the INA. Meissner asserts that immigration officers may appropriately exercise prosecutorial discretion "even when an alien is removable based on his or her criminal history and when the alien—if served with an NTA—would be subject to mandatory detention." However, she reserves prosecutorial discretion to law enforcement entities, which USCIS absolutely refuses to be. As a self-avowed non-law enforcement agency, perhaps USCIS would be better off simply obeying the law.

NATIONAL SECURITY INDICATORS

As of August 2005, some 1,400 immigration applications, most for U.S. citizenship, that had generated national security hits on IBIS were sitting in limbo at USCIS headquarters because the employees trying to process them were unable to obtain the national security information that caused them to be flagged. If a government agency (e.g., FBI, CIA, DEA, ATF) has national security information about an alien, or when an agency has an ongoing investigation that involves an alien, the USCIS employee who runs a name check in TECS will see only a statement indicating that the particular agency has national security information regarding the alien. (This is assuming that the employee has Level 3 TECS access; without such access, the employee may get no indication at all that national security information exists.) Employees are not permitted to deny an application "just" because there is national security information or a record with another law enforcement agency. In-

¹⁷ See Attachment 15: Yates memo on NTAs.

¹⁸ See Attachment 16: Update on Philadelphia A-files.

stead, the employee must request, acquire, and assess the information to see if it makes the alien statutorily ineligible for the immigration status or document being sought, or inadmissible or deportable. However, whether or not an employee can get the national security information, in order to assess it, depends on at least two things:

The level of background investigation the employee has undergone, which determines the types of information he or she is lawfully permitted to access; and

The nature of the national security information, which determines the willingness or ability of the agency with the information to share it with non-law enforcement personnel (all USCIS employees, including those in the Fraud Detection and National Security unit, are non-law enforcement except for the 1811 criminal investigators and some of the 0080 security specialists who work in OSI).

The more sensitive the national security information, the less likely that the non-law enforcement employee will be able to get it. This is the genesis of the so-called “FOCUS” cases—employees see that there is national security information on the alien, but they are unable to obtain the information to assess it. The bulk of FOCUS cases are applications for naturalization because naturalization regulations require USCIS to make a final decision within 120 days of interviewing the applicant. Once that 120-day window closes, the applicant can petition a court for a writ of mandamus, and the court will order USCIS to issue a decision. USCIS set up a group of employees, the FOCUS group, to review these applications and issue the final decisions. However, as non-law enforcement personnel, they may have no better access to the relevant information than the original employee who sent the application to Headquarters in the first place. (In fact, some FOCUS employees do not even have access to Level 3 TECS records.¹⁹) OSI, whose law enforcement personnel have the security clearances and the contacts necessary to obtain the pertinent information, offered to assist employees with these applications. Rather than utilizing OSI, however, USCIS leadership instructed the FOCUS group members to contact FDNS—the official USCIS liaison with outside law enforcement and intelligence agencies—when they need additional information about any of these cases. Since FDNS lacks law enforcement personnel, it, too, has been unable to obtain the necessary information from these outside agencies in some cases.

In documented instances, FDNS has instructed FOCUS employees to grant a benefit, even though neither FDNS nor the FOCUS employee knew why the alien generated a national security indicator.²⁰ Despite the fact that my staff was willing and able to assist in obtaining the national security information that was otherwise unavailable to USCIS, I was ordered directly by Acting Deputy Director Divine to remove myself and my staff from any involvement with the FOCUS cases and to cease any communication with the FBI and the intelligence community. I was told repeatedly that FDNS was the official liaison and so I was to have no further contact with any law enforcement or intelligence agencies or participate in any information sharing, either within USCIS or outside USCIS. I have been told that my successor is working under the same constraints.

The result is that FOCUS employees are faced with a choice between approving an application for U.S. citizenship with limited information about what raised a national security flag versus denying the application, perhaps wrongly, or asking someone at OSI to violate the direct order of the Acting Deputy Director and the Chief of Staff in order to share critical information with them.

In a November 2005 report on Alien Security Checks by DHS–OIG, USCIS told the IG investigator that “FDNS has resolved *all national-security related IBIS hits since March 2005*. FDNS’s Background Check Analysis Unit reviews, tracks, analyzes, and resolves all name-vetted hits related to national security” [emphasis added]. Technically, this statement is true, but only because the former head of Domestic Operations redefined the word “resolution.” In a memo dated March 29, 2005, Bill Yates says in a footnote:

“Resolution is accomplished when all available information from the agency that posted the lookout(s) is obtained. A resolution is not always a finite product. Law enforcement agencies may refuse to give details surrounding an investigation; they may also request that an adjudication be placed in abeyance during an ongoing investigation, as there is often a concern that either an approval or a denial may jeopardize the investigation itself” [emphasis added].

In other words, USCIS employees can “resolve” a national security hit simply by asking why the alien is flagged, regardless of whether the employee is actually able to obtain the data necessary to decide the application appropriately. One of the first

¹⁹ See Attachment 17: O’Reilly email.

²⁰ See Attachments 18 and 19: FOCUS emails.

lessons employees are taught is that they must grant the benefit unless they can find a statutory reason to deny it. *Without the national security information from the law enforcement agency, the employee must grant the benefit unless there is another ground on which to deny it, even where the applicant may present a serious threat to national security.*

Mr. Chairman and Members of the Subcommittee, as you can see, USCIS is operating an immigration system designed not to aggressively deter or detect fraud, but first and foremost to approve applications. Ours is a system that rewards criminals and facilitates the movement of terrorists.

On no less than 8 occasions in the past year, the DHS Inspector General and the GAO have reported critical, systemic failures in the immigration system. They have raised the national security red flag with regard to cyber attack, terrorist attack, criminal fraud, and penetration by foreign intelligence agents posing as temporary workers. All while the bad guys are patiently working within the framework of our legal immigration system, often with the explicit help of USCIS.

Currently, the USCIS Headquarters Asylum Division has backlog of almost 1000 asylum cases that it has not reported to you as Members of Congress, to the Inspector General, or to the American people. This backlog includes two kinds of asylum claimants:

Individuals who claim that they have been falsely accused by their home government of terrorist activity; and

Individuals who *have* provided material support to a terrorist or a terrorist organization.

These asylum claimants, most of whom fall into the second category, are in the United States right now. Some have been awaiting a decision since late 2004 on whether the Secretary of Homeland Security, after consulting with the Secretary of State and the Attorney General, will grant them a waiver of inadmissibility for providing material support to terrorists. It is no wonder DHS does not want to report this backlog.

But there is more. The USCIS Headquarters Fraud Detection National Security unit also has an unreported backlog.²¹ As of September 24, 2005, this backlog included 13,815 immigration applications that had resulted in an IBIS "hit" involving national security, public safety, wants/warrants, Interpol, or absconders. FDNS had a separate backlog of 26,000 immigration applications that resulted in some other kind of IBIS "hit."

In late March 2005, FDNS began requiring that all national security-related IBIS hits be sent to Headquarters for resolution. During the 6 months between April 2005 and the end of September, FDNS HQ received 2,000 national security hits and reached "final resolution" on 650, leaving 1,350 pending by the beginning of October.

This backlog of national security cases is particularly disturbing when put in the context of USCIS's definition of how to "resolve" a national security case. One has to wonder how many of them were "resolved" simply by asking for the national security information and then granting the application when the agency with the information refused to share it. We have proof of at least one case where that would have happened, had OSI not stepped in and provided the national security information.²² The USCIS General Counsel's office points out another such case, except that they expect to grant the application for citizenship despite the national security hit because the national security information "is unavailable to USCIS at this time."²³

Perhaps the following finding from the GAO sheds light on the truth:

*Verifying any applicant-submitted evidence in pursuit of its fraud-prevention objectives represents a resource commitment for USCIS and a potential trade-off with its production and customer service-related objectives. In fiscal year 2004, USCIS had a backlog of several million applications and has developed a plan to eliminate it by the end of fiscal year 2006. In June 2004, USCIS reported that it would have to increase monthly production by about 20 percent to achieve its legislatively mandated goal of adjudicating all applications within 6 months or less by the end of fiscal year 2006. It would be impossible for USCIS to verify all of the key information or interview all individuals related to the millions of applications it adjudicates each year approximately 7.5 million applications in fiscal year 2005 without seriously compromising its service-related objectives.*²⁴

²¹ See Attachment 20: USCIS response to press.

²² See Attachment 18: FOCUS email

²³ See Attachment 11: Memorandum for WIC Members, March 13, 2006, p. 4, 3rd item.

²⁴ "Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud," Government Accountability Office, GAO-06-259, March 2006, p. 26..

USCIS leadership has been warned repeatedly of national security vulnerabilities in the asylum, refugee, citizenship, information technology, and green card renewal systems by me personally, by the GAO, by the Inspector General, and no doubt, by others. Time and again, they have ignored warnings of systemic weaknesses wide open to exploitation by criminals, terrorists, and foreign agents. When faced with irrefutable proof of vulnerabilities, they attempted to balance national security and customer service and explained to me that immigration was a right not a privilege. They have knowingly misled Congress, the Inspector General's Office, the GAO, and perhaps most disheartening, the American people. They are attempting to simply reboot the immigration system, in the hope that whatever system conflict there is will just resolve itself. In this case, however, if you just reinstall the same software, with the same software engineers, and without the necessary safeguards in place to catch viruses or deter hackers, the system simply replicates itself and bogs down all over again, until one day there is a catastrophic failure. This root conflict is not going to go away without immediate and enormous change. The immigration process itself is flawed and is being exploited internally and externally by criminals, terrorists, and foreign intelligence agencies.

In closing Mr. Chairman, I sit before this committee, having lost my career, my passion for service to the government, my faith that someone, somewhere would do the right thing within DHS. I know there are more good men and women in the agency who would like nothing more than to do their part in fixing this broken system. I have now been able to present some of the information I have gathered to the FBI, the GAO, the Inspector General, and to you. Thankfully, senior leadership can no longer retaliate against me, for I am no longer employed by DHS. Based on the response I have seen thus far, I am hopeful that enough people will come forward that, with your help, we will finally be able to force serious change on an agency that has needed it desperately for decades.

Chairman Royce, Ranking Member Sherman, and Members of the Committee, thank you all for your support. I would be happy to answer any questions you may have at this time.

Abbreviations

ADD – Acting Deputy Director

BI – background investigation

CBP – Customs and Border Protection

CI – counterintelligence

CIO – Chief Information Officer

CIS – Central Index System – provides information regarding approximately 45 million aliens who have come into contact with the INS. It contains information on lawful permanent residents, naturalized citizens, violators of immigration laws, and others for whom the INS has opened an A-file or in whom the INS has a special interest. It is a centralized text-based system that identifies the location of each alien's A-file. It includes biographical and status information about the alien, such as name, date of birth, Alien number, country of birth, citizenship, various file control data, dates of INS actions, and identifying numbers. It also contains selected data from other INS databases, such as NAILS and DACS, and links those databases to CIS. CIS is intended to be a "pointer" system that will lead to the alien's A-file, which should contain complete information on the alien, or to other databases.

CLAIMS 3 – Computer Linked Application Information Management System 3 – used to track pending immigration and customs applications; ICE is responsible for maintaining the systems access controls software and establishing user access privileges, though the data it contains belongs to and is used by CIS.

COMSEC – communications security – measures taken to deny unauthorized persons information derived from telecommunications or to ensure its authenticity. Includes crypto security, emission security, transmission security, and physical security of COMSEC material and information.

COOP – Continuity of Operations

CoR – cancellation of removal

COS – Chief of Staff

CT – counterterrorism

DHS – Department of Homeland Security

DOJ – Department of Justice

EO – Executive Order

EOIR – Executive Office of Immigration Review

FDNS – Office of Fraud Detection and National Security

FSO – Field Security Officer

G-325, G-325A, G-325B, G-325C – USCIS forms on which applicants for certain benefits provide biographical data—including name, birth date, and current and former addresses and employers—that is used to run IDENT, IBIS, and FBI name checks

HR – Human Resources

IA – Internal affairs

IAFIS – Integrated Automated Fingerprint Identification System

IBIS – Interagency Border Inspection System – includes the combined databases of 24 federal agencies and allows users to interface with all 50 states via the National Law Enforcement Telecommunications System. USCIS employees access IBIS through the Treasury Enforcement Communications System (TECS).

ICE – Immigration and Customs Enforcement

IDENT – Automated biometric identification system created by then-INS to track illegal aliens apprehended in the United States or attempting to enter the United States.

IJ – Immigration Judge

INFOSEC – information security – the protection of classified national security information by the application of the rules and procedures established by Executive Order 12958. Other responsibilities in this area include the promotion of security awareness and education, responding to security violations, and performing security indoctrination and exit clearances.

ISSO – Information Systems Security Officer

LBI – limited background investigation

LES – law enforcement sensitive

NAILS – National Automated Immigration Lookout System

NCIC – National Crime Information Center – a text-based database, managed by the FBI, that contains criminal history information on millions of individuals. Established in 1967, it contains records that are submitted by participating federal, state, and local law enforcement entities. NCIC records can be searched by name and at least one other identifier, such as date of birth or FBI number. NCIC consists of 20 files, including wanted persons, deported felons, protective files, sexual offenders, and stolen vehicles. NCIC is also linked to an automated system of criminal history record information (its largest file) known as the Interstate Identification Index (III).

NCTC – National Counterterrorism Center

NIIIS – Nonimmigrant Information System

NLETS – National Law Enforcement Telecommunications System – links all states and many federal agencies together for the exchange of criminal justice information. Each state's criminal justice system can access any other state's criminal justice system

to obtain a variety of information, including vehicle registration, drivers licenses, and criminal history records.

NNCP – National Name Check Program – searches records of prior and ongoing FBI investigations

NSCO – National Systems Control Officer

NSI Classification – National Security Information Classification

OGC – Office of General Counsel

OPR – Office of Professional Responsibility

OPSEC – operation security – A process to deny to potential unauthorized persons information about capabilities and/or intentions, by identifying, controlling and protecting generally unclassified evidence of the planning and execution of sensitive activities.

OSI – Office of Security and Investigations

PD – position description

PERSEC – personnel security – Assisting employees in completing Form SF-86, conducting pre-appointment background checks, issuing pre-appointment background investigation waivers, identifying and resolving derogatory information, and making employment suitability determinations.

Physical Security – Physical measures designed to safeguard personnel; prevent or delay and identify unauthorized access to facilities, equipment, material and information; and safeguard against espionage, sabotage, damage and theft. Other responsibilities in this area include the issuance of agency credentials and office identification, the execution of building security surveys, and interaction with Federal Protective Services to promote building security.

RFE – request for evidence

SCI – Sensitive Compartmented Information – classified information to which access is heavily restricted

TECS – Treasury Enforcement Communications System – provides a gateway into a wide variety of law enforcement data systems, including NCIC, III, IAFIS, NIIS, NAILS, state motor vehicle databases, and others

TSC – Terrorist Screening Center

TSDB – Terrorist Screening Database

ATTACHMENT 1**Statement of Mission and Jurisdiction of the USCIS
Office of Security and Investigations**

The USCIS Office of Security & Investigations (OSI) was established in May of 2004 by Director Eduardo Aguirre with agency-wide responsibilities and placed within his immediate reporting chain. In the context of the USCIS mission, it made good sense and was deemed necessary to create a professional security-oriented organization upon which each office and the agency as a whole could rely. Diverse responsibilities include:

- Oversight of agency-wide COOP planning and implementation;
- Immediate response to continuity of government/national security special events;
- Facilitation of secure fixed and mobile communications between CIS and DHS;
- Oversight of secure documents and physical security storage requirements;
- Oversight of NSI Classification Management Program including Original Classification Authority;
- Oversight and control of Special Security Programs (SCI Programs);
- Coordination with OCIO regarding National Security Information Systems and COMSEC requirements;
- Agency-wide physical security standards and facility security programs;
- Administrative security;
- Technical security;
- Protective operations;
- International security operations;
- Internal security investigations;
- Internal affairs investigations;
- IT forensic investigations;
- Security Awareness training; and
- Critical Response Options training.

ATTACHMENT 2

Office of Security and Investigations

U.S. Department of Homeland Security
20 Massachusetts Avenue, NW
5th Floor Suite 5003
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

MEMORANDUM FOR: ASSISTANT DIRECTOR FOR LABOR AND
MANAGEMENT EMPLOYEE RELATIONS,
DIRECTORATE FOR PERSONNEL AND SECURITY,
WASHINGTON HEADQUARTERS SERVICES,
ATTN: EXECUTIVE SECRETARY TO THE INCENTIVE
AWARDS BOARD

FROM: MICHAEL PETRUCELLI
DEPUTY DIRECTOR
US CITIZENSHIP AND IMMIGRATION SERVICES

SUBJECT: NOMINATION FOR THE SECRETARY OF DEFENSE
MERITORIOUS CIVILIAN SERVICE AWARD

I recommend approval for the attached nomination for award of the Secretary of Defense Meritorious
Civilian Service Award to:

Michael J. Maxwell
Director, Office of Security and Investigations
GS-0080-14, EOD May 2004
US Citizenship and Immigration Services
Department of Homeland Security
Washington, DC

Prior Awards and Dates: Service Above and Beyond Call of Duty 1994 - Shutesbury PD, MA
Service Above and Beyond Call of Duty 1994 - MA Ofc. Attorney General
Service Above and Beyond Call of Duty 1997 - MA OEMS
Meritorious Service Award DHS/USCIS 2003 -USCIS
Special Act Award DHS/USCIS 2004 -USCIS

Nomination for DOD Medal
Page 2

NARRATIVE JUSTIFICATION

Following his appointment within United States Department of Homeland Security/United States Citizenship and Immigration Services in May of 2004, Michael Maxwell was immediately tasked by the Undersecretary of Citizenship and Immigration Services, Eduardo Aguirre, to research, implement and lead all Logistical and Security efforts for joint US Department of Defense/US Department of Homeland Security, Military Naturalization Operations.

Previously non-existent within the operational capabilities of USCIS, the scope of military operations (MILNATZ) would take the Undersecretary of USCIS and an all-volunteer corps of federal personnel into the CENTCOM Theater of Operations, exposing them to the combat environments of Balad and Baghdad Iraq, as well as the austere environment of Bagram, Afghanistan in order to naturalize member of the United States Army and Marine Corps.

Director Maxwell spearheaded transportation and security planning for the entire operation. For the full four month planning cycle, Director Maxwell exhibited an uncanny ability to circumvent obstacles, leverage DHS and DOD resources, facilitate information exchange, and maintain operational security with regard to time and place dependent information that could have resulted in the cancellation of the MILNATZ operation.

Volunteering to travel into the combat zones listed above, Director Maxwell was successful in mitigating unfriendly surveillance efforts threatening the well being of the undersecretary and other high-ranking US dignitaries. Further, from forward stations in Iraq and Afghanistan, he coordinated one dozen combat flights on behalf of the Undersecretary. Additionally, he was exposed to hazards including an in-flight emergency and aircraft evacuation; indiscriminate rocket and mortar fire, and the threat posed by improvised explosive device's (IED) and suicide vehicle borne improvised explosive devices (SVBIED), the threat of attack while traveling through the area of operation (AO). Finally, while on route to Balad, Iraq, Director Maxwell utilized his skills as a paramedic to treat an Air Force Crew Chief injured in-flight. The care rendered by Director Maxwell allowed the Crew Chief, despite his injury, to return to in-flight duties that were critical to a safe landing of the aircraft in Balad.

Successful in his efforts to overcome significant hurdles posed by operational planning across organizational elements, multiple time zones and within an active combat zone, Director Maxwell was a critical liaison between U.S. Department of Homeland (DHS) and U.S. Department of Defense (OSD). His dedication to mission success resulted in the first ever naturalization of men and women of the U.S. Armed Forces serving on active duty in a war zone. Due to his knowledge, leadership, courage, and vision, the military naturalization (MILNATZ) operation was enormously successful and U. S. Citizenship and Immigration Services was able to fulfill its' obligation to the men and women of the U.S. Armed Forces.

In nominating Director Maxwell for this award, I have carefully considered his contribution to the Department of Defense. He greatly influenced the successful deployment and recovery of volunteer federal employees to a combat zone and facilitated the naturalization of nearly one hundred members of our Armed Services.

Nomination for DOD Medal
Page 3

Proposed Citation

THE SECRETARY OF DEFENSE
MERITORIOUS CIVILIAN SERVICE AWARD
TO

MICHAEL MAXWELL

For exceptionally meritorious civilian service as Director, Office of Security and Investigations, U. S. Citizenship and Immigration Services, Department of Homeland Security, 1 July 2004 to 20 October 2004. During this period he developed and executed security operations of major scale and importance within U.S. Citizenship and Immigration Services and conducted on behalf of the US Department of Defense. Director Maxwell spearheaded the transportation and security planning cycle for Military Naturalization (MILNATZ) operations in Iraq and Afghanistan. He fulfilled leadership responsibilities by developing professional relationships with OSD and the military intelligence community, coordinating military airlift operations within CONUS and OCONUS venues and was instrumental in coordinating the security requirements for US Citizenship and Immigration Services Senior Executives. Despite known risk associated with security operations in these and other areas, Director Maxwell voluntarily deployed and was instrumental to mission success, discreetly managing "down-range" activities and leading a close protection detail in a non-permissive environment.

ATTACHMENT 3

U.S. Department of Homeland Security
Office of Security and Investigations
26 Massachusetts Avenue, NW
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

March 9, 2005

ACTION

**MEMORANDUM FOR: Eduardo Aguirre, Director
U.S. Citizenship and Immigration Service
U.S. Department of Homeland Security**

**FROM: Michael Maxwell, Director
U.S. Citizenship and Immigration Service
Office of Security & Investigations**

**SUBJECT: Realignment of CIS Security Personnel and Assets to Report to Headquarters Office of Security
& Investigations and OSI Staffing Matrix**

Purpose

Initiate Realignment of Security personnel and functions, as previously approved, across the USCIS enterprise to rapidly address the equities of key customers of security and investigative services.

Background

On 14 July 2004, the Deputy Director of USCIS signed a memorandum (attached), realigning USCIS security functions to USCIS Headquarters (HQ). Following the signing of the memorandum, the Office of Security and Investigations (OSI) established an initiative whereby it solicited key customer input regarding the establishment of a security model designed to better support the USCIS mission and its worldwide operations. At the onset of the interviews, stakeholders were informed that any realignment action and future staffing matrix must be in line with USCIS' fiscal, personnel, and material limitations while maximizing existing capability and addressing key agency equities. Over a period of 120-days the Director, OSI, and a team of consultants from Booz Allen Hamilton conducted stakeholder interviews with the following personnel:

Regional Directors (3)
 Director of Field Operations (1)
 Director, International Operations (1)
 Director, FDNS
 Director, National Service Centers (1)
 Associate Director of Operations (1)
 U.S. DHS Inspector General Staff (2)
 USCIS-CEO and Deputy Director of IT Security (2)
 USCIS Office of Finance and Internal Audit (2)

The exercise with the stakeholders was intended to attempt to determine the health of current security and investigative capability across the enterprise, define a scalable model of security and investigative support, and present findings to USCIS Senior Leadership. The OSI initiative was well received by all stakeholders and garnered crucial buy-in for future development as well as unanimous support for an enterprise wide roll-out of policies and procedures from USCIS HQ-OSI.

OSI reviewed the agency-wide structure and presence of USCIS security functions, staffing matrices, and investigative capability. During the discovery phase of the initiative and through interviews with key stakeholders, OSI was able to identify high profile deficits in the capability of this agency to support Security and Investigative mandates both domestically and abroad. Staffing, budget and training issues were unaddressed or addressed within a local or parochial framework, that stakeholders stated was "inefficient," "lacking in depth," "understaffed" and "incapable of meeting the demand" of the customer base. Further, the stakeholders unanimously reaffirmed their concern for the breakdown of the shared-service model of Security Services, while stating that in those areas where USCIS could in-fact engage other agencies and leverage best practices and resources we should.

Specifically, and in an order of importance as determined by stakeholders, the following areas of concern were identified regarding current and future posture of USCIS Security.

1. Internal Affairs (OPR) and Managerial Inquiries
2. Security Model
3. Reporting Structure
4. Areas of Responsibility
5. Staffing Levels
6. Budget
7. Communications
8. Training
9. Personnel Security

In order to best address the equities of the stakeholders, detailed discussion regarding each of the nine primary concerns is found below.

Discussion

1. Internal Affairs (OPR) and Managerial Inquiries

- Stakeholders unanimously supported the concept of an autonomous USCIS-OSI Internal Affairs (IA) functional group, however, they expressed concern for the handling of case-work, the slow release of hardcopy cases by ICE to CIS, and the inability of USCIS OSI to rapidly hire additional staff needed to administer the IA case load.
- Stakeholders proposed and agreed to a model whereby all potential criminal investigations would be managed by HQ-OSI and / or the DHS Inspector General as would management inquiries involving GS-14, GS-15 and SES Level personnel.
- Stakeholders mentioned their concerns pertaining to liability issues arising from the lack of training for staff responsible for conducting management inquiries involving personnel below the GS-14 level. As a solution, Stakeholders presented legacy policy governing Management Inquiries and requested OSI establish a training program for field staff on such management inquiries.
- A key stakeholder also stated that approximately "30 criminal investigators stationed across the country" was a model he felt to be adequate.
- DHS IG offered workspace in their regional offices and at their intake center for any additional USCIS Criminal Investigators or support staff.
- Internal Audit presented legacy statistics that INS OPR conducted HQ level investigations on approximately 20% of all complaints, an indicator that OSI HQ can expect a similar caseload in the next few years. The remaining 80% of complaints were sent back to the field as management inquiries.
- DHS Legal Counsel and OMB Undersecretary Hale approved, in writing, the establishment of 1811 positions within CIS.

2. Security Model

- Stakeholders proposed to the Director OSI, a "Regional Security" model of service.
- According to the proposed model, each region would receive one Regional Security Officer (RSO) position.
- Geographic areas of the country, referred to as "hubs" by the stakeholders, and specific Service Centers, Asylum Centers and other stand alone USCIS facilities would be serviced by additional GS-0880 Security Specialists ("security engineers"), Security Support Specialists, contractors, or Collocated Duty Security staff.
- Reporting Structure is presented below;

3. Reporting Structure

Stakeholders agreed that the RSO would be the primary official responsible for implementing USCIS security policies and procedures throughout USCIS field locations, while responding on a day-to-basis to the Regional Director

- Stakeholders agreed to the OSI recommendations that policy and program guidance regarding Security and Investigations would be promulgated by HQ-OSI;
- Stakeholders agreed that said Security and Investigations policy and program guidance is formulated taking into account the equities held by the field offices and their unique environmental constraints/concerns.
- Stakeholders agreed that Security Specialists, Collateral Duty Security Officers, security contractors, and support staff would respond to the specific needs of the facility director, or following direct communication from/with the RSO;
- Stakeholders expressed need for the establishment of "OSI Help Desks" in each of the three regions to address security and investigations incidents, inquiries and concerns from the various USCIS field locations.

Discussion

4. Areas of Responsibility

- Stakeholders expressed concern over the lack of defined roles and responsibilities for security and investigations staff;
- Stakeholders requested a standardized list of responsibilities for security and investigations staff;
- OSI has developed the Functional Areas of Responsibility (AOR) list and will distribute at the next arranged stakeholder meeting;
- OSI AOR (Security Operations) and associated subsets to be disseminated include:
 - a. Information Security
 - b. Physical Security
 - c. Industrial Security
 - d. Personnel Security
 - e. Special Security (SCI Programs, systems, CTFP)
 - f. Communications Security
 - g. Operational Security
 - h. Secure Forms
 - i. International Security (CITADEL)
 - j. Technical Security
 - k. NSI Classification Management Program (Original Classification Authority)
 - l. COOP/OEP
 - m. National Systems Control (TECS)
 - n. Information Technology Security (IT Security, CIP, FISMA)
 - o. Security Awareness and Training (Domestic/International)
 - p. Critical Incident Management
 - q. Policy and Compliance Oversight
 - r. Local and HQ Reporting

5. Staffing Levels

- Stakeholders expressed concern over inadequate security staffing levels throughout USCIS locations leading to not only severe case back logs in the area of management inquiries, but also continued exposure to security liabilities.
- Stakeholders support a staffing model whereby each Regional Office would be allotted a dedicated RSO, and Satellite Offices would be supported by existing and new CIS security staff as needed.
- Stakeholders expressed the need for minimum new 4-6 full-time security staff in addition to the proposed RSO positions, (either Federal or contractor support).

6. Budget

- Current funding levels are inadequate to support the security and investigations construct supported by stakeholders, leading to critical functional gaps with the potential to compromise USCIS field locations and missions.
- Stakeholders support a scalable funding plan that fully leverages existing resources but stress that additional funding will be necessary to meet critical short and long-term goals in the area of security and investigations.

7. Communications

- Stakeholders expressed concern over a pervasive lack of communication between HQ and field locations.
- Stakeholders advanced two possible solutions to this problem, the first consisting of an "OSI Communications and Command Hub" responsible for disseminating and receiving timely information to and from USCIS field locations. The second proposed solution consists of three separate "Regional OSI Help Desks."
- Either solution advanced by stakeholder would offer both information as well as operational guidance to CIS locations worldwide.

8. Training

- Stakeholders expressed grave concern over the inability of field staff to conduct management inquiries in a manner consistent with governing investigations practices, leading to potential serious liabilities.
- Cognizant of budgetary constraints, stakeholders suggested OSI develop and implement a comprehensive training program for non-OSI staff responsible for conducting field management inquiries.
- In accordance with this proposed model, each field location would nominate a select number of trainees to receive "Train the Trainer" OSI investigations training for a period of ten days. Each trainee is then responsible for training collateral duty investigations staff at his/her assigned location.
- Stakeholders stressed the success of the OSI International Safety and Security Training program designed to train hundreds of CIS employees and their dependents.
- DHS stakeholders requested that the OSI International Safety and Security Training program evolve into a fee-for-service Center of Excellence capable of training all DHS staff and/or dependents assigned to TDY or permanent overseas locations.
- To address the Department's deficit in the area of International Safety and Security Training, OSI's Center of Excellence can be expected to train thousands of DHS staff and dependents.

ATTACHMENT 4

OSI Authorized FTE Staffing

HQ:	47 FTE Authorized	24 Filled	23 Vacant *
FIELD:	41 FTE Authorized **	19 Filled	22 Vacant
1811:	23 FTE Authorized	3 Filled	20 Vacant
080/086:	18 FTE Authorized	16 Filled	2 Vacant
TOTALS:	88 FTE Authorized	43 Filled	45 Vacant

HO and Field Office Distribution of Authorized FTEs:

California Service Center:	2	Texas Service Center:	1 (Vacant)
Vermont Service Center:	2	Nebraska Service Center:	2 (1 Vacant)
Chicago:	1	Los Angeles:	7 (6 Vacant)
Houston:	7 (4 Vacant)	San Antonio:	1
Seattle:	1	Burlington (VT):	6
Philadelphia:	5	HQ:	47 (23 Vacant)
Washington Field Office:	6 (1 Vacant)		
TOTALs:	88		

OSI Authorized Contract Support Staff ***

24 Personnel Security Positions:	23 Personnel Security Specialists, 1 Admin Support 18 at Burlington, VT; 6 at HQ
15 Physical Security Positions:	5 at HQ; 10 Allocated among Field Offices
3 Intelligence Analysts: (Rapid Response + Cross Training)	3 at HQ
TOTALS:	42 Authorized

TOTAL Authorized FTE and Contract Staff: 130**Notes:**

- * Authorized HQ FTE vacancies may be distributed as necessary throughout USCIS
- ** Allocated among Service Centers, OSI Regional Offices (LOS, HOU, and PHI) and Field Offices, except that the Washington Field Office is established separately as a direct report to HQ (not through the Eastern Regional Office)
- *** Contract staff are either presently on board (17) or scheduled for award this FY (25) with EODs shortly thereafter.

ATTACHMENT 5



**U.S. Citizenship
and Immigration
Services**

**Senior Review Board:
Members and Alternates**

Rev.1, 01/19/2006

		Telephone	Alternate Chair	Alternate Phone
Chair				
Acting Deputy Director	Robert Divine	(202) 272-1440	Tom Paar	(202) 272-8000
Members	Principal	Telephone	Alternate's Name	Alternate's Phone
Administration	Nancy Williams	(202) 272-1570	Renee A Downs	(202) 272-1580
Budget	Paul Schlesinger	(202) 272-1920	Joseph Moore	(202) 272-1919
Chief Counsel	Dea D Carpenter	(202) 272-1441	Phil Busch	(202) 272-1445
Chief Information Officer	Tarrazzia Martin	(202) 272-1700		
Chief of Staff	Tom Paar	(202) 272-8000		
Citizenship	Alfonso Aguilar	(202) 272-1310	Laura Patching	(202) 272-1308
Communications	Lauren Verdery	(202) 272-1290	Angie Alfonso	(202) 272-1215
Congressional Relations	Sarah Taylor	(202) 272-1950	Ruth E Tintary	(202) 272-1947
Domestic Operations	Mike Aytes	(202) 272-1710	Janis A Sposato	(202) 272-1710
Financial Management	Bucky Tretler	(202) 272-1960	Gloria T Scott	(202) 272-1959
Policy & Strategy	Carlos Iturregui	(202) 272-1477	David R Howell	(202) 272-3535
Refugee, Asylum & International Operations	Tracy Renaud	(202) 272-1501	Joe Langlois	(202) 272-1617
Transformation*	Dan Renaud	(202) 272-1399	Ann Simeone	(202) 305-4620
Staff Support	Gregg Beyer	Staff Director	Beyer, Gregg A	(202) 272-1483

* = The Office of Transformation is successor to the former Office of Modernization

ATTACHMENT 6

From: Moore, Joseph
Sent: Thursday, August 11, 2005 9:31 AM
To: Hass, Dennis
Cc: Maxwell, Michael J; Schlesinger, Paul L; Treter, Charles U
Subject: RE: SRB Request for Funding, Topic 4, April 19, 2005

Dennis,

Paul, Bucky and I spoke and we believe that the SRB needs to approve the proposed \$2M "recurring" investment in 24 regional security contract personnel.

We acknowledge that the Director's signature provided his endorsement to your office's recommendations which included:

3 Regional Security Officers
 12 Security Officers (or contract equivalents)
 20 Criminal Investigators
 10 Personnel Security Adjudicators or contract equivalents
 45 Total

but, his recommendation does not provide a mandate for this office to fund the above items along with the associated infrastructure support (cars, laptops etc.). The process that USCIS established to address new requirements and associated funding is the SRB, and the Director was a major proponent of this process. We had an understanding with the Director and the Deputy, that whenever they gave their endorsement (they had lots of folks coming to them directly requesting things) to a program, project or staffing request that it was contingent on funds availability and SRB approval. We have been working hard to instill budgetary discipline within USCIS and the foundation of this discipline is that new requirements are fully priced out prior to being approved. At this time we do not believe that the above items have been appropriately priced and communicated to the USCIS leadership team so that an informed decision can be made. This is the process that all managers are having to go through to get their new program, projects or activities approved and funded. Accordingly, we believe that the above items need to be more fully priced and then taken back before the SRB for a Senior Leadership vote before we can release any funds for these items.

Bottom line ... the above items present a significant budget issue for USCIS that will have out year impacts. Please understand that we don't claim to make any judgments as to the legitimacy or urgency of your requirements, but are simply holding firm to a process that was established for dealing with these kind of budget and personnel resource issues.

Joseph Moore
 Office of Budget
 US Citizenship and Immigration Services
joseph.moore@dhs.gov smad@joseph.moore@dhs.gov
 (p) 202-272-1919
 (f) 202-272-1933

-----Original Message-----

From: Hass, Dennis
Sent: Wednesday, August 10, 2005 3:10 PM
To: Moore, Joseph
Cc: Maxwell, Michael J
Subject: SRB Request for Funding, Topic 4, April 19, 2005
Importance: High

Joe,

During the SRB meeting on April 19, 2005, OSI presented the following request for funding that was put on hold by the SRB pending approval by Director Aguirre:

1. 23 FTE's + Admin Costs for Internal Affairs function-----\$3.400+M
2. 24 Regional security personnel \$TBD

On May 4, 2005, OSI presented an action memo to Director Aguirre for the realignment of CIS security personnel and assets to report to OSI HQ and OSI staffing matrix. Director Aguirre approved this request. Therefore the request for the above actions should not continue to be on hold. It seems we are caught in the cycle again. How do we shake this loose?

Thanks

Dennis

ATTACHMENT 8**U. S. Citizenship and Immigration Services
Office of Security and Investigations****Central Region and Western Region
Office of Special Investigations
Briefing and Investigative Summaries
February 17, 2006**

The following weekly briefing has been prepared to provide an update of the current investigative activity being conducted by the field components of the Office of Security and Investigations (OSI). However, to continue providing this on a weekly basis does not appear to be practical. It takes approximately twenty-four man-hours to prepare this document. Therefore, the actual productivity conducted during the workweek equates to approximately two (2) days of actual work activity. Based on past experience with other investigative agencies, thirty-day reports are the standard.

Reference is made to the February 10, 2006, briefing. Under the current matrix, it is unreasonable to expect improved productivity. Assigned personnel are constrained with their existing inventory. Last week, a criminal investigation was initiated in the WRO involving an [REDACTED] and CIS employees (in various management capacities) stationed in [REDACTED]. This investigation serves as the latest example of the need for additional resources. Without additional resources, the CRO and WRO will subsequently fall their mission.

Ten (10) additional 1811 Criminal Investigators and at least three (3) administrative personnel are needed immediately to support the mission of the field components. The lack of administrative support as well as the lack of investigative support is an obstruction to the objectives of the field offices.

The attached Investigative Summaries outline the investigative inventory of the CRO and the WRO. Updated information has been annotated in red.

Attachment

INVESTIGATIVE SUMMARIES
CENTRAL REGION OFFICE

CRIMINAL INVESTIGATIONS
* Denotes Changes

Illegally Providing Benefits - 18 USC 1016, 1017, 1018 (105-CIS-CRO-0001)

It was alleged that a District Adjudications Officer (DAO) [REDACTED] was illegally providing benefits to applicants who were seeking residency in the United States without properly adjudicating their adjustment cases.

Update 02-16-06: [REDACTED]

[REDACTED] the AUSA [REDACTED] suggested that OSI consider perusing possible marriage fraud violations against the petitioners in an effort to aim the petitioners at incriminating the subject. The AUSA also suggested that OSI consider conducting a bribery investigation against the subject; however, present resource allocations will not allow OSI to properly conduct an extended overseas bribery and/or marriage fraud investigation, which would necessitate a minimum of 2 agents. OSI's current manpower matrix consists of CRO-2, WRO-1. *AUSA decision still pending.

Disclosure of Confidential Information - 18 USC 1905 (104-CIS-HOU-0000)

It was alleged that a Citizenship and Immigration Services (CIS), Contract Employee, was illegally utilizing legacy INS computers to determine whether a DEA target was under investigation and notified the target of their findings. This was a joint investigation with the DHS OIG. Update 02-16-06: *This investigation has been completed and was substantiated. The AUSA met with all agencies involved on 02-13-06, in preparation for trial, which is set for 02-21-06.

This trial resulted in a conviction on March 22, 2006.

Bribery 18 USC 201 (105-CIS-CRO-0002)

[REDACTED] Update 02-16-06: Preliminary findings have been presented to the U.S. Attorney's Office, [REDACTED]
NO CHANGES

Illegally Providing Benefits - 18 USC 1016, 1017, 1018 (105-CIS-CRO-0003)

[REDACTED] Update 02-16-06: [REDACTED]
[REDACTED] * Awaiting requested Alien Files for review.

Bribery 18 USC 201 (R05-BCIS-██████████-200504777)

It was alleged that a Citizenship and Immigration Services (CIS), District Adjudications Officer (DAO) was selling immigration documents for \$10,000 ██████████. Reportedly, in excess of 20 individuals are involved.

Update 02-16-06: This investigation will be initiated pending receipt of additional resources to conduct numerous potential interviews. NO CHANGES

Bribery 18 USC 201 (R05-BCIS-██████████-02179)

It was alleged that a Citizenship and Immigration Services (CIS), official implied to applicants that paying an additional \$300 would expedite the benefit process.

Update 02-16-06: This investigation will be initiated pending receipt of additional resources. NO CHANGES

Disclosure 18 USC 1905 (R05-BCIS-██████████-06830 and R05-BCIS-██████████-05719)

Anonymous complainants alleged that unknown Citizenship and Immigration Services (CIS), officials are disclosing TECS information to citizens.

Update 02-16-06: This investigation will be initiated pending receipt of additional resources to conduct proactive investigations. NO CHANGES

CRO ADMINISTRATIVE INVESTIGATIONS

Update 02-16-06

NO CHANGES

The CRO has (4) administrative investigations involving employee misconduct, prohibited personnel practices, retaliation, and crude treatment, which are under review by assigned CRO personnel are as follows:

R04-BCIS-██████████-08117; R05-BCIS-██████████-01104; R05-BCIS-██████████-07506; R05-BCIS-██████████-08767

CRO MANAGEMENT INQUIRIES

Updated 02-16-06

* Denotes Changes

The CRO has (9) Management Inquiries (MI), which are being conducted by Management Inquiry representatives (MIR) and supervised by assigned CRO personnel. The MI number, description, and status are as follows:

- R05-BCIS-██████████-11069 (Misconduct) – Subject resigned; MI Summary pending
- R05-BCIS-██████████-01287 (Misconduct) – Ongoing MI; MI Summary pending
- R05-BCIS-██████████-01229 (Mismanagement) – Reassigned/ongoing MI
- R05-BCIS-██████████-06782 (Misconduct) - Reassigned/ongoing MI
- R05-BCIS-██████████-06286 (Ethics/III. Practices) – Ongoing MI
- R05-BCIS-██████████-08186 (Forgery) - Ongoing MI
- R05-BCIS-██████████-08746 (Misconduct) - Ongoing MI

- R05-BCIS-████-08337 (Misuse of Govt. Equip.) – MI Completed; Final MI Summary will be transmitted week of 02-13-07 *pending
- R05-BCIS-████-09699 (Harassment/Abuse) - MI Completed; Summary and memorandums of activity are pending review by the CRO

CRO NOTE: The CRO has received several anonymous criminal and/or administrative complaints against ██████████ CIS offices alleging bribery, disclosure of TECS information, and other questionable office irregularities; however, at the present, proactive investigations have been placed on hold pending the assignment of additional resources. Effected case numbers are as following: Updated 02-16-06 (NO CHANGES)

R505-BCIS-████-02170; R505-BCIS-████-05719; R505-BCIS-████-02802;
R505-BCIS-████-07893; R505-BCIS-████-06830; R504-BCIS-████-07893

CRO CLOSED OIG/OPR/OSI INVESTIGATIONS

Updated 02-16-06

* Denotes Changes

Since January 30, 2006, the CRO has processed (26) closed investigations for all three regions. These are investigations which have been conducted and concluded by the DHS OIG, ICR OPR, and CIS OSI. The Reports of Investigation (ROI) have been disseminated to the appropriate CIS manager for whatever action they deem appropriate. The CRO is maintaining a copy of the closed case file and monitoring them for reported disciplinary actions. *Twelve (12) ROIs were sent 02-15-06. The case number, description, and disposition are as follows:

CRO (*Sent 02-15-06)

- I05-BCIS-████-09366 (Misconduct) – Unsubstantiated
- I04-BCIS-████-04253 (Job Performance Failure) – Substantiated/Pending disciplinary action/30-day reply requested by CIS management
- R05-BCIS-████-0884 (Misconduct) – Substantiated/Pending disciplinary action
- I04-CIS-████-03590 (Copyright Infringement) – Substantiated/Pending disciplinary action/30-day reply requested by CIS management
- ERO-████-2004-379 (Threats/Workplace violence) - Pending disciplinary action

ERO (*Sent 02-15-06)

- I05-CIS-████-10665 (Bribery) – Substantiated/Non CIS employee/No action
- I05-CIS-████-06653 (Bribery) – Unsubstantiated
- I05-CIS-████-02784 (Misconduct) – Substantiated/Pending disciplinary action/30-day reply requested by CIS management
- 200404582 (Criminal Misconduct) – OPR Investigation ██████████
Unsubstantiated
- 200502653 (Felony DWI) – OPR Investigation ██████████
Substantiated/30-day reply requested by CIS management

WRQ (*Sent 02-15-06)

- IN04-CIS-████-02015 (Misconduct) Unsubstantiated
- 200500892 (Domestic Violence) OPR Investigation ██████████
██████████ Substantiated/30-day reply requested by CIS management

Previously Sent 02-16-06

- I03-BCIS-████-0607 (Embezzlement allegation) – Employee terminated
Report sent to CIS management
- I05-BCIS-████-00850 (Bribery allegation) – Barred from naturalizing
Report sent to CIS management
- I05-BCIS-████-01403 (Ethics violation) – Resigned in lieu of termination
Report sent to CIS management
- I04-BCIS-████-07135 (Sale of Immigration docs. ██████████ employee) – Referred
Report sent to CIS management
- R05-BCIS-████-01196 (Misuse of Authority/Gov. Equipment) – Pending
disciplinary action Report sent to CIS management
- I04-BCIS-████-00613 (Child Pornography/Possession) – Resigned/110 mos. Fed
prison Report sent to CIS management
- I03-BCIS-████-0912 (Misconduct) – Pending disciplinary action
Report sent to CIS management
- I03-BCIS-████-0629 (Theft of Gov. Funds) – Employee terminated
Report sent to CIS management
- I04-BCIS-████-03325 (Bribery of Public official) – Unsubstantiated/No action
Report sent to CIS management
- IN04-CIS-████-02388 (Bribery/public Corruption) - Unsubstantiated/No action
Report sent to CIS management
- C03-BCIS-HQ-04675 (Misconduct/Misuse of Position) - Unsubstantiated/No
action
- I04-BCIS-████-00136 (Bribery) - Unsubstantiated/No action
- I04-BCIS-████-05739 (Sexual Assault allegation) – Substantiated/Pending
disciplinary action Report sent to CIS management
- I04-BCIS-████-05740 (Sexual Assault allegation) – Substantiated/Pending
disciplinary action Report sent to CIS management

**INVESTIGATIVE SUMMARIES
WESTERN REGION OFFICE**

CRIMINAL INVESTIGATIONS

Computer Crime (05-CIS-████-00301)

[REDACTED]

Update 02-15-04 NO CHANGES

Release of Confidential Information (05-CIS-████-11000)

[REDACTED]

**Anticipated prosecution determination: Three months.
Update 02-15-04 NO CHANGES**

Fraud (05-CIS-████-10520)

[REDACTED]

Fraud (05-CIS-████-00302)

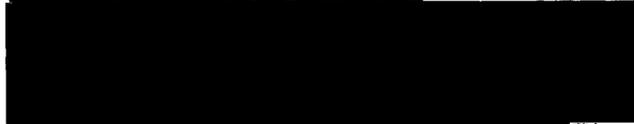
[REDACTED]

Assault-Physical Abuse/Misconduct (05-CIS-████-00300)

[REDACTED]

Update 02-15-06: Interrogatories received with information pertaining to the status of the complainant, witness, and subject. OSI awaiting complainant to enter the U.S. (anticipated for February) in accordance of her asylum request; interviews to follow.

Trafficking of Counterfeit Goods (06-CIS-WRO-00309)



This investigation is ongoing.

WRO Administrative Investigations

Update 02-15-06

NO CHANGES

The WRO has (6) administrative investigations involving employee misconduct, conflict of interest, EEO and hostile work environment, which are currently under review by the (1) Special Agent assigned to the WRO:

- R05-CIS-11303 (Conflict of interest/Employment)
- R05-CIS-12785 (EEO/Hostile work environment)
- R06-CIS-00136 (Failure to disclose)
- I05-CIS-00306 (Misconduct/Indirect threat)
- I05-CIS-00307 (Misconduct/Misuse of authority)
- I05-CIS-00308 (Misconduct/Fraud)

MANAGEMENT INQUIRIES

Update 02-15-06

* Denotes Change

The WRO has (4) Management Inquiries (MI), which are being conducted by Management Inquiry Representatives (MIR) and supervised by the (1) Special Agent assigned to the WRO. The MI number, description, and status are as follows:

- R05-CIS-11701 (misconduct, job performance) – Ongoing MI
- R05-CIS-12719 (misconduct; failure to perform duties) – *MI received for review.
- R05-CIS-00343 (prohibited personnel actions) - Ongoing MI
- I05-CIS-00303 (failure to perform * Congressional) – MI complete; MI Summary pending HQ approval

ATTACHMENT 9

Maxwell, Michael J

From: Maxwell, Michael J
Sent: Tuesday, February 07, 2006 12:15
To: Gonzalez, Emilio T
Subject: RE: Internal Security Update

No sir,

Each Director or Chief within each business unit of USCIS has the authority to grant AJO to his or her staff. This flows from the Director of CIS, for instance to me, and from me to staff as I deem appropriate. Obviously, that authority was revoked in my case this past December.

Previously we had AJO because we were subject to recall, unusual hours, last minute extended hours, and work on weekends or holidays. AJO is not a Law enforcement specific benefit, which is why we were granted it in the first place. We don't have the luxury of scheduling overtime. It is often thrust upon us, i/e short notice travel, investigations, COOP/COG, department mandates. We simply can not claim overtime if it is not scheduled in advance. AJO address this issue.

Mike

Michael J Maxwell
Director, Office of Security and Investigations
U. S. Citizenship and Immigration Services
U.S. Department of Homeland Security
202.272.1500 Office

-----Original Message-----

From: Gonzalez, Emilio T
Sent: Tuesday, February 07, 2006 12:06
To: Maxwell, Michael J
Subject: RE: Internal Security Update

Will DHS pay for auo?

Emilio T. Gonzalez
Director, US Citizenship and Immigration Services
20 Massachusetts Ave., N.W.
Washington D.C. 20529
202.272-1000
202.272-1134 fax

From: Maxwell, Michael J
Sent: Tuesday, February 07, 2006 12:05 PM
To: Gonzalez, Emilio T
Subject: RE: Internal Security Update

In the past it was just part of AJO. So in other words, we site it on behalf of DHS.

Mike

Michael J Maxwell
Director, Office of Security and Investigations
U. S. Citizenship and Immigration Services
U.S. Department of Homeland Security
202.272.1500 Office

-----Original Message-----

From: Gonzalez, Emilio T
Sent: Tuesday, February 07, 2006 12:05
To: Maxwell, Michael J
Subject: RE: Internal Security Update

Will DHS pay for any overtime or do we have to eat it?

From: Maxwell, Michael J
Sent: Tuesday, February 07, 2006 11:37 AM
To: Gonzalez, Emilio J
Subject: Internal Security Update
Importance: High

Sir,

Just so you are kept in the loop, we have been asked by the Dept. (HQ DHS) to be a primary on the below "sensitive" Internal Security (CI) issue. Additionally, I have just assigned a team to conduct a preliminary inquiry on another potential Internal Security matter that came to our attention this morning.

The below email string also references AUO concerns I posed last week, as the Dept. is notifying us that OSI Staff (Sean Thrash) may work beyond the normal work day or may be subject to considerable overtime hours.

I have not discussed this case with anyone at the request of DHS, but have given the green light for the mission so that we can get off the X. If you wish to discuss I am at your disposal.

V/R

Mike

-----Original Message-----
From: Riccio, Joseph (<mailto:Joseph.Riccio@dhs.gov>)
Sent: Monday, February 06, 2006 3:50 PM
To:
Subject: Request for Special Scheduling for Sean Thrash

Dennis,

As you know, Sean has been a tremendous asset to the Internal Security and Investigations Division. We are currently conducting a sensitive investigation at the MAC which will require leads to be conducted out-side normal duty hours. With your permission, I would like to detail Sean as one of the lead investigators, however in thinking the matter through, it occurred to me that I may need to inform you that his work schedule may go beyond the normal work day or may consist of considerable overtime hours. That being said, can we still use him to support this very important matter?

Please advise,

Joe

Joseph F. Riccio
Chief, Internal Security & Investigations Division
Department of Homeland Security
(703) 601-3158

ATTACHMENT 10

OI [Operation Instruction] 105.10 Agency checks of applicants and petitioners.

(a) Use of Forms G-325, G-325A, G-325B, and G-325C.

An applicant or petitioner shall be required to submit Form G-325, G-325A, or G-325C, as appropriate, when called for by the instructions for completion of an application or petition, or the relating regulations or OI's.

Form G-325 shall be used to check the records of the FBI Identification Division or Records Branch, or both; Form G-325A to check the records of the CIA, or a consul (in adjustment of status cases), or both, in addition to FBI checks, and G-325B to check records of other agencies. In a naturalization case the field office shall complete sheet 3 of Form G-325A if a check of CIA records is desired, and Form G-325B if a check of the records of any other agency (except the FBI) is desired. Form G-325C shall be used for overseas refugee applicants as indicated in paragraph (e) of this OI. (Revised)

If a check of agency records is deemed appropriate in connection with an application or petition in which such check is not normally made, the field office shall complete Form G-325, G-325A, or G-325B, as appropriate, and note the signature box "Prepared by INS."

A check shall be requested only if the applicant or petitioner (or a child beneficiary in a naturalization case) is 14 years of age or older. A FBI identification check shall not be requested for any such person who is more than 79 years of age.

If the response to a previous check of the FBI Identification Division or Records Branch is less than 15 months old at the time adjudication of any application or petition is made, or at the time of final hearing on a naturalization petition, an up-to-date check shall not be made unless there is reason to believe that additional pertinent information is available.

(b) Processing of Forms G-325, G-325A, and G-325B.

Check to assure that all sheets are legible and complete. If sheet 1 prepared by an applicant or petitioner is so illegible as to be useless for the required purpose, the applicant or petitioner shall be called upon to submit a legible form; otherwise the illegible copies shall be completed by the field office. Insert any missing information from the data in the relating file. Such insertion shall be made on all sheets and shall appear in red on sheet 1.

Stamp the following information in the INS box of sheet 2 and 3: (Revised)

Office Code

Type of Case

Data

The data shall be the date of mailing to the agency. The file shall be noted to show each type of record check requested and the date of the request.

Stamps and notations on Forms G-325A, B, and C shall be made strictly in conformity with this OI.

Sheet 1. Retain sheet 1 in the file with the application or petition. (Revised)

Sheet 2. On sheet 2 (Rec. Br.) at the bottom of the INS box print or stamp "Prior response received (date)," if Form G-325 is being submitted to the FBI Records Branch within 15 months from the date of the last response; in addition, if the file contains any narrative reports from the FBI, insert the file number and date of such reports. If additional space is needed, insert "See reverse" and list the reports on the reverse. Mail sheet 2 to: Director, Federal Bureau of Investigation, Department of Justice, Washington, D. C. 20535, Attention: Records Branch.

Sheet 3. Mail sheet 3 (CIA) to: Central Intelligence Agency, Attention; Deputy Director of Operations, Room 2D-27HQ5, Washington, D.C. 20505. (TM 2/87)

Sheet 4. On sheet 4 (Consul), which is used in adjustment of status cases, stamp the following in the INS box:

U.S. Consul: Please check records pursuant 9 FAM, Part IV, App. D, Services for I.N.S., section 8. If required, reply to: (full address of office of origin) (date), and cite above alien registration number.

In any case where a complete police and security check is desired, print or type in the INS book, in lieu of above stamp, the following:

U.S. Consul: Complete police and security check requested. Reply to (full address of office of origin) (date) and cite above alien registration number.

In Hong Kong, Taiwan and India job-offer cases where overseas investigations are required by QI 245.3(b), the Service office processing Form I-485 should type, stamp or print in the Other Agency Use box that it is a job-offer case, and that the OF 156, the G-325A and comments should be provided either to the District Director, Rome or if within the jurisdiction of the District Director, Bangkok, directly to the officer in charge of the particular office.

Form G-325B. When Form G-325B is used to check the records of any agency other than the FBI, CIA, or American Consul, the INS box shall be stamped to show the full address of the office of origin, and date. When sending Form G-325B to the State Department passport Office, the subject's United States passport number, if known, should be inserted in the INS box. (Revised)

(c) Responses from FBI and CIA.

When the FBI or CIA furnishes a relating record, advises that one exists or may exist, or returns a fingerprint card with the notation "Fingerprints illegible", the material shall be stamped on the reverse by the field office to show date of receipt and shall be immediately sent to the operating branch for immediate attachment to the file. The operating branch shall also stamp the reverse to show date received.

If no response is received to an FBI or CIA G-325 request within 40 days of the date of mailing the application or petition shall be processed on the assumption that the results of the request are negative. (Revised)

When an expeditious response is needed from the FBI or CIA because of an unforeseen emergency or other circumstances indicating a sound basis for urgency, stamp in bright green ink or write with a bright

green felt-tipped pen the word "SPECIAL" in the lower portion of the INS box. In naturalization cases involving servicemen on active duty, stamp or write "SERVICEMAN" in lieu of the word "SPECIAL." The agency response, whether negative or positive, to any Form G-325, which is so noted will be sent to the Service office of origin. The file shall be endorsed to show that such notation was made and the agency response awaited before making a decision on the case. (Revised)

See OI 335c.6 for other circumstances under which the word "SPECIAL" is to be entered upon Form G-325 in naturalization cases. (Revised)

(d) Follow-up and re-check procedure.

When a response has not been received to a Form G-325 request sent to an agency other than the FBI or CIA, make a machine copy of the form in the file, write "This is a follow-up on request dated _____," on the bottom of the copy, date the copy and send it directly to the agency. Note the file to show the date the follow-up was sent. (Revised)

(e) Special procedures applicable to refugee applicants.

Refugee applicants under Section 207 who are 14 years of age or older shall be required to submit a fully executed Form G-325C. It is to be processed and distributed in accordance with the instructions in this OI. (Revised)

Show the full address of the office of origin on sheets 2 through 7 of Form G-325C and date in the INS box. Sheets 2 and 3 shall then be processed in accordance with paragraph (b) of this OI. Sheet 4 shall be mailed to the Director, United States Army Investigative Records Repository, ATTN: ICIRR-A, Fort Meade, Maryland 20755, Attention: Liaison Officer, Immigration and Naturalization Service. Sheet 4 responses in refugee cases shall be processed in the same manner as prescribed by OI 104.10(c). No response to sheet 4 within 40 days from date of request should be regarded as indicating no record. (Revised)

Sheet 5, 6, or 7 shall be sent to each consulate having jurisdiction over the places of the alien's residence of six months or more as shown on Form G-325C and, when warranted, to State Department in Washington, D. C. If no response is received within 40 days from the date of the request, non-response shall be regarded as evidence that no derogatory information has been located and that there is no foreign policy objection to the alien's entry as a refugee into the United States. If the consulate has reason to believe that (a) a ground of ineligibility may exist, (b) derogatory information may be developed, or (c) the entry of the alien as a refugee may have an adverse effect on the foreign policy interests of the United States, the consulate will alert the originating office thereof. Upon receipt of such alert that office will not complete action on the alien's application until follow-up material is received from the consulate. If the checks are desired at more than 3 consulates the required extra sheets may be detached from additional sets of Form G-325C and the exact information appearing on the form submitted by the applicant shall be transposed to them. If a copying machine is available, the additional copies required may be made by this method. (Revised)

The file shall be noted to show each type of record check requested and the date of the request.

In all countries, except Germany, the Department of State makes the police check. In Germany, the applicant signs a request on a German government form for a check of the German police records. The form is forwarded to the Central Registry of all persons born outside Germany, which is located in

Berlin. The form is returned to the Service office with an abstract of the record if positive, or with a stamp indicating no record.

In addition, other records in the country of the alien's residence are checked in accordance with the specific arrangements made with the appropriate officials of the host government.

(f) Supplemental instructions.

With respect to any aspect of the procedures outlined in OI 105.10, which are not fully covered by this instruction, the instructions contained in OI 105.1 through OI 105.9 shall be followed. However, Form G-138, Signature Specimen Form, is not used with G-325 series forms since a block is available on those forms for signature in applicant's native alphabet when such is in other than Roman letters.

ATTACHMENT 11

U.S. Department of Homeland Security

Date: March 13, 2006

MEMORANDUM FOR WIC MEMBERS

FROM: USCIS Executive Secretariat

SUBJECT: (Collated) US CIS Report to the WIC
Week of March 13-17, 2006

Administration

Top Projects Currently Underway (Week Ahead Focus)

- **Verification Unit Moved**-On Friday, March 3, Janis Sposato, Leslie Hope, Dominica Gutierrez, and Johnetta Drake moved from 20 Mass to 111 Mass as the Verification Unit.
- **FY 2006 Inventory**-As a result of the phased migration of assets into Sunflower, this year's physical inventory will be conducted in two phases. Phase 1 of the FY06 inventory will commence on March 15 and end on April 15. Phase 1 will include all HQ components, International District Offices and Central Region Offices, including the National Benefits Center, Nebraska Service Center, Texas Service Center, and the Asylum Offices located within the Central Region. Property Custodians must report their inventory results to HQ or the Field Support Center, Burlington, whichever is appropriate, no later than May 1, 2006. Phase 2 will include inventories from all programs located in the Western and Eastern Regional Offices, including associated Asylum Offices. Phase 2 will begin on May 15 and conclude no later than June 15, with the Property Custodians reporting their inventory results to FSC no later than July 1, 2006.
- **A-76 Competition: Language Specialists**-On March 2, 2006, in support of the A-76 Competition for Language Specialists, the Human Capital Office sent out notification letters directly to all of the affected employees. A notification was also sent to the NINSC Union President. This competition will study work performed by the USCIS New York District Office Language Support Section. The competition affects approximately 29 Full Time Equivalents (FTEs) represented by 147 full time and intermittent employees from USCIS, ICE and CBP. A decision regarding the study will likely be made by July 2006, with full transition of the winning party (in-house or contract) occurring prior to September 30, 2006.
- **Decision and Order Granting Petition for Successorship**-The Federal Labor Relations Authority granted the American Federation of Government Employees (AFGE) continuing recognition as the union representing USCIS employees. The FLRA held that a unit of all nonprofessional employees of USCIS is still an appropriate unit within the meaning of the statute even after the tri-bureau split. For further information, contact Susan Dole, LMR Specialist, at 202-272-1348.
- **Requesting Management Participation for the USCIS' Summer Intern Program**-The Chief of Staff has approved a limited 2006 Summer Internship Program for HQ. The program offers paid, full-time student opportunities designed to jointly meet the needs of the student and USCIS. Ideal candidates are individuals pursuing undergraduate or graduate degree programs in business administration or management, economics, public policy, international relations or studies, accounting or financial management, information systems, or human resources management.

Students will be selected and compensated based on their academic level and work experience. Assignments can begin as early as May 2006 and will end no later than

September 30, 2006. Grade levels range from GS-2-4 for undergraduate and GS-5-7 for graduate students. Limited funding has been allocated in support of this program and the availability of funding is contingent upon grade level of interns hired and their length of stay. Program Offices are requested to submit a program request form to HCMO no later than March 24, 2006 to express their interest in the 2006 Summer Intern Program. Should you have any questions, please contact LaShawn Walker, USCIS Student Program Coordinator, at (202) 272-1560 or via email, at humancapital@dhs.gov.

- **Human Resource Staffing Statistics**

Actions in Progress	220
Pending Vacancy Announcement	108
Open Vacancy Announcement	22
Pending Certification List	90
Awaiting Manager Selections	111
Selections in Progress	352

- **Administrative Appeals**

- **Budget**

Top Project(s) Currently Underway (Week Ahead Focus)

- Work with PRD on new fee-related regulations
- Document Fee Review results and prepare several options on how proposed fees could be rolled out
- Identify resource requirements v. available funding for Transformation
- Build Draft FY 2007 Operating Plan.
- Work with SAVE and EEV Programs to identify new resource needs for FY 2007.
- Work on FY 2008 – 2012 Resource Allocation Plan (RAP) with Planning Office.
- Complete QFR's from the Secretary's Senate Appropriations Briefing.

Top Project(s) Accomplished (Past Week)
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- Conducted monthly backlog reduction teleconference with OMB

Master Calendar Events & Speaking Engagements (30 days out)
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- RAP is due to DHS on March 24th

- **Chief Counsel**

Top Projects Expected (Two Weeks Ahead)
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- **MOA with ICE on NTAs** - USCIS has drafted a memorandum of agreement with ICE to delineate when each agency will make the prosecutorial decision on whether to issue an NTA in cases that are encountered during an USCIS adjudication and the alien is amenable to removal. A very general statement of the structure is that ICE will make the decision on criminal cases and USCIS will make the decision on applications where an NTA is required by regulation.
- **Conditional Asylum Grants based on coercive population control practices**. OCC is working with USCIS Ops and ICE OPLA on the process for converting conditional grants to final grants in defensive EOIR cases. USCIS met with ICE on 2/15 to discuss outstanding issues in dealing with persons who do not appear for fingerprinting and for resolving security check hits. A meeting with EOIR and ICE OPLA was held on March 7 to discuss the topic of public outreach in an effort to ensure that aliens have provided a correct address to which fingerprint notices may be sent.

- **U Non-Immigrant Visa Rule.** OCC is working to address comments from ICE and from OGC to the USCIS draft of the rule. OCC is also working with USCIS operations to draft additional language for the rule to implement requirements of the VAWA 2005. Meanwhile, the U Visa litigation, *Ruiz v. Chertoff*, challenging the failure to promulgate regulations, was dismissed by the District Court on March 2.
- **Military Naturalization Case.** OCC is preparing for a possible interview in March 2006 regarding the application for naturalization pursuant to Section 329 of the INA. OCC has reviewed proposed interview questions that have been distributed for further review.

Top Projects Currently Underway (Week Ahead)

- **Material Support Inapplicability Provisions in 212(d)(3).** Continue to work with USCIS Ops, OGC, ICE, CBP, DOJ and DOS on process and criteria for applying the in-applicability provisions of the material support bar. USCIS provided a memorandum with its recommendations to the Deputy Secretary. USCIS has received a draft document from the DHS Office of Policy setting out proposed criteria based on input from USCIS and other DHS components, and has provided comments to that document. OCC accompanied the Director to a briefing of the Secretary on 2/23. The issue will be presented to an interagency Deputy's meeting on 3/9.
- **MOU with DOS on Data Sharing** – OCC is reviewing the latest comments received from the Department of State on the proposed subject agreement.
- **MOU with CBP on TECS Access** – OCC is working with CBP to finalize the decision on the third agency rule and when TECS printouts can be placed into other systems of records (specifically A-files).

Top Projects Accomplished (Past Week)

- **TWP Update.** OCC continued to work closely with DHS OGC and Policy, ICE and CBP in the continuing TWP legislative process, including review and comment on numerous amendments to the 400-page "Chairman's Mark" on a short time frame.
- **Withholding of Adjudication (Abeyance) Rule.** CIS is currently modifying the abeyance rule to address DHS OGC comments submitted in a pass-back on 3/7. CIS anticipates resubmitting the rule to DHS OGC for formal review on 3/8.

Master Calendar 30-Day Outlook

- **OCC Management Meeting from March 13-16 at the Washington Court Hotel.** The senior leadership of OCC will be meeting in Washington, DC to discuss management concerns and issues facing the legal program. This "off-site" meeting is located a block from USCIS HQ.

Noteworthy Litigation, Announcements, Programs, External Activities

- **Old Flagler Bridge Case.** On 1/10, an Emergency Complaint for Declaratory, Injunctive and Other Relief was filed in the U.S. District Court for the Southern District of Florida. *Movimiento Democracia, Inc. et al v. Chertoff et al*, CIV No. 08-20044. On 2/28, Judge Moreno issued a decision rejecting as "unreasonable" the U.S. Coast Guard's determination that 15 migrants did not make a landing in the United States for purposes of the Immigration and Nationality Act when they alighted on an unconnected portion of the old Flagler bridge. The court then ordered the U.S. Government to "use their best efforts to give Plaintiffs the

due process rights to which they were entitled" and to report in writing by March 30, 2006, on "its efforts to comply with this order."

- European Connections & Tours, Inc. v. Gonzalez: On 3/3/06, the U.S. District Court for the Northern District of Georgia granted a temporary restraining order (TRO) against the Government, finding that plaintiff, an international marriage broker, had demonstrated a substantial likelihood of showing that the International Marriage Broker Regulation Act of 2005 (sections 832 - 834 of the Violence Against Women Act of (VAWA) 2005) was unconstitutional under the 1st & 5th Amendments. The district court's precise findings went to the 5th Amendment equal protection argument. The district court also found that there was no governmental interest furthered by the distinctions between for-profit and not-for-profit international marriage brokers and that the statute was more extensive than necessary to protect foreign women from abuse by American men. The TRO was verbally entered. The District Court will likely enter a written order sometime this week.
- Abghari v. Gonzales: On 2/14, the US District Court for the Central District of California ordered USCIS to adjudicate the naturalization application of an Alien Entrepreneur Conditional Resident (EB-5) within 120 days after the date on which the naturalization interviews were conducted. The court found that USCIS' inability to adjudicate the petitioner's six and a half year old petition to remove conditions (because of the absence of regulations) did not justify delaying adjudication of the naturalization application. The Court was not persuaded by the Government's argument that an alien whose residence is subject to conditions is ineligible to naturalize. ICE has suggested that there may be derogatory information about the applicant, but the information is unavailable to USCIS at this time. Absent prompt promulgation of the EB-5 regulations, USCIS will likely be forced to grant this, and other, naturalization applications. The District Court's order, widely disseminated by the immigration bar, has already resulted in a flurry of threatened lawsuits by other EB-5 conditional residents, in addition to the other currently existing lawsuits in regard to this matter.
- American-Arab Anti-Discrimination Committee (ADC) "120 Day Cases" in District Court: The Department of Justice is greatly concerned with the number of these actions that are pending. A concerted effort to file such cases in district court pursuant to 336(b) of the Act is being championed by the American-Arab Anti-Discrimination Committee. DOJ/OIL believes that CIS violates its own regulations (at 8 C.F.R. 335.2(b)) in holding interviews before checks are done, and that DOJ is left without a good argument to make when advocating these cases before district courts. While DOJ understands the Congressional and Presidential mandates on processing times and backlog reduction that CIS labors with, OIL nonetheless has expressed in the strongest terms a desire that CIS conducting the naturalization process in this way.
- U-visa Regulations Litigation: The plaintiffs failed to file a response to oppose the Government's motion to dismiss in the suit against USCIS for failure to promulgate the U-visa regulations. OIL is very appreciative of USCIS cooperation and support in the litigation effort. It is expected that the court will issue an order dismissing the case soon.
- Padilla & Santillan Litigation Update: First, as to Padilla, Judge Hinajosa, has sua sponte decided to put the case back on the calendar and hold a hearing on the pending motion to dismiss without further briefing. The Padilla hearing will be held 3/22 and OIL is not aware of what the judge intended or why he had decided upon this course of action after accepting a stipulation between the parties to hold the case in abeyance pending resolution in Santillan. In Santillan, there have been some events that turn upon the technical details of federal court judgments and decisions. Although the court has rendered a decision and issued an injunction, the separate order formally entering judgment has yet to be issued by the court. The plaintiffs moved for such an order, which was summarily denied. The plaintiffs then moved for costs in the case, approximately \$36,000, which was rejected by the clerk,

because there has been no final entry of judgment. Apparently the rules provide for the automatic entry of judgment after 150 days. In the meantime, the judge, to take the case off of her docket, issued an "order statistically closing the case." OIL raised some concerns about how the Government would have to go about appealing the final injunction without a final entry of judgment, but OIL is taking steps to ensure all avenues are covered and it's possible that there will be a need to amend the docketing statement before the Ninth Circuit.

- **Atabani v. Gonzales.** OCC drafted a USCIS declaration that was filed by the AUSA with a motion to remand an important naturalization case before the District of New Hampshire. OCC also participated in several teleconferences involving multiple agencies on the case.
- **AlHussein v. Howard.** OCC drafted a USCIS declaration that was filed by the AUSA with a motion to remand an important adjustment of status mandamus case before the Eastern District of Virginia.

Upcoming Briefings, Reports or Other Significant Activity

- **Report on Implementation of Safe Third Country Agreement.** USCIS, ICE and CBP have been working on a review of implementation of the U.S. / Canada Safe Third Country Agreement. The Agreement requires an annual review to be conducted by both parties. UNHCR in its monitoring capacity has submitted a review of the implementation of the Agreement. On 3/7, OCC participated in an interagency meeting (USCIS, ICE, CBP, DOJ and DOS) with UNHCR on their report. Each agency will participate in formulating the US portion of the joint report with Canada.

Chief Financial Officer (as from March 20, 2006)

Chief Information Officer

Top Projects Currently Underway (Week Ahead Focus)

- The Vermont Service Center upgrade began on February 23rd. Anticipated completion date is March 13th. The CLAIMS 3 upgrade will follow the completion of the infrastructure refresh at VSC. The Nebraska Service Center upgrade will follow.
- eGovernment – OCIO continues to work on its eGovernment activities. We are currently drafting our eGovernment Strategy and Plan with a preliminary draft expected the second week of March. Complementing these activities, OCIO continues to work with the Office of Communications regarding the USCIS Customer Service Portal (www.uscis.gov).

Top Projects Accomplished (Past Week)

- Tarrazzia Martin, the USCIS CIO, spoke this past Thursday at FOSE regarding USCIS enterprise architecture, the roles of IT as an enabler of business and government, executive management support of the CIO, and other related topics. "The business is the driver; technology is the enabler," Ms. Martin said. Tarrazzia also did say it is important to have high-level support for a CIO to succeed. "From where I sit, it is imperative to have the chief executive officer in your corner and aligned with the CIO's office," Ms. Martin said. "It's all about the mission and not about the technology."
- BSS/BCS - OCIO and Operations met collectively this week to review funding and contract issues. A decision is expected in the next few weeks for future direction of BSS based upon requirements and funding review. Operations also working toward an early May roll out date for BSS.

- USCIS Data Center - Strategy and cost projections are now complete. OCIO continuing to work on a disaster recovery approach, cost estimates as well as baseline current DoJ support.

Master Calendar Events & Speaking Engagements (30 days out)
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- OCIO continues to work on numerous cost-related data calls both internal and external to USCIS.
- DHS OneNet - 30 of 595 (CIS/ICE/CBP) circuits and routing equipment were delivered by carriers and are currently undergoing acceptance testing. In addition, Feb 28th marked the first CIS OneNet access site at the Atlanta District office. Approximately 15 sites are scheduled for the week beginning March 6th. Service Centers with the exception of VSC will migrate during the month of March, VSC in mid- April.
- Critical Information Protection Strategy – Based upon the critical information protection strategy developed last year with the Department which identified the critical data elements and infrastructure of USCIS and the Department, the USCIS OCIO has developed a preliminary multi-phase contingency planning / COOP strategy (*i.e.*, an integrated information assurance life cycle strategy) focusing on the data housed at the data center, versus the equipment or the data center itself. Refinements to this strategy and mapping to the Critical Information Protection Strategy are planned over the next few weeks.
- FISMA Remediation and Compliance – OCIO continues moving forward with its security remediation of all of the USCIS IT systems and networks. The current USCIS inventory is the third largest in DHS. On October 1, 2005, USCIS was at 11% compliance, at the end of February, USCIS was at 68% compliance (DHS target was 67% and actual DHS compliance was 60%). Of the largest three inventories (USCIS, USICE, and USCG), only USCIS is at or above target. No additional funding for IT security has been provided and these activities are being funded out of the OCIO operating budget. Wherever possible, we are putting controls in place to reduce the threat impact. However, additional funding will be required to address the remaining security concerns that are being identified and documented. Our IT Security team is examining all aspects of IT security, not just for the unclassified systems and SBU systems but also classified systems and USCIS' links to classified networks so that USCIS data can be made available, in a secure manner, to these stakeholders.
- Systems Assurance, DBA and DB Management, Security and IT Operations continue to work towards acquisition through a Contracting Officer (direct ordering authority) specifically for USCIS. Target date for USCIS-managed ITESS at risk scheduled for April 1. Task orders and IGCEs stalled with the ICE ITESS CO. Transition activities and processes are under development for operations handoff from ICE to USCIS team. Final resolution of Oracle license issues continues to be under discussion. SLAs with ICE for short -term Security functions and AIS support are expected to be completed March 31st. Security's remote access VPN solution is currently with contracts org. AIS transition (web applications and web-based systems) is being detailed into task areas and progressing towards transfer.
- Data Management – OCIO continues to draft a data management and data migration strategy in the context of the USCIS Transformation. We have completed our first definition of a USCIS data model. The NIEM will be used as the information exchange model for USCIS to exchange data Intra-organization and Inter-Organization. The proposed data model, enterprise architecture, and services are under IV&V review by the Gartner Group (www.gartner.com). Gartner is known throughout the IT industry for their independent review of technologies, trends, and planning.

Citizenship**Top Projects Currently Underway (Week Ahead Focus)**

- Office of Citizenship will meet with the National Park Services to discuss venues for naturalization ceremonies (3/13).
- OoC will participate in Teachers of English to Students of Other Languages (TESOL) Conference from March 15-18.

Top Projects Accomplished (Past Week)

- Office of Citizenship (OoC) met with Applications Support Centers (ASC) chief to firm up plans for distribution of Quick Civics Lessons to N-400 applicants at ASCs (3/6).
- OoC met with DOL officials to discuss immigrant integration collaboration opportunities (3/7).
- OoC attended the first meeting on the interagency Adult Education Task Force headed by Department of Education. OoC goals for this initiative are to collaborate and leverage resources to better meet the needs of non-English speaking immigrants (3/7).
- OoC participated in special naturalization ceremony and met with stakeholders in San Antonio (3/9).
- Deputy Chief Melero attended a Hispanic Chamber of Commerce event in Houston (3/10).

Master Calendar Events & Speaking Engagements (30 days out)

- OoC will participate in Public Library Conference (3/23 – 3/24).
- OoC will host a special naturalization ceremony in Washington, DC in partnership with the Daughters of the American Revolution (3/27).

Communications**Top Projects Currently Underway (Week Ahead Focus)**

- The USCIS Story: 'About US' CD - The project was generated by general interest from employees and stakeholders to understand the overarching vision and mission of USCIS. The project features two parts, a video flash presentation and an interactive information page. The flash presentation features an introduction to USCIS accompanied by a narrator who introduces the audience to the functions and responsibilities of the agency.
- Tim Ward installed video conferencing pilot at Asylum office in Houston.
- Preparing remarks for Director's appearance at the Heritage Foundation on March 16th.
- Preparing remarks for Director's appearance at the Foreign Press Center on Monday.
- Production and distribution of the Director's Photos to be the field.
- Distribution of USCIS Town Hall (Feb 2006) CDs to the Field.

Top Projects Accomplished (Past Week)

- Organized and executed Director Gonzalez' first media roundtable with 18 outlets.
- Organized and executed Director Gonzalez' first set of teleconferences with regional media outlets from around the country.
- Released March edition of "USCIS Today"
- The USCIS Intranet Migration project has successfully migrated over the Branding Site, the Competitive Sourcing Site (A-76) and the FDNS Site.
- The USCIS Photo Archive (Flash Version) has been successfully created and will hopefully be sent to production within the next month.

Master Calendar Events & Speaking Engagements (30 days out)
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- Preparing remarks for Director's appearance in Miami: Poder Business Forum, Miami/Dade College Commencement.
- Preparing remarks for Director's appearance at the March 24th Bi-National Meeting with Mexico.
- Preparing remarks for Director's appearance at the Hispanic Chamber of Commerce.
- Tim Ward will install video conferencing pilot at Asylum office in Miami.

Congressional Relations**Customer Relations Management**

Top Projects Currently Underway (Week Ahead Focus)

- The DHS Citizenship and Immigration Service Ombudsman is scheduled to visit the Los Angeles District Office, the California Service Center. And the Chula Vista Satellite Office March 14, 15 and 16 respectively

Domestic Operations

Top Projects Currently Underway (Week Ahead Focus)

Information and Customer Service Division (ICS):

- On March 17th, Baltimore CIS Management will host their quarterly Congressional and Community-Based Organization meeting. Constance Carter, Director of the Office of Business Liaison (OBL) within the Customer Assistance Office, will be the guest speaker who will address OBL's role concerning immigration employment investment and school issues.

Service Center Operations (SCOPS) and Office of Field Operations (OFO):

- On March 17th, Harford CIS will participate in an outreach event at the Hartford Public Library in conjunction with the International Institute of Connecticut. The event is sponsored by the American Place Program (APP) regarding information on the immigration process.

Top Projects Accomplished (Past Week)
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Service Center Operations (SCOPS) and Office of Field Operations (OFO):

- On March 3rd, the Philadelphia Application Support Center (ASC) hosted an 8-hour fraudulent document training presentation. Joe Vasil, a Forensic Document expert with the State of New Jersey Department of Motor Vehicles, gave a detailed presentation on fraudulent versus authentic federal, state, city and foreign documents being presented to DMV and USCIS as proper identification.
- As noted in last week's USCIS Daily News, on March 6th District Director Raymond P. Adams naturalized ten members of the 250th Transportation Company Army Reserve Unit from El Monte, California in a special administrative naturalization ceremony at the El Paso CIS District Office. This reserve unit arrived at Ft. Bliss, Texas on January 1, 2006 for training before deploying to Iraq on March 14, 2006. The El Paso District Office expedited their naturalization applications in coordination with the Nebraska Service Center. Fingerprints and interviews were coordinated with the unit and Ft. Bliss to minimize the loss of any training time at the base. The ten soldiers naturalized were from Mexico, El Salvador, Honduras, Philippines, Vietnam, Guatemala and Columbia. The local TV stations and the El Paso Times covered the ceremony.

- On March 9th, Acting District Director Heinauer participated in the quarterly Homeland Security Chicago Community Roundtable that was facilitated by CLO Carol Rogoff Hallstrom. As part of the Roundtable discussion, Dr. Steve Davidson, Regional Quality Systems Administrator and Bob Hennings, Quality Management Analyst, reported feedback regarding their internal and external customer service review.

Master Calendar Events & Speaking Engagements (30 days out)
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- Mike Aytes, Acting Director of Domestic Operations, will participate along with Acting Deputy Director, Robert Divine, on a panel regarding "USCIS-Getting the Petition Approved" at the Annual 2006 AILA Spring Conference (Capitol Hill) Washington Court Hotel on March 24th.
- Mike Aytes, Acting Director of Domestic Operations, will host the next Community Based Organization meeting in Washington, DC on March 28th.

Executive Secretariat

Financial Management

Top Projects Currently Underway (Week Ahead Focus)

- The 2nd quarter validation and verification exercise began March 3rd with a focus on open FY 2005 obligations and FY 2006 commitments that have been open for 60 days. All applicable USCIS offices are asked to complete their review of their list by March 17th.
- The DHS Chief Financial Officer has determined that seven DHS components, which includes USCIS, need to explore other options for obtaining financial services to equip managers and senior leadership with the critical business information necessary to improve decision-making and service delivery. USCIS participated with other components within USCIS developing a list of requirements and this was provided to the four DHS and one external organizations identified as possible providers of financial services. USCIS also worked with ICE to provide the selected providers with workload data to facilitate their preparing a cost estimate. Technical proposals were received February 11th. Rough Order of Magnitude cost proposals were received February 17th. Representatives for the Offices of Financial Management and Budget observed demonstration provided by FLETC, CBP, the Bureau of Public Debt and the USCG. Each participating DHS component is expected to provide DHS' CFO with its preliminary decision by March 14th however this may be pushed back to the end of the week.
- The Service Centers and the National Benefits Center have started internal assessment of administrative functions as part of the Internal Self-Inspection, Tracking and Evaluation (INSITE) program. Completion of the reviews is scheduled for March 15th. The third phase in rolling out the INSITE program begins March 15th with training of Regional Office INSITE coordinators in Washington DC.
- As part of the FY 2005 financial audit, the KPMG team is required to plan and perform their audit in order to obtain reasonable assurance the financial statements are free from material misstatements, whether caused by unintentional errors or fraud. The Statement of Auditing Standards 99 requires auditors to consider the risk of fraud, waste and abuse that could have an impact on the financial statements or operations. As such, the KPMG team is required to interview all headquarters directors to help identify such risks. The interviews should take no longer than 45 minutes and will address any knowledge directors may have of risks as well as their responsibilities for: creating an ethical culture; designing and implementing programs and controls to prevent and detect fraud, waste and/or abuse; and developing and implementing effective oversight processes. The Office of Financial Management has

provided the KPMG audit team with the names of each office director. The audit team will contact directly to set up appointments.

Top Projects Accomplished (Past Week)
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- The GAO report, **IMMIGRATION BENEFITS: Additional Controls and a Sanctions Strategy Could Enhance DHS' Ability to Control Benefit Fraud**, GAO-06-259, March 10, 2006, was disseminated to appropriate offices.

Master Calendar Events & Speaking Engagements (30 days out)
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- March 10, 2006 – Response to the DHS addressing recommendations in the draft GAO report: **INFORMATION TECHNOLOGY - Near-Term Effort to Automate Paper-Based Immigration Files Needs Planning Improvements**. The Office of Transformation and Records Services/Verification are preparing responses, which will be consolidated by the Office of Financial Management for clearance by the Front Office by March 15th.
- March 14 & 15, 2006 - The Financial Management migration team will visit Savantage Solutions to evaluate the FFMS financial system.
- March 15, 2006 - As part of its planning process the KPMG Financial Audit team will visit the **Office of Contracting and the Financial Operations** team in Burlington to walk-through the commitment/obligation processes.
- March 22-24, 2006 – As part of its planning process the KPMG Financial Audit team will visit the **National Benefits Center** to walk-through through the quality assurance process related to deferred revenue.
- March 27, 2006 – As part of its planning process the KPMG Financial Audit team will visit the **Chicago Lockbox** operation to walk-through the collection/deposit/reporting processes.
- March 28, 2006 - As part of its planning process the KPMG Financial Audit team will visit the **Chicago District** to walk-through through the quality assurance process related to deferred revenue as well as fee collection/deposit processes.
- March 29-31, 2006 - As part of its planning process the KPMG Financial Audit team will visit the **Texas Service Center** to walk-through through the quality assurance process related to deferred revenue as well as fee collection/deposit processes.

Policy and Strategy

Top Projects Currently Underway
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- **Comprehensive Immigration Reform** – Policy and Strategy continues to work closely with the Front Office, the Office of Chief Counsel, Operations, and the Office of Congressional Relations to review the Chairman's Mark (Comprehensive Immigration Reform Act of 2006) and amendments during the March 8 and 9 mark up to support the Department in responding to the legislation through the Senate hearing and afterward.
- **Congressional Responses** – Last week we drafted responses to eleven questions for the record regarding the TWP from Representative Lamar Smith and worked with the Office of Budget to draft responses to six questions for the record from Representative Serrano.
- **Policy Considerations** – We reviewed policy considerations and options on NTAs, foreign students, and human trafficking.

- **Resource Allocation Plan Development** – In conjunction with the Budget Office, we continue working with program offices to develop the FY 2008-2012 Resource Allocation Plan Development (RAP) "at target" submission (due to DHS March 24) and any necessary "above target" (i.e. unfunded) requests. Above target requests are due to DHS on April 14.
- **Compliance with the Paperwork Reduction Act** – We submitted eight information collections for forms to DHS and one to OMB.
- **I-LINK** – We coordinated the review and signature of the Interagency Agreement between ICE and USCIS for I-LINK and related services and CD-ROM updates to ICE Detention and Removal Operations.
- **Basic Pilot** – We are currently providing technical support and expertise to the new Verification office and Budget on the Basic Pilot and its potential expansion to an EEVP. They are continuing to handle budget issues related to the expansion of the program and respond to Congressional questions on the EEVP; staff briefed the House Homeland Security staff on these issues on March 3. Cost estimates were developed for implementing the EEVP as proposed by the Chairman's Mark. They are also responding to a GAO report on SSN enhancement as it relates to employment verification
- **Save and Basic Pilot Verifications** – We are working with SAVE and CBP to start resolving the data quality problems that are causing an inordinate number of secondary verifications in both SAVE and Basic Pilot verifications. A meeting has been scheduled for March 15.
- **Project Speak Out** – We are finalizing an evaluation plan for Project Speak Out, an interagency effort to detect and take enforcement action against practitioner fraud. This project involves several DHS components, the Department of Justice, and local law enforcement. Once operational, the program will be piloted in Los Angeles.

Top Projects Accomplished (Past Week)
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- **Comprehensive Immigration Reform** – We worked with the Office of Chief Counsel to review the most recent Chairman's Mark (Specter) on Comprehensive Immigration Reform and provide comments on amendments for the Senate mark-up March 8 and 9.
- **Interagency Working Group on International Migration Statistics and Research** – We chaired a meeting of this working group, which was attended by representatives of ten Federal agencies and OMB. The program included a briefing on the New Immigrant Survey, which USCIS OP&S supports. Data from the first round of this survey will become available next week.
- **Basic Pilot** – We responded to several sets of Congressional questions on the EEVP, briefed the House Homeland Security staff on these issues on March 3, and developed annual cost estimates to implement the EEVP as proposed by the Chairman's Mark.

Master Events Calendar (30 days out)

- **National Legal Conference on Immigration and Refugee Policy** – Chief Carlos E. Iturrregui will participate as a panelist at the 29th National Legal Conference on Immigration and Refugee Policy to be held at the Fordham University Law School, NY, NY on March 13th 3:30 p.m.-5:00 p.m. This forum is organized and hosted by the Fordham University Law School and the Center for Migration Studies of New York (CMS) NY
- **United Nations** – Chief Carlos E. Iturrregui will participate as a panelist at the United Nations Headquarters in New York on March 15th (10:30 a.m.-11:50 a.m.) He will deliver remarks on "Labour Migration Arrangements" (highly skilled labour); sponsored and hosted by UNITAR

(United Nations Institute for Training and Research), International Organisation for Migration (IOM); International Labour Organisation (ILO).

- **American Payroll Association National Summit** – The Director of Research and Evaluation will participate in a panel on immigration worksite issues to discuss the Basic Pilot and its possible expansion on March 23.
- **Population Association of America Annual Meeting** – The Director of Research and Evaluation will chair a panel on Temporary Migration and the International Migration Working Group meeting at the annual meeting of the Population Association of America, March 29 through April 1.

Refugee, Asylum and International Operations

Top Projects Accomplished (Past Week)

- The second Refugee Officer Training Course (ROTC) ended this week. During the three-week course, the Office of Refugee Affairs trained thirteen newly hired Refugee Corps Officers on refugee law, adjudication procedures and interviewing techniques. These officers are scheduled to travel on their first refugee processing circuit rides in March and April.
- Ann Palmer, Director of International Operations, attended the Rome District Conference this past week in Amsterdam. Major topics on the agenda included military naturalization, procedures on adjudication of various immigration benefits at overseas location, combating fraud and backlog eliminations.

Security

Top Projects Currently Underway (Week Ahead Focus)

- **Crisis Management Unit:** Preparing for the first of three COOP/Emergency Preparedness classes. The first class will be held from March 20 to March 24 at the USCIS training facility at GLYNCO, GA.
- Recently received a 79A report from DHS Headquarters reflecting an additional 68 cases that are over 90 days old. Cases are being located and distributed to the specialists for adjudication.
- Received 106 new Federal hires and 230 new Contractor packages in Burlington to be worked for EOD.
- The Office of Administration and OSI are developing a plan of action to respond to the DHS tasking regarding planning for response to pandemic outbreaks. This is a major effort that will require executive support and assured participation by representatives from or for all agency components.
- OSI continues to actively contribute to the USCIS Performance Advisory Group which, under the direction of the Office of Strategy and Policy, is to have materials ready for presentation to the Director in the near future.

Top Projects Accomplished (Past Week)

- Training for E-qip (electronic security questionnaire) has been accomplished and CIS is now hooked up. Security questionnaires will now be completed on line with 100% compliance by April 1, 2006, in accordance with OMB directive. Security approvals for new Hires Federal and Contractors 316. Internal Selections approved 139.

Master Calendar Events & Speaking Engagements (30 days out)
--

- Meeting with David Colangelo regarding the new Integrated Security Management System (ISMS) to discuss deviations and additions to the requirement packages distributed on 2/15.
- Meeting with David Colangelo to discuss processes on how to eliminate our surge backlog.

Training and Career Development
--

Top Projects Currently Underway (Week Ahead Focus)

- New Model Update: OTCD is scheduled to meet with SI International next week to finalize Task 3 milestones for the design and development of the I-539 prototype training-module.

Top Projects Accomplished (Past Week)
--

- New Model Collaboration with the SCOPS: The Office of Service Center Operations (SCOPS) agreed to assist OTCD with Task 3 under the New Model contract by providing four SME's, on the I-539, one from each Service Center. This request included a total of 16 CAO's and their supervisors who will participate in the initial design, pilot testing, and evaluation of the prototype I-539 training-module.
- EDvantage On-Line Training System Update: OTCD's Field Training Office (Burlington, VT) worked with SUMTOTAL Corporation to test and deploy the self-registration letters that will automatically produce Basic Training and Advanced Training class rosters and verify attendance via an email sent to the USCIS Academy in Glynco, GA. This real-time updating transmits information from the Academy Course Management System (ACMS) to EDvantage.

Master Calendar Events & Speaking Engagements (30 days out)
--

- March 14: DHS Training Leadership Council (TLC) meeting, Glynco, GA
- March 14 & 15: INA Overview for OIG staff, Miami, FL. (Note: This has been coordinated with the USCIS Office of Financial Management and Internal Controls.)
- March 27-29: Pre-Retirement Planning Course scheduled for Burlington, VT.
- April 3-5: Pre-Retirement Planning Course scheduled for Chicago, ILL
- April 5&6: INA Overview, Washington, DC

Transformation

Top Projects Currently Underway (Week Ahead Focus)

- The Transformation Program Management Office (PMO) and Integrated Design Team (IDT) continue to develop the implementation plan for the initial rollout of the first increment of applications employing the new electronic case management system. The IDT and the Technical Solutions Team (TST) will continue refining overall business requirements and begin process modeling for the implementation.
- TST will conduct User Acceptance Testing of MS Enterprise Project Management Server installation.
- Change Management, Training and Communications Team will continue developing an overall communications plan.

Top Projects Accomplished (Past Week)
--

- Representatives from the Transformation PMO initiated its first benchmarking meeting with the US Patent and Trademark Office to discuss USPTO's lessons learned as it migrated from a paper-intensive environment to an electronic filing and case-processing program.

- The Integrated Design Team completed a draft Concept of Operations and continued gathering and analyzing Standard Operating Procedures from the field related to potential benefit applications and forms for initial release within the case management system.
- TST conducted technical alternative analysis for Intake solution and ongoing configuration of the Oracle-Siebel Case Management development environment.
- The Change Management, Training and Communications team continued, map system stakeholders, define potential impacts of the transformation on the organization, and build communications vehicles for employees and external stakeholders.

Master Calendar Events & Speaking Engagements (30 days out)
--

- USCIS executive leadership and the Transformation PMO will officially brief the DHS Investment Review Board (IRB) on the transformation effort.
- Present documentation for DOORs requirements management software to OCIO Information Technology Review Board (ITRB) for review and approval.
- Transformation benchmark meetings with US Health and Human Services, US Patent Office and the Internal Revenue Service.
- Conduct data modeling and complete Master Data List.
- Develop Independent Government Cost Estimate.
- Continue on-going development program of baseline reporting for IRB, including cost schedule and performance metrics for the Transformation pilot.
- Initiate field site visits to present transformation implementation plan and conduct business requirements focus groups with field managers and employees.
- Begin acquisition of contract support for Increment 1 of the case management system.
- Provide increase communication to internal and external stakeholders about Transformation.
- Develop Transformation Training Plan and schedule.

Verification

Top Projects Accomplished (Past Week)
--

- FDNS staff attended the monthly liaison meeting with the Department of State, Department of Labor and ICE regarding the coordinating efforts to combat immigration benefit fraud, with special emphasis on H & L categories.

ATTACHMENT 13

-----Original Message-----

From: Maxwell, Michael J <mjmaxwel@fins3.dhs.gov>
 To: Divine, Robert <rdivine@fins3.dhs.gov>; Crocetti, Don
 <dcrocett@fins3.dhs.gov>; McGraw, Robert A <ramcgraw@fins3.dhs.gov>;
 Lee, Danielle L <dlee@fins3.dhs.gov>
 CC: Gallagher, Rand <rgallagh@fins3.dhs.gov>; Cuddihy, Joe
 <jcuddihy@fins3.dhs.gov>; Hurteau, Mallory J <mjhurtea@fins3.dhs.gov>;
 Sheppard, Lorie <lsheppar2@fins3.dhs.gov>; Bucher, Steve P
 <spbucher@fins3.dhs.gov>; Pierre, Paul M <mpierre@fins3.dhs.gov>;
 Aytes, Michael <maytes@fins3.dhs.gov>; Paar, Tom <tpaar@fins3.dhs.gov>
 Sent: Mon Sep 19 19:04:02 2005
 Subject: Re: Developing Issue?

All,

I do not suspect I will receive any more information on this issue, but with the potential security and political issues this may present I felt it should go immediately to the COS. If I happen to receive more info I will immediately forward to all on this DL. Of course we are ready to assist in any other way as directed.

Michael

 Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Divine, Robert <rdivine@fins3.dhs.gov>
 To: Crocetti, Don <dcrocett@fins3.dhs.gov>; McGraw, Robert A
 <ramcgraw@fins3.dhs.gov>; Lee, Danielle L <dlee@fins3.dhs.gov>;
 Maxwell, Michael J <mjmaxwel@fins3.dhs.gov>
 CC: Gallagher, Rand <rgallagh@fins3.dhs.gov>; Cuddihy, Joe
 <jcuddihy@fins3.dhs.gov>; Hurteau, Mallory J <mjhurtea@fins3.dhs.gov>;
 Sheppard, Lorie <lsheppar2@fins3.dhs.gov>; Bucher, Steve P
 <spbucher@fins3.dhs.gov>; Pierre, Paul M <mpierre@fins3.dhs.gov>;
 Aytes, Michael <maytes@fins3.dhs.gov>; Paar, Tom <tpaar@fins3.dhs.gov>
 Sent: Mon Sep 19 18:36:16 2005
 Subject: Re: Developing Issue?

This is obvious, but any analysis needs to tell us which types of benefits we grant, relying on previous or other pending actions, without confirming identity from those other case files/systems. Need to know why we don't and what would be involved in changing to verify identity. This has particular poignancy as we face a flood of filings by Katrina victims seeking to replace documents.
 Robert C. Divine
 Acting Deputy Director, USCIS
 202-272-1000

 Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Crocetti, Don <dcrocett@fins3.dhs.gov>
 To: McGraw, Robert A <ramcgraw@fins3.dhs.gov>; Lee, Danielle L <dillee@fins3.dhs.gov>; Maxwell, Michael J <mjmaxwel@fins3.dhs.gov>
 CC: Gallagher, Rand <rgallagh@fins3.dhs.gov>; Cuddihy, Joe <jcuddihy@fins3.dhs.gov>; Hurteau, Mallory J <mjhurtea@fins3.dhs.gov>; Sheppard, Lorie <lsheppar2@fins3.dhs.gov>; Bucher, Steve P <spbucher@fins3.dhs.gov>; Pierre, Paul M <mpierre@fins3.dhs.gov>; Aytes, Michael <maytes@fins3.dhs.gov>; Paar, Tom <tpaar@fins3.dhs.gov>; Divine, Robert <rcdivine@fins3.dhs.gov>
 Sent: Mon Sep 19 18:31:40 2005
 Subject: FW: Developing Issue?

Bob--Please read below exchange and see what you can find out from ICE, perhaps CBP as well. Also get with Rand/Lori to have some internal systems checks/data mining done. Keep me posted. Thanks.--Don

Danielle--Please look into this apparent area of vulnerability. Appears Paul Pierre is SCOPS POC. Thanks--Don

-----Original Message-----

From: Cuddihy, Joe
 Sent: Monday, September 19, 2005 3:53 PM
 To: Crocetti, Don
 Subject: FW: Developing Issue?

Here we go. Can you find out from ICE if they have a specific investigation going on in Arliqto/Baltimore. If they do, shouldn't we be aware of the target and being particularly careful?

Joe

-----Original Message-----

From: Bucher, Steve P
 Sent: Monday, September 19, 2005 3:44 PM
 To: Divine, Robert; Crocetti, Don; Yates, William R; Aytes, Michael; Pierre, Paul M
 Cc: Paar, Tom
 Subject: RE: Developing Issue?

Robert--Yes, the prior issue related to I-90 adjudication. The issue raised below is a known vulnerability that we have been trying to address on a number of fronts over the past year or so.

Paul--Can you brief us on this issue and on the steps we have taken and or have proposed in this area? Thanks--Steve

-----Original Message-----

From: Bucher, Steve P
 Sent: Monday, September 19, 2005 3:44 PM
 To: Divine, Robert; Crocetti, Don; Yates, William R; Aytes, Michael; Pierre, Paul M
 Cc: Paar, Tom
 Subject: RE: Developing Issue?

Robert--Yes, the prior issue related to I-90 adjudication. The issue raised below is a known vulnerability that we have been trying to

address on a number of fronts over the past year or so.

Paul--Can you brief us on this issue and on the steps we have taken and or have proposed in this area? Thanks--Steve

-----Original Message-----
From: Divine, Robert
Sent: Monday, September 19, 2005 12:55 PM
To: Crocetti, Don; Yates, William R; Aytes, Michael; Bucher, Steve P
Cc: Paar, Tom
Subject: FW: Developing Issue?
Importance: High

I thought I had gotten confirmation from someone (Steve?) that we are checking ISRS (in response to a ping I got from the Secretary's visit to document lab several weeks ago), but maybe that was just green cards, and now we have other documents. I'd like to know about these vulnerabilities and when we do and don't check ISRS. Thanks.

-----Original Message-----
From: Paar, Tom
Sent: Monday, September 19, 2005 12:02 PM
To: Divine, Robert
Subject: FW: Developing Issue?
Importance: High

Robert,

FYI.

respectfully,

-----Original Message-----
From: Maxwell, Michael J
Sent: Monday, September 19, 2005 10:10 AM
To: Paar, Tom
Subject: Developing Issue?
Importance: High

Just an FYI

This issue is not in our lane as it is not involving an employee. But it has apparently gone up to Bonner, so I thought you may want a heads up.

Vr

Mike

-----Original Message-----
From:
Sent: Monday, September 19, 2005 9:54 AM
To: Maxwell, Michael J; Langlois, Joseph; Ohata, Fujie; Cuddihy, Joe;
Sposato, Janis A
Subject: FW: Security Situation
Importance: High

This is from a friend of mine at Dulles. I told him I would forward to the correct people.

To: Lenihan, Maureen
Cc: Coloma, Marco

Subject: Security Situation
Importance: High

In a nutshell - the scenario is as follows:
Cameron National wants into U.S. - probably refused visa in past,
contacts attorney in D.C. area (name and identity are known - ICE and
Baltimore Co.
DA have open investigations on him) - we know him too- We see his name
on these fraud applications. Attorney in question, files application
I-131 to
obtain either an asylee travel document and/or employment authorization
card for Cameroon who wants into U.S. - *the attorney uses the identity
of a
legit asylee (former client) and the Cameroon who wants into the U.S.
poses as real asylee - the attorney is utilizing the id's of former
clients for
this scam - it is not known how much he is charging yet*

What is happening is that the attorney has figured out that he either
applies by mail, internet, or goes to a service center, with the
understanding
CIS will not check ISRS for the photo of the actual asylee. Also CIS
will not require a fingerprint with the application- he has managed to
acquire
re-entry documents as well as Employment Authorization Cards for 4 known
prosecution cases -with the actual photo of the imposter. To the
untrained
inspector - they are legit on their face. All the docs are being
processed through the Nebraska Service Center.

I am returning to the Eastern District of Virginia court 09/19/05 for a
pretrial and detention hearing for the latest case.

In short - if a Cameroon can get a hold of these docs then a terrorist
could too. The only solution to this problem would be to stop all mail
in or
non-face to face applications- I'm assuming that is an unlikely request
for an immediate stop gap.

There is more to the story and interest is peaking. The Commissioner was
briefed last night and we all agreed the problem is probably widespread.

I hate to throw this bomb in your lap, but I have to start somewhere. At
least point us in the right direction - maybe one of the 1811's for CIS
(if
that has come to fruition)

JT

ATTACHMENT 14

Office of Intelligence
 U.S. Department of Homeland Security
 425 I Street, NW
 Washington, DC 20536



**U.S. Immigration
 and Customs
 Enforcement**

December 16, 2005

MEMORANDUM FOR: DON CROCETTI, DIRECTOR
 US CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) FRAUD
 DETECTION AND NATIONAL SECURITY

FROM: CYNTHIA O'CONNELL, ACTING DIRECTOR
 OFFICE OF INTELLIGENCE

SUBJECT: USCIS ISSUANCE OF MULTIPLE PERMANENT RESIDENT CARDS
 TO DIFFERENT INDIVIDUALS

On December 13, 2005, the Southwest Field Intelligence Unit (SWFIU) issued a Homeland Security-Intelligence Report (HSIR SWFIU-TUC-013-06; TBCS II Record 06KQHIZ00019), describing the identity theft of legitimate Mexican nationals by illegal aliens (Mexican nationals) in the United States using stolen and/or altered Mexican passports. Intelligence developed by the SWFIU identified a systematic problem regarding the issuance of multiple Permanent Resident Cards (Form I-551) to individuals using the same Alien Registration Number (ARN).

Of particular interest outlined in the HSIR is the issuance of multiple Permanent Resident Cards to different individuals all using the same ARN. Specifically, seven Permanent Resident Cards were issued to different individuals using the name Daniel GARCIA [REDACTED], all providing the same ARN. These documents were issued to the different individuals, all of whom provided photographs, fingerprints, and signature. These transactions were captured in the USCIS Image Storage and Retrieval System (ISRS), a web-based computer system used to manage and capture photographic images, fingerprints and signatures of legitimate applicants for immigration benefits. The SWFIU retrieved all the captured data in ISRS depicting the issuance of the multiple Permanent Resident Cards to obviously different individuals.

Based on the information developed by the SWFIU, it is apparent that the USCIS overall process of verification, issuance, and subsequent management of the Permanent Resident Cards is vulnerable. This vulnerability if allowed to continue without modification, will undermine the security of the US immigration system and could have severe national security implications by allowing unscrupulous individuals to enter the US wrongfully obtain Permanent Resident Cards, as proof of identity and legitimacy in the United States.

Attachment
 SWFIU HSIR TUC-013-06

Cc: Acting Assistant Security John P. Clark

ATTACHMENT 15

U.S. Department of Homeland Security
Citizenship and Immigration Services

425 I Street, NW
Washington, DC 20536

SEP 12 2003

MEMORANDUM FOR REGIONAL DIRECTORS
SERVICE CENTER DIRECTORS

FROM:

William R. Yarbrough 
Associate Director for Operations

SUBJECT:

Service Center Issuance of Notice to Appear (Form I-862)

This memorandum discusses new guidelines for Service Centers when exercising their authority to issue Form I-862, *Notice to Appear* (NTA), and is a reminder of the existing principles that govern decisions to exercise prosecutorial discretion when adjudicating benefits applications.

The initial phase will focus on three areas:

1. All cases where the alien's violation of the Immigration and Nationality Act (INA), and/or Federal, State or local statutes and codes constitutes a threat to public safety or national security.
2. Instances where fraud scheme has been detected.
3. Certain applications for Temporary Protected Status (TPS) where the basis for the denial or withdrawal constitutes a ground of deportability or excludability. The regulations require the issuance of a charging document when the basis for a TPS denial or withdrawal constitutes a ground of deportability or excludability. [See 8 CFR 244.10(a)(1) and 244.14(b)(3)].

This initial phase is scheduled to commence by the end of September 2003, once Standard Operating Procedures (SOPs) have been completed and all training, systems, and

Memorandum for Regional and Service Center Directors
Subject: Service Center Issuance of Notices to Appear

Page 2

resources needs have been addressed. An assessment of the initial implementation phase will be conducted in conjunction with Immigration and Customs Enforcement (ICE), and the Executive Office of Immigration Review (EOIR) before any subsequent phases are implemented.

In instances where aliens appear to be subject to mandatory detention under section 236(c) of the INA, the Service Centers will adjudicate the application, prepare and sign an NTA, but will not serve the NTA on the alien or on EOIR. Instead, the Service Centers will prepare a memorandum to the file explaining that an NTA has been signed, but not served, and that the case is being transferred for custody determination and NTA service to the appropriate ICE District Office point of contact for service of the charging document.

Lastly, it is important to remind officers that each decision to issue an NTA must be made in accordance with the attached memorandum entitled: *Exercising Prosecutorial Discretion*, dated November 17, 2000. Although that memorandum was issued prior to September 11, 2001 and the implementation of enhanced security checks on all applications and petitions, it established the guiding principles for determinations regarding prosecutorial discretion and remains in force.

If you have any questions regarding this memorandum, please contact, via appropriate channels, your center or regional representative. If needed, Service Center representatives may contact Danielle Lee or Al Herrera via e-mail or telephone, at (202) 305-8010. Regional representatives may contact Peter Rosenstock via email or at (202) 514-2982.

ATTACHMENT 16

[This update was written by a Special Agent with close ties to the ICE agent who found the alien files.]

Feb. 15, 2006

I just wanted to update you on an issue I became aware of back in October of 2005. I was informed that there was a "file" room at the CIS, Philadelphia District Office (PHL) that contained a large number of alien files (est. at 2,000). An ICE employee found the room while searching for a file that the JTTF needed. It is my understanding that the majority of these files were for aliens from countries of interest. I also understand that these files have been building up for several years. The ICE employee said that through conversations with CIS personnel, they gleaned that these files contained a variety of immigrant applications that were referred from CIS to ICE OI for issuance of a NTA and were subsequently returned without action. From what I have been able to gather, CIS claimed that ICE was charging an exorbitant fee for processing of the cases through EOIR. Therefore, they stopped putting people into proceedings directly (CIS issues the NTA) or CIS stopped referring the cases to ICE OI. This resulted in hundreds of files sitting in limbo with no process moving them forward. It was my understanding that a national MOU was being worked out between ICE and CIS to deal with this issue in October 2005. I am unaware of a MOU going into effect to this date.

The National Security ramifications surrounding this are ominous. As you can imagine, this plays right into the hands of foreign-born nationals who wish to stay in the United States, while they work on another "petition", find another wife or circumstance that allows them to stay or adjust status. This limbo status puts us into a terrible position, especially when superimposed on the status profiles of the 9-11 hijackers. I would also suggest that this is potentially a national problem not restricted to Philadelphia. CIS will be the sacrificial lamb when a national security issue arises with this connection.

It has come to my attention, that due to construction at Philadelphia, these files were moved throughout the District last week, in part and remain in "limbo".

ATTACHMENT 17

-----Original Message-----

From: Maxwell, Michael J <Michael.Maxwell@dhs.gov>
To: O'Reilly, Terrance M <Terrance.O'Reilly@dhs.gov>; Crocetti, Don <Don.Crocetti@dhs.gov>; Maxwell, Michael J <Michael.Maxwell@dhs.gov>
CC: Burteau, Mallory J <Mallory.Burteau@dhs.gov>
Sent: Tue Aug 23 07:07:54 2005
Subject: Re: Tecs access

Perhaps we can meet later this morning and brainstorm an internal solution.?

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: O'Reilly, Terrance M <Terrance.O'Reilly@dhs.gov>
To: Crocetti, Don <Don.Crocetti@dhs.gov>; Maxwell, Michael J <Michael.Maxwell@dhs.gov>
CC: O'Reilly, Terrance M <Terrance.O'Reilly@dhs.gov>; Burteau, Mallory J <Mallory.Burteau@dhs.gov>
Sent: Tue Aug 23 07:02:07 2005
Subject: RE: Tecs access

Infact, the lack of access is and continues to drive USCIS employees crazy. Even in FOCUS there are employees that have LIMITED access.

-----Original Message-----

From: Crocetti, Don [mailto:Don.Crocetti@dhs.gov]
Sent: Tuesday, August 23, 2005 7:00 AM
To: Maxwell, Michael J
Cc: O'Reilly, Terrance M; Burteau, Mallory J
Subject: RE: Tecs access

I know nothing about these issues being resolved.

-----Original Message-----

From: Maxwell, Michael J
Sent: Tuesday, August 23, 2005 6:33 AM
To: Crocetti, Don; 'Terrance.O'Reilly@dhs.gov'
Subject: Tecs access

Don, Terry

Am I to understand that all your folks now have access to TECS etc and the background investigation issue with CBP has been rectified?

A follow up to above would be, is there a possibility that the lack of suitable background investigations of CIS personnel inadvertently limited CIS access to TECS for finite period of time and therefore adjudicators were forced to make decisions without all pertinent and potentially derogatory information available to them?

Thanks, I have to craft a reply to numerous questions about the BI process within CIS and this may be a good example of where a stovepipe occurred in the process.

Mike

Sent from my BlackBerry Wireless Handheld

ATTACHMENT 18

From: Haas, Dennis
Sent: Thursday, September 15, 2005 1:40 PM
To: Miner, Lloyd W; Berglund, John M; Mullin, Geoffrey M
Subject: FW: Interview Notes
Sensitivity: Confidential

Geoff:
 See below traffic.

-----Original Message-----

From: Sposato, Janis A
Sent: Thursday, September 15, 2005 1:28 PM
To: Maxwell, Michael J
Cc: Aytes, Michael; Yates, William R; Paar, Tom; Haas, Dennis
Subject: RE: Interview Notes
Sensitivity: Confidential

Thank you Michael. You and your staff have been very responsive to me and to Focus, and I appreciate that.

Janis

-----Original Message-----

From: Maxwell, Michael J
Sent: Thursday, September 15, 2005 1:26 PM
To: Sposato, Janis A
Cc: Aytes, Michael; Yates, William R; Paar, Tom; Haas, Dennis
Subject: RE: Interview Notes
Importance: High
Sensitivity: Confidential

Janis,

I have spoken with Tom Paar on this particular case. I need to make my position clear to all parties. With the approval of the Chief of Staff, in this case only, we can finish the job and shake the information. However, in the future, I have been directed to cease OSI participation in the FOCUS initiative and, as seen in the email below, had already directed my staff that OSI shall not be involved in future FOCUS initiatives unless approved by Bill, the COS, and ADD.

I will have Geoff Mullin contact Pat to close the loop and then must withdraw from the process.

Vr,

Michael

-----Original Message-----

From: Sposato, Janis A
Sent: Thursday, September 15, 2005 1:03 PM
To: Maxwell, Michael J
Cc: Aytes, Michael; Yates, William R
Subject: FW: Interview Notes
Importance: High

Maxwell, Michael J

From: Sposato, Janis A
Sent: Thursday, September 15, 2005 1:03 PM
cc: Maxwell, Michael J
Cc: Ayles, Michael; Yates, William R
Subject: FW: Interview Notes

Importance: High
Sensitivity: Confidential

Michael
 I don't want to interfere with whatever instructions you got from Robert, but one of our FOCUS mandamus cases seems to have gotten caught in the middle. I understand that your staff had contacted Secret Service and obtained adverse information for us about the applicant, but that they now feel constrained to share it. Can you see your way clear to allow your staff to share what they have? Or would you rather I ask Robert for permission? I apologise for putting you on the spot.
 Janis

-----Original Message-----
From: Molin, Patricia
Sent: Thursday, September 15, 2005 9:20 AM
To: Sposato, Janis A
Cc: Mulrean, Mary C; Leclair, Kellie
Subject: FW: Interview Notes
Importance: High
Sensitivity: Confidential

Janis, FOCUS was hoping to use information that OSI (Office of Security and investigation) was going to provide in support of this M400 case. According to information previously provided by OSI, this individual is involved in moving large sums of money, and under current investigation by the Secret Service. According to the information FOMS provided FOCUS, there was no derogatory information and we should proceed with adjudication. FOCUS needs the information available to OSI in order to render an appropriate decision in this case. Thanks, Pat

-----Original Message-----
From: Leclair, Kellie
Sent: Thursday, September 15, 2005 9:08 AM
To: Molin, Patricia
Subject: FW: Interview Notes
Importance: High
Sensitivity: Confidential

Pat,
 This is regarding the [REDACTED] mandamus case.
 Thanks,
 Kellie

-----Original Message-----
From: Mullin, Geoffrey M
Sent: Wednesday, September 14, 2005 6:48 PM
To: Leclair, Kellie
Cc: 'john.berglund@dhs.gov'
Subject: Interview Notes

Kellie,
 Recvd your message re: reviewing the interview notes you have just been forwarded. I would like to assist but I have been instructed that I will be directly defying the Acting

Deputy Directors order if I do. You may ask Pat to ask her boss to talk with Director Maxwell as I know he is receptive to our doing whatever we can to help you guys. Hoipe this can be resolved in time!

Geoff

Sent from my BlackBerry Wireless Handheld

ATTACHMENT 19

From: Nolin, Patricia
Sent: Friday, September 09, 2005 8:45 AM
To: Mullin, Geoffrey M
Subject: [REDACTED] (POB: Somalia; 02/10/1988) [REDACTED]

Importance: High
Sensitivity: Confidential

Geoff, Not sure if I should be making this request, but I'll take a chance. The above-referenced individual has filed a Mandamus against the Service relating to his unadjudicated N400 application. The Name Check Process returned a POSITIVE RESULT and the FBI LHM and FDNS follow-up provides FOCUS with no details, other than the individual is the subject of an ongoing investigation with national security implications. According to FDNS, in order to maintain 'case integrity' the FBI did not provide specifics of the case, but the case should be placed in Abeyance. I was wondering if you would be able to obtain more detailed information regarding the investigation along to assist FOCUS with this case and information that could be used in open court before the judge to explain the need for placing the case in Abeyance. Thanks for your help, Pat

ATTACHMENT 20

[Note: This document was compiled through a team effort that included staff from the Chief Counsel's office, Public Affairs, Congressional Relations, and others.]

Draft – 10/4/05

Initial Statement

Recent press articles, particularly those appearing this week in the Washington Times, suggest that some U.S. Citizenship and Immigration Services (CIS) adjudicators lack access to certain law enforcement data bases when adjudicating benefit applications, and that CIS has a backlog of approximately 2500 cases involving allegations of employee misconduct.

Before providing more detailed information regarding these concerns, it is important to emphasize that CIS' highest priority is preserving and protecting the integrity of the legal immigration system. While delivering timely, accurate and effective services is critical, CIS maintains an unwavering commitment to promoting national security and public safety. Toward that end, CIS conducts law enforcement checks on all applications and petitions before adjudicating them, and completes approximately 35 million background checks each year. CIS has in effect a strict policy requiring the resolution of all law enforcement checks prior to the approval of any related immigration application. Obtaining necessary information from a range of law enforcement and intelligence agencies is vital to this effort.

CIS also places paramount importance on employee integrity. Allegations of misconduct are investigated thoroughly and, if substantiated, addressed with appropriate disciplinary action. With regard to the number of alleged misconduct cases mentioned in recent press reports (an estimated 2600) historical experience indicates that approximately 90% are likely to be either unsubstantiated or administrative in nature. CIS has worked hard to devote additional resources to our Office of Security and Investigations (OSI) to review and resolve outstanding cases, but it will take some time to mobilize these resources and eliminate backlogged allegations. CIS is committed to completing the backlog of internal investigations fully, fairly and expeditiously.

Does CIS Have Full Access to All Necessary Law Enforcement Data Bases?

[Here we need to fashion 2-3 sentences basically saying No, we do not have FULL access and state the reasons why. We then need to emphasize how even without full access, we ensure that no application is approved without resolution of all national security and other safety concerns. IF we had more complete access – here is what it would look like (the fix) and here is how it would render far more efficient and productive our day-to-day operations...]

CIS conducts computerized law enforcement background checks related to all applications and petitions. For some application types, the agency conducts several different kinds of law enforcement checks. If the results of any given check reveal the existence of derogatory information, CIS removes the case from normal processing, and seeks clarification and/or additional guidance from whichever law enforcement agency posted the background check information. Most often, that posting agency is Immigration and Customs Enforcement (ICE), or the Federal Bureau of Investigation (FBI), though other federal, state or local agencies may also

be involved. **When CIS obtains sufficient information to adjudicate a case, it does so. No case is adjudicated without sufficient information either to deny the application, or to resolve any identified security or safety concern.**

CIS at times utilizes background check processes to alert ICE about pending applications filed by, or on behalf of, aliens deemed to be national security risk. We have in place protections to ensure that adjudications do not proceed in the face of unresolved law enforcement information. We recognize that law enforcement information can and should be obtained at various stages in the adjudications process, not just immediately after filing but also at later stages of adjudication. **To ensure that security checks are completed and resolved prior to any final adjudication, CIS conducts regular quality assurance reviews. Recently the DHS Office of the Inspector General completed an evaluation of CIS security processes that resulted in the identification of no significant lapses.**

The standard law enforcement check performed by CIS on all applications is called an Inter Agency Border Inspection System (IBIS) check. The database at the heart of IBIS is the Treasury Enforcement Communication System (TECS). Since the formation of the DHS, some transition issues have arisen involving access by CIS adjudicators to TECS. These issues are predicated upon a very legitimate debate about the level of employee background checks that should be conducted prior to qualifying for TECS access. Negotiations about this issue are ongoing, with the Fraud Detection and National Security (FDNS) Unit representing CIS.

Related questions exist concerning the specific level of access to TECS information CIS adjudicators and FDNS staff should be given. *[Here we should describe each level and what it implies – Alice and/or Nick can you help?]* These implicate the law enforcement “need to know” requirement, and the level of personnel security clearances of employees seeking access. FDNS is likewise responsible for representing CIS in these negotiations.

With respect to the FBI’s NCICIII database, CIS is encountering direct access difficulties, though not with regard to fingerprint checks *[add a sentence explaining why]*. Access issues do arise when we want to submit a name rather than fingerprint check. The CIS Office of the Chief Counsel has made numerous attempts to obtain fuller access to NCICIII for agency personnel.

[Here we need to explain in clear terms how Section 403 of the Patriot Act did not clearly provide for the use of FBI criminal history information in adjudications involving aliens already in and admitted to the U.S. We should further emphasize our support of an amendment to Section 104 of the Immigration and Nationality Act that would ensure that those charged with determining whether aliens will have temporary or permanent access to the U.S. through a grant of a visa, immigration benefit, or citizenship, are equipped with the same informational tools as law enforcement agencies, as their function is no less important in the war on terrorism. The FBI has provided direct access to NCICIII (via IBIS) to immigration inspectors at ports of entry for purposes of ensuring that aliens who seek to enter the U.S. are admissible (i.e. an immigration purpose or benefit), yet is has resisted providing that same access to CIS personnel adjudicating immigration benefit applications in the U.S. Attached is a comprehensive summary

of both the access to criminal history information problem CIS confronts and the proposed remedial amendment.]

How Does CIS Identify Fraud and Potential Threats to National Security?

To strengthen national security and ensure the integrity of the legal immigration system while simultaneously administering immigration benefits in a timely and effective manner, CIS established a Fraud Detection and National Security (FDNS) Unit whose primary responsibilities are to:

- Detect, pursue, and deter immigration benefit fraud,
- Ensure background checks are conducted on all persons seeking benefits before benefits are granted,
- Identify systemic vulnerabilities and other weaknesses that compromise the integrity of the legal immigration system, and
- Perform as USCIS' primary conduit to/from law enforcement and intelligence agencies.

The headquarters (HQ)-based FDNS consists of four branches: 1) Fraud Detection, 2) Operations, 3) National Security, and 4) Administration/Support Services. A Background Check Analysis Unit (HQ-BCAU) within the National Security Branch receives and reviews all National Security Notifications (NSNs) resulting from IBIS hits. These NSNs, and the subsequent case resolution information in the form of a Case Resolution Record (CRR) are reviewed by the HQ-BCAU. All CRRs must be approved by the HQ-BCAU before a case may be released for adjudication. Sensitive national security-related cases are forward to the CIS Office of Field Operations' FOCUS [spell out] Unit, which provides adjudications-related advice and guidance. HQ BCAU's primary responsibilities include performing system checks and gathering information.

FDNS staff is also assigned to each of the five CIS Production or Service Centers and operate in the form of Fraud Detection Units (FDUs). Each FDU is engaged in anti-fraud activities and "Top 5" IBIS background check operations: all IBIS hits that involve 1) National Security, 2) Public Safety, 3) Wants/Warrants, 4) Interpol, or 5) Absconders are forwarded to FDUs from Production Center IBIS Triage Units. The FDUs performs referral and/or resolution activities, and return information to adjudicators. Production Center IBIS Triage Units resolve non-"Top 5" IBIS hits.

Many CIS District Offices have an on-site local FDNS Immigration Officer (IO) to assist in anti-fraud efforts and IBIS National Security-related hit resolutions. These IOs are organized across the three CIS Regions, and guided by Regional FDNS Supervisors. Local IBIS units under CIS Field Service Operations are responsible for resolving non-National Security-related IBIS hits.

CIS conducts approximately 35 million IBIS checks each year. FDNS is responsible for processing all "TOP 5" IBIS hits through Production Center staff and National Security IBIS hits through District IOs.

As of September 24, 2005, the pending IBIS FDU workload consisted of 13,815 cases, including all National Security cases. Roughly 90% of the National Security IBIS workload is carried by the FDUs. The number of public safety cases referred from all Regions, including the Asylum Division and Production Centers totaled 11,997 for the ten-month period from September 2004 through June 2005.

[NOTE: The current IBIS backlog for the Center Triage units, which resolves other than "Top 5" hits, is approximately 26,000 cases]

In March 2005, CIS began requiring all of its offices to report National Security-related hits to the HQ-BCAU before commencing resolution activity. Since April 2005, an estimated 2000 NSNs have been submitted to the HQ-BCAU. Over this same six-month period, approximately 650 final resolutions were completed by FDNS staff and approved by the HQ-BCAU for release to adjudications or referral to FOCUS. Presently roughly 1350 resolutions are pending completion.

[Here we need to add a paragraph explaining how FDNS interfaces with OSI to identify fraud and potential threats to national security. Ideally this would include numbers of cases sent from OSI to FDNS and the course of such referrals. Point is that we are trying in a variety of ways to identify, isolate and resolve instances of fraud and national security risks.]

How Effectively Do CIS and ICE Share Law Enforcement and intelligence Information?

Presently CIS is seeking access to ICE's TECS Case Management System that includes information on past and present investigations and targets to compliment and reinforce our anti-fraud program. [Tom P. prefers that we try to present as united a front as possible vis a vis other DHS components as opposed to appearing in conflict with them] Obtaining details regarding watch-listed persons is part of a larger information sharing issue confronting various DHS components, the FBI, and other agencies upon whom CIS relies for background check protocol information. However, CIS typically encounters little difficulty isolating through watch lists and FBI name checks individual national security concerns *[why?]*. CIS also routinely shares information with other intelligence and investigative agencies, including ICE.

Is it True that up to 1300 CIS Adjudicators Have Been Shut out of TECS?

In January 2005, Customs and Border Protection (CBP) placed approximately 1300 of CIS' 8,642 employees into a "restricted profile." In general, these individuals either never had access to TECS, or had let such access lapse. Since then, CBP has moved virtually all of these individuals out of a restricted profile and designated them with Level 2 or 3 access depending on their background investigation level. Level 2 access pertains to all CIS-posted information as well as information any other posting agencies have relegated to Level 2. Level 3 access pertains to all CIS look outs as well as look outs established by other agencies. Other individuals who have since January 2005 lapsed into archive status may currently be in the restricted profile category. Administrative control over CIS users remains an open issue with CBP for all persons

placed in the restricted profile. FDNS is currently negotiating with ICE and CBP regarding CIS access levels and associated background investigations, which is the greater agency issue as regards TECS.

What Is CIS FOCUS and What Does it Aim to Achieve?

FOCUS [*not an acronym so no longer translation*] is a group of seasoned adjudicators in the Office of Field Service Operations that was established to provide special attention and technical expertise in cases involving national security or public safety concerns. Until now the group has consisted largely of field adjudicators detailed from positions in the field, although permanent positions for FOCUS have been advertised and are in the process of being filled. While FOCUS adjudicators have the authority to decide cases directly, their strong preference is to provide field adjudicators with resources, information and advice to perform their duties in the best possible way.

Because FOCUS cases derive from the field, there is no set number or limit of FOCUS cases. This year FOCUS began its work by assisting the CIS Office of Chief Counsel with regard to the over 100 pending mandamus cases filed in federal court that implicate national security or significant public safety issues. FOCUS does not intend to limit its work, however, to helping resolve mandamus cases.

What Is the CIS Office of Special Investigations and How Many Potential Misconduct Cases Does it Have?

The CIS Office of Security & Investigations (OSI) was established in May 2004 to protect and promote agency-wide physical security standards and to prevent, detect and investigate allegations of CIS employee misconduct. Presently OSI employs six investigators, four of whom are assigned criminal cases, the remaining two investigators are in the process of developing OSI's infrastructure, policies and procedures. The four agents are actively investigating 8 cases, deemed priority cases, and have closed two cases administratively. OSI has received funding for, and will hire, six additional staff to serve as 1811 Criminal Investigators within 30 days.

Between October 2004 and September 2005, OSI received and reviewed approximately 1500 complaints that had been pending with the former Immigration and Naturalization Service (INS) and Immigrations and Customs Enforcement. Over that same period OSI has received an additional 1100 cases from a variety of sources including the DHS Office of Inspector General, the US State Department, the Drug Enforcement Administration. Although the OSI presently lacks a database to track and/or inventory all allegations, its Director estimates that about 500 of the total 2700 in-house complaints involve alleged criminal conduct.

Historically, What Was the Role of the INS Office of Internal Audit and Does It Differ from CIS OSI?

The Internal Investigations Branch, within Legacy INS Office of Internal Audit, managed the processes by which allegations of Service employee misconduct were reported, resolved and

acted upon. It also conducted and oversaw the conduct of investigations and inquiries. The workload received within the Investigations Branch is attached, with a breakdown of how each allegation was handled.

An explanation of the categories to include an **8-year average (1995 – 2002)**¹ is as follows:

- ✓ Investigated by the DOJ OIG – Generally criminal in nature or the allegation was against a GS-15 or above. Note that OIA did not have the authority to conduct criminal investigations. **8.9%**
- ✓ Investigated by other, which was usually the DOJ Civil Rights Division. Such investigations involved abuse. **.5%**
- ✓ Investigated by the OIA – Administrative investigation involving a serious allegation of misconduct. Many times the OIG would try to get a US Attorney to take the case, but when this would not happen, the matter was referred to the OIA for investigation. **11.1%**
- ✓ Management Inquiry by field – These involved less serious matters that could be reviewed by the field management. **39.8%**
- ✓ Referral to management as information – Something management should be aware of but not enough information within the allegation on which to investigate or look into. **29.5%**
- ✓ File no/action. **4.7%**
- ✓ Other. **5.4%**

Although information was available in the OIA case management system as to what occupation codes were subjects of misconduct allegations, that information is currently not available. However, during the months after the creation of DHS, analysis had been done as to the percentage of allegations that related to adjudication and asylum officers, and the results showed between 10-15%.

The type of allegations reported in the OIA annual reports is attached.

Without a database to inventory the allegations received by CIS OSI, it is difficult to compare the work of this new internal investigations division with that performed by legacy INS OIA. Clearly, however, with regard to OSI allegations related to administrative or criminal misconduct, most appear related to what the legacy INS OIA would have also categorized as misconduct with the exception of an unknown number of customer service complaints received by the OSI concerning the time it takes to adjudicate immigration benefit applications. OSI does not yet track the latter type of correspondence.

¹ The total number of allegations for this 8 year period was 28,722.

Although approximately 50 CIS employees have been trained to investigate management inquiries, almost 40% of the legacy INS OIA caseload, this process has not been implemented by OSI because it lacks a database to track the allegations through resolution, a major point of concern for USCIS field leadership who stated the legacy process was “lacking and inefficient”.

Of the Reported 50 Allegations Received Each Week by the OSI, Are These New Cases or Cases Filed in the Past That Are Only Now Being Forwarded to OSI from Other DHS Components? Has the DHS IG Reviewed and Referred Each of the 50 Cases to the OSI?

- Allegations referred to OSI by the DHS OIG are primarily new although a small number represent repeat allegations against one or more persons. As mentioned previously, OSI does receive allegations directly from ICE, CBP, US State Department and others. These allegations received directly by OSI must be sent to the DHS OIG for review. The OIG may accept the case, choose to investigate the case jointly with OSI, or refer the case back to OSI who will investigate the case unilaterally. Per an MOU with OIG, the OIG shall determine within one business day of the OSI referral whether to investigate the allegation or refer it back to CIS.

Attachments:

Overview of history of agency's request to receive legislative authority to access NCIC III.

Categories of Allegations within Legacy INS OIA

Attachment 1

Access to Criminal History Information. Section 403 of the USA PATRIOT Act amended section 105 of the Immigration and Nationality Act to provide for the use of FBI criminal history information for the purpose of determining admissibility to the United States in the visa or inspections context. However, after two years of work implementing section 403, DHS and DOS have found that this section needs several improvements. These amendments have been coordinated between DHS and DOS to meet the goals of both Departments.

In the case of DHS, section 403 did not clearly provide for the use of this important information in adjudications involving aliens already admitted to the United States. These benefit adjudications within the United States may be equally important to protecting the country from terrorism. For example, several of the September 11 hijackers applied to change their nonimmigrant status. This amendment clarifies that criminal history information shall be provided for use in immigration adjudication cases on the same terms as for visas and initial

admission to the United States. Relatedly, it provides that immigration adjudications shall be considered a law enforcement purpose in order to ensure full access to FBI criminal history information.

In the case of DOS, the Department has received extracts from the FBI that contain only biographical information, but do not include information pertaining to the criminal offense or disposition. The information pertaining to the criminal offense or disposition is essential for the consular officer to access for determining the alien's eligibility for a visa and admissibility to the United States. The FBI contends that the National Crime Prevention and Privacy Compact, a statutory authority, prevents it from providing information on the extract pertaining to the crime or disposition without a fingerprint match (for positive identification). The FBI maintains that positive identification is required because consular officers are not law enforcement officials or serving a law enforcement purpose. The proposed amendments to the INA frame the consular visa adjudication function as serving a criminal justice purpose and grant consular officials direct access to NCIC records. Direct access would facilitate a more effective and efficient screening of legitimate travelers and travelers who are persons of interest.

Department of State personnel who adjudicate visas abroad act as the nation's first line of defense against terrorists and criminals who seek to enter the United States. Since the events of September 11, 2001, legislation has mandated interagency datashare. In light of the level of information shared and the coordination and cooperation with law enforcement and intelligence agencies in identifying persons of interest, the Department of State consular officer serves a criminal justice purpose and should be granted direct access to criminal history record information. This access would enhance the efficiency with which a consular officer is able to identify legitimate travelers from persons who may pose a threat if admitted to the U.S. Without direct access, consular officers must submit an applicant's fingerprints to the FBI causing significant delays and attendant adverse economic impact. The majority of submitted prints are returned as "no match" or the crime does not have impact on the individual's eligibility for a visa. The current procedures impose significant costs on the operational efficiency of consular sections. Direct consular access to the NCIC system is necessary for consular officers to meet the national security mandates imposed after 9/11. The statutory language suggested used the term Department of State personnel rather than consular officers as Visa or Passport personnel may be involved in rendering advisory opinions in visa cases or the decision to issue a passport.

Proposed Language:

(a) Section 104 of the Immigration and Nationality Act, 8 U.S.C. 1104, is amended by adding a new subsection (f) reading—

'(f) Notwithstanding any other provision of law, the powers, duties and functions conferred upon Department of State personnel relating to the granting or refusal of visas or passports may include activities that serve a criminal justice purpose.'

(b) Section 105 of the Immigration and Nationality Act, 8 U.S.C. 1105, is amended by-

(1) Amending paragraph (b)(1) to read—

‘(b)(1) Notwithstanding any other provision of law, the Attorney General and the Director of the Federal Bureau of Investigation shall provide to the Department of Homeland Security and the Department of State access to the criminal history record information contained in the National Crime Information Center’s Interstate Identification Index (NCIC-III), Wanted Persons File, and to any other files maintained by the National Crime Information Center, for the purpose of determining whether an applicant or petitioner for a visa, admission, or any benefit, relief or status under the immigration laws, or any beneficiary of an application or petition under the immigration laws, has a criminal history record indexed in any such file.’;

(2) Amending paragraph (b)(2) to read—

‘(b)(2) The Secretary of Homeland Security and Secretary of State shall have direct access, without any fee or charge, to the information described in paragraph (1) of this subsection to conduct name-based searches, file number searches and any other searches that any criminal justice or other law enforcement officials are entitled to conduct, and may contribute to the records maintained in the NCIC system. The Secretary of Homeland Security shall also receive, upon his request, access to such information by means of extracts of the records for placement in the appropriate database without any fee or charge.’;

(c) Striking paragraphs (b)(3) and (b)(4); and

(d) Amending paragraph (c) to read –

‘(c) Notwithstanding any other law, adjudication of eligibility for benefits under the immigration laws, and other purposes relating to citizenship and immigration services, shall be considered to

be criminal justice or law enforcement purposes with respect to access to or use of any information maintained by the National Crime Information Center or other criminal history information or records.'

FBI Objection:

The Department of Justice strongly opposes section 502 of the State Department's draft Authorization bill. That draft section seeks to eliminate certain provisions of Section 403 of the PATRIOT Act concerning the means of access by the Department of State and the INS (now DHS) to criminal history records maintained in the FBI's National Crime Information Center's Interstate Identification Index (NCIC-III) for purposes of determining whether a visa applicant or applicant for admission has a criminal history record in the III. Section 502 seeks to provide direct, unrestricted name-check access to the fingerprint-based criminal history records in the III to State and DHS *without* any requirement for fingerprints, and *without* a fee, for the purpose of granting a broad array of benefits to both aliens seeking entry in the United States and aliens already present in the United States. The proposal seeks to avoid the fingerprint requirement imposed by the National Crime Prevention and Privacy Compact for non-criminal justice criminal history background checks of the III by defining immigration and visa decisions as having a criminal justice purpose. By avoiding any fee for these checks, this proposal also places the cost of these incomplete name checks squarely on American taxpayers.

The Department of Justice opposes this proposal and believes that the issues it raises should be resolved through the interagency process because of all the Departmental equities involved. A legislative change of this nature should not go forward absent an interagency consensus.

The Department of Justice does not concur in this proposal for the following reasons:

(1) Using Names Instead of Positive, Biometric Identification: This change is being proposed when there are still significant outstanding issues the Administration is trying to resolve about the implementation by the Department of Justice, the State Department, and DHS of the other, related provisions of section 403 of the PATRIOT Act regarding establishing and adopting a biometric technology standard and a fully integrated system that can be used to confirm the identity of persons applying for a United States visa or such persons seeking to enter the United States pursuant to a visa. There is general agreement by all Departments involved that a check of criminal history records is essential to processing applications for visa and immigration benefits. The Department of Justice, however, has, from the outset, argued that a fingerprint-based check for these purposes is both feasible and the most effective and reliable way to determine whether a relevant record exists on an applicant for a visa or a change in immigration status. While DHS and State have argued that full criminal history checks using fingerprints are too hard, take too long, and are too expensive, the security argument should trump these operational hardship arguments, especially since the operational hardship is a temporary condition under the control of DOS, DHS, and DOJ policymakers. Had a solution for the Congressional-tasking for biometric interoperability under section 403 been agreed upon by now,

there would be no need to seek to broaden section 403's authority to do name-checks using extracts.

The FBI has pressed forward on this issue, but absent any DHS cooperation or requirements to drive funding for system modifications/ upgrades, the FBI can only make so much progress. Currently, the FBI CJIS Division is running 5 ongoing pilots with Consular posts in Mexico and El Salvador and may be expanding to the UK shortly. The FBI's new flat transaction will make collection easier and less expensive and should be in place this Spring. In addition, the Homeland Security Counsel is currently working to produce the first cost estimates for 10-flat print checks at time of visa enrollment that are based on actual DHS-supplied transaction volume data. The statement in the sectional analysis of section 502 that the cost is not worth the benefit should not be accepted without considering this additional information now being developed. Given all of this, it is, at best, premature to consider negating the requirement for positive identification, particularly through a legislative mandate, by giving unrestricted, direct name-check access to III to State and DHS for these purposes.

(2) The inherent unreliability of name checks. The proposal ignores the steps that are needed to be taken in order to secure our borders. The focus should not be on expanding the name-based background check capabilities of State and DHS, but rather on moving those agencies, as quickly as possible, to a fingerprint-based background check system. Name checks are not reliable and present problems of both security gaps from false negatives and unfairness to applicants from false positives. A draft 15-month study by State and the FBI under Section 403(b) doesn't support decision-making without positive identification. In fact, the data shows that without positive identification:

- False Negative Problem - After a negative name check, the Consular Officer has no way of knowing whether the applicant who clears the name check is known in the criminal files under a different name. In these cases, an applicant might be issued a US Visa good for up to 10 years. This situation poses highest risk in countries that use different alphabets or highly variable spellings of the same name.
- False Positive Problem - After a positive name check, the consular officer will have no way of knowing that the returned criminal history information associates to the applicant. The draft PATRIOT Act 403(b) study showed that False Positives occurred 2 out of 3 times over a 15 month study period. In these cases, an applicant might be denied a US visa based on irrelevant information

In addition, the 1999 DOJ Name Check Efficacy Study showed that 11.7 percent of applicants with criminal history records in the study were not discovered by name checks. Moreover, the fact that the great majority of fingerprint-based background checks come back with a no record response is true of all applicant checks. That is not a reason to excuse the use of fingerprints for aliens seeking admission to or immigration benefits from the U.S., any more than it is to excuse fingerprints that are required of U.S. citizens in the many employment and licensing contexts involving background checks for criminal history using III information.

(3) Eliminating the Requirement for Follow-up Fingerprints. Under the interim extract approach, there is a requirement that fingerprints be submitted whenever there is a hit by a name check in order to get the full criminal history record. This requirement is totally missing in this proposal. Given the fact that applicants can wait for a decision on the visa or immigration benefits while fingerprints are run when there is a hit on a name, there is no reason to totally dispense with the followup fingerprint requirement during the interim name-check regiment under Section 403 of the PATRIOT Act, even if a way can be found of providing State and DHS with the ability to check names against the full III database, instead of the extract database (which is a subset of III). Moreover, as noted above, the proposal still ignores the fact that fingerprints are only submitted when the alien's name matches a name with a criminal history record. As a result, an alien with a hard to detect false ID would be able to receive a visa even though he or she may have criminal history record information under another name.

(4) Apparent Inconsistency with the National Crime Prevention and Privacy Compact. The proposal's attempt to redefine the processing of applications for visas or immigration benefits as including a criminal justice purpose creates an apparent contradiction or inconsistency with the terms of the National Crime Prevention and Privacy Compact which requires that checks of the III for non-criminal justice purposes be supported by fingerprints. The Compact was enacted by Congress and has been adopted by 22 states. It could undermine the integrity of the Compact to enact legislation declaring an activity to have a criminal justice purpose simply because Congress says it does, regardless of whether the declaration is consistent with how that language is used in the Compact and has been applied in practice. The Compact's fingerprint requirement was enacted for the same policy reasons discussed above regarding the unreliability of name-checks and the importance of using positive identification when a person is applying for benefits from the government where the security and protection of the public is at stake.

(5) No Consideration of the Budgetary Impact. This proposal fails to consider the budgetary impact of allowing DHS and State to have unrestricted administrative name-check use of and access to III criminal history records in processing alien applications for visas or for admission or adjustment of immigration status. U.S. civil applicants for employment or licensing or for positions of trust are required to submit fingerprints and pay a fee when a criminal history check of the III is required and authorized by law. Applicant fees typically include a surcharge that is used to support the operation the national fingerprint-based criminal history record system. If visa or immigration benefits can be processed without submitting fingerprints and a fee, not only will those benefits be granted without the greater security and accuracy of positive identification, the funds from the fingerprint fees will no longer be available to support the CJIS Division's record system. The lost funds will have to be made up through appropriations and perhaps otherwise subsidized through an increase in the surcharge in the applicant fees paid by U.S. citizens. There will also be a significant budgetary impact on the FBI CJIS Division that must be considered - approximately 20 percent of the non-criminal justice fingerprint submissions are from DHS and State and their elimination definitely affect CJIS's West Virginia workforce.

(6) Access to Non-fingerprint Based NCIC Records Does Not Require this Change: The proposal's reference to access to name-based files in the NCIC, such as the wanted persons file,

does not require this legislation. If desired, arrangements for access by State and DHS to such records can be made outside of the extract process under existing law.

Summary: In sum, whenever name-based searches are conducted utilizing the III for immigration and visa matters, such searches should be immediately followed up by the submission of fingerprints when a match occurs. More importantly, *all* aliens seeking a visa or an immigration benefit should have fingerprints taken of all ten fingers and have those fingerprints run against the III -- not just those aliens whose names happen to match. Aliens seeking these benefits should be required to bear the cost of processing the prints for the background check. These requirements are critical to ensure that immigration and visa decisions are based on accurate information. In addition, the collection of fingerprints would "freeze" an alien's identification -- preventing the alien from trying to use a different name at a later time. The collection of 10-fingerprints also would allow for the fingerprint's to be run against the FBI's latent fingerprint file. That file contains latent fingerprints taken from crime scenes and other locations of interest, such as scenes of terrorist activities.

USCIS Response to FBI Objection:

Since 9/11 (if not before) Congress has repeatedly emphasized and mandated the breaking down of artificial barriers to the sharing of relevant information between agencies. E.g. USA PATRIOT Act and Enhanced Border Security Act. At the highest levels, the Department of Justice (DOJ) has promoted this goal as well. See, e.g., Testimony of FBI Director Mueller before Senate Select Committee on Intelligence, Feb. 16, 2005 at 19 ("The FBI's Information Sharing Policy Group . . . brings together the FBI entities that generate and disseminate law enforcement information and intelligence to implement the FBI's goal of sharing as much as possible consistent with security and privacy protections."). DOJ's objections to this proposal are entirely inconsistent with this overarching Administration, DOJ and Congressional policy, and perpetuate the roadblocks to information sharing that prevent government agencies from communicating effectively with one another to prevent terrorism.

What this proposal seeks to do, in short, is no more than to ensure that those charged with the critical function of determining whether aliens will have temporary or permanent access to the United States through a grant of a visa, immigration benefit, or citizenship, are equipped with the same informational tools as law enforcement agencies, as their function is no less important in the war on terrorism. The FBI has provided direct access to NCIC III (via IBIS) to immigration inspectors at ports for purposes of ensuring that aliens who seek to enter the U.S. (i.e. an immigration purpose and benefit) are admissible, yet it has resisted providing that same access to USCIS personnel providing immigration benefits within the United States. This distinction is capricious, since the inspection and adjudication function are analogous to each other and of equal potential importance in fighting terrorism. DHS seeks to ensure the same type of direct access to determine whether aliens who file applications that can lead to their obtaining travel and entry documents (and work authorization) are also admissible, and if they are in the U.S., that they are not deportable due to disqualifying criminal records. DOS seeks the same direct NCIC III access in order to make determinations on aliens seeking visas to enter this country. The rationale for permitting direct access to immigration inspectors who have responsibility for approving an alien for the immigration benefit of admission to the

U.S. applies equally to DHS adjudicators and DOS consular officers who have responsibility for approving aliens for the immigration benefits and documents that allow them to enter (and remain in) the U.S.

DHS does take and submit ten fingerprints to the FBI for criminal history checks on aliens seeking many forms of immigration benefits (e.g. naturalization, adjustment to permanent residency, asylum, temporary protected status, among others). DHS is also expanding the categories of applicants and petitioners for immigration benefits and documents who will be required to submit full sets of fingerprints as rapidly as resources and available technology permit. However, direct access to NCIC III would greatly facilitate DHS' ability to identify, via name checks, those individuals who have a disqualifying criminal history record, but who might otherwise be missed while routine ten printing is being expanded. Direct name access to NCIC III will also assist DHS in identifying those individuals who may have positive "hits" that require further verification of the alien's identity through fingerprint submission. At the moment, criminal history "hits" are often received on aliens in the NCIC "wants and warrants" files and other NCIC files to which the FBI currently does permit DHS direct access, but the information is not necessarily disqualifying for the particular immigration benefit (e.g. certain misdemeanors). With direct NCIC III access, DHS could "triage" its benefit cases and focus enforcement efforts on those cases where the "hit" was of a type likely to disqualify the person for the application or petition at issue. If it received such a "hit" via a name check of NCIC III, DHS or DOS could follow up by requesting fingerprints of the individual for further verification of identity so as not to deny a benefit to the wrong individual. Finally, direct access to NCIC III would assist DHS adjudicators in determining what may have happened in terms of conviction, acquittal or other follow-up activity in the case of an individual for whom DHS has received a "hit", or an FBI name check "hit" from the FBI's investigative records for which the FBI does not require DHS to submit fingerprints.

No one would dispute that fully fingerprint-based checks are more reliable to determine identity than name checks, but DOJ's position that name-check access should not be provided at all because print-based checks for all should be done is, essentially, rejecting a substantial improvement because it does not result in perfection. Indeed, the same argument suggests that law enforcement use of NCIC information without full prints is equally flawed, yet law enforcement agencies, in matters where liberty is at stake, are authorized to use the system. Furthermore DOJ's position that name checks are "not reliable" is contradicted by its own stated position to Congress; in a draft letter to Chairman Sensenbrenner circulated interagency in early March, DOJ took the position that a match between a visa applicant's identifying information (e.g., name, date of birth, place of birth, country of citizenship) and a record in the terrorist watchlist by itself provides reasonable ground to believe that the alien is inadmissible, and thus that the visa must be denied. How can DOJ take this position on the one hand, while on the other argue that the Department of State should not be permitted to do name-checks of criminal history information for the purpose of determining visa eligibility because of their "inherent unreliability"?

DOJ's opposition cites budget concerns. In essence the DOJ argument is this: DHS should be required to submit fingerprints rather than have name-check access, so that the FBI can continue to collect fees to pay the salaries of the people who look at the fingerprints. We do not believe that this argument is a credible reason not to share information, and it is thoroughly inconsistent with the repeated public statements of DOJ and the FBI that their goal is to remove barriers to interagency information-sharing.

Mr. ROYCE. Thank you, Mr. Maxwell. And thank you for discharging your responsibilities under the Constitution.

I think that you can take some optimism in the fact that many of your charges have been very much vindicated today. Because in the reporting of your testimony here, in the newspapers across the country is also reference to a response by the Administration. And that response is as follows:

“Washington. Acknowledging widespread security lapses within the nation’s security system, the Bush Administration announced today it is opening anti-fraud task forces in 10 cities, including Atlanta, to crack down on fake driver’s licenses, passports, and other methods used to obtain immigration benefits.”

And this is what I really want to share with you. This is the quote from the Assistant Secretary:

“Millions have used fraudulent documents to obtain work permits, or to provide cover for criminal or terrorist activities, said Julie Myers, Assistant Homeland Security Secretary for Immigration and Customs Enforcement.”

And she cited in her words, “an epidemic of bogus identification documents generated by highly sophisticated crime networks.”

And then the news reports go on to say:

“The announcement came the day before a former Homeland Security official was scheduled to tell Congress that the Department was now awarding immigrant benefits, including citizenship, without proper background checks, and has failed to investigate nearly 600 cases of alleged bribery, money laundering, and other criminal activities by its own employees.”

I would say that your testimony has already had a pretty major effect. The report says that your memos and your words show an agency awash in security problems and lacking the resources to open investigations, even into the relatively small number of national security cases.

That is what brings us back to your testimony here today, with this announcement of this effort to open these anti-fraud task force in response to the millions of individuals who have committed document fraud in cities across the United States. Let me ask for your observation or response to that initiative, that initiative announced the day before you were set to testify, and referencing your testimony here today.

Mr. MAXWELL. Well, I am happy to hear that the Department is taking a hard look at the, quote, rampant fraud that is ongoing external to the Department. I wish they would take a hard look at the rampant fraud that is taking place internal to the Department, as well.

Enforcement really is only one side of the equation. And I will come back to my testimony and reiterate that the immigration system itself needs to be reengineered. Without reengineering the system, it will continue to put us into this very same place.

Mr. ROYCE. So you don’t have a lot of confidence in that task force.

You know, the GAO reports now—there has been eight of them that report extensive fraud in the granting of immigrant benefits.

And now, with this reporting today, we find that there is an acknowledgement of millions of individuals who have taken advantage of document fraud. How much confidence, then, do you have, would you say at this point that these task forces will be able to root out that fraud?

Mr. MAXWELL. I don't think that the enforcement action alone will be highly effective. I really don't have much confidence that they will be highly effective at all.

If you look at the statistics they present themselves, you will see that their arrest statistics over the course of the year show, as reported in the open-source media, an increase in arrests of less than a dozen¹ in a year.

Internal statistics are much different than that. And you will find that ICE actually declines to investigate nearly 70 percent of the fraud referrals that CIS sends to ICE.

Mr. ROYCE. 70 percent.

Mr. MAXWELL. 70 percent.

Mr. ROYCE. They just decline to investigate those fraud referrals.

Mr. MAXWELL. They decline to investigate 70 percent of fraud referrals. Now, that number has been provided to me from the Director of FDNS. So he has been tracking this for over 2 years. And obviously, that is a substantial amount of fraud that is not being investigated.

Mr. ROYCE. I am trying to understand what I think most Americans can't understand about this situation. Why do you believe that your national security concerns were being ignored within USCIS? Do you think it was embarrassment that the system was in such poor shape? Or was it political expediency? Why weren't you given support, you and your agents, for what you were attempting to do in investigations?

Mr. MAXWELL. I have come to the conclusion that there really was a convergence of factors that were affecting our operation.

One, CIS was set up to be a service agency, and very quickly adopted a mindset of a service agency. So philosophically, law enforcement was——

Mr. ROYCE. Can you give us an example of that?

Mr. MAXWELL. Well, certainly. Just last night, a CIS adjudicator was able to contact me, and said that her supervisors were pressuring them to adjudicate 16 cases per hour. That is every 3.7 minutes adjudicating a case for benefits. That is just a staggering statistic. That is just a stamp every 3 minutes. Where is the quality assurance in that process? I would question where the quality assurance is in that process. Where is the fraud detection in that process?

Now, put on top of that statement that they are processing an application every 3.7 minutes with the documents we have, and the statements we have from individuals saying they actually receive benefits, cash bonuses for positively adjudicating these cases, and you begin to worry that these folks would rather grant the benefits and receive a cash bonus than deny a benefit. And you are setting the system up for——

¹Following correction sent by Mr. Maxwell: Increase in arrests is 91 in one year. "Less than a dozen" is not correct.

Mr. ROYCE. Well, here is what the GAO is worried about. Supervisors will receive a 2-day time-off award if their group has the highest numbers of completions for the quarter. So you get a time-off incentive award program. This maybe is why the GAO says that "adjudicators we interviewed reported that communication from management did not clearly communicate to them the importance of fraud control; rather, it emphasized meeting production goals designed to reduce the backlog of applications almost exclusively."

Mr. Maxwell, what is the national security implications for security of the GAO's finding, and of documents which indicate, you get 2 days off if you just rubber-stamp and run things through the process?

Mr. MAXWELL. Again, the system has been designed at this point to allow for the benefits adjudications to go through the system with very little quality assurance. In fact, employees are tempted to grant benefits in order to receive cash, promotions, time off, rather than deny the benefit.

Supervisors have to review denials. They do not have to review approvals.

Mr. ROYCE. And this is all post-9/11.

Mr. MAXWELL. All post-9/11, yes, sir.

Mr. ROYCE. In your testimony you state that Director Gonzalez told staff of two foreign intelligence operatives who work on behalf of USCIS at an interest section abroad, and who were assisting aliens into the United States as we speak. Obviously that statement is of serious concern to Members of this Subcommittee.

What steps are being taken to address this, if I could ask? Is there any other information that you can share with us in an open forum? One I can think of is, are these foreign intelligence operatives from a hostile power?

Mr. MAXWELL. I am not aware of any steps that have been taken to mitigate this issue. And in an open forum, I don't think we should discuss further specifics of that case.

Mr. ROYCE. Then let me go to Ms. Kephart for one question that I have for her before I go to the Ranking Member for his questions.

I wanted to ask you, Ms. Kephart, in your written statement you mention that Hezbollah has successfully smuggled operatives across our southern border. Other Hezbollah members have used sham marriages to gain entry into the country, as you told us. In your estimation, which terrorist organizations do you believe are most actively and most effectively exploiting our immigration system?

Ms. KEPHART. I have to go on the evidence that I have had. And I would say that the top three would be al-Qaeda, Hamas, and Hezbollah.

Hamas has a lot of charitable work they do in this country, a lot of financial resources here in the country. It is important for them to come in and stay for a long period of time.

Hezbollah operates a little bit differently. Hezbollah is more of a criminal organization. Their activities here have often been sort of mafioso-like. The cigarette scam coming out of North Carolina. That was connected to Detroit and Canada, and back to senior leadership back in Lebanon. These are folks who need to stay here

for long periods of time because they are conducting millions of dollars worth of scamming here.

And then al-Qaeda, often the folks that I have focused on there are people that have been convicted for terrorist activity, so they are more of the operative type. And they have sought a variety of different types of benefits.

But the benefit often goes with what their purpose is here, while they are here.

Mr. ROYCE. But Hezbollah is supported by Iran, which is a state-sponsor of terrorism. If we should ever have major disagreements with Iran where push comes to shove, the fact that all those operatives are in the United States and have used benefit fraud in order to work their way into the system could be a major national security problem for the U.S.

Ms. KEPHART. Yes, sir. It is a concern both on the illegal stance and the legal stance with Hezbollah. Because, as I talk about in my testimony, we know of at least one Mexican-Lebanese alien smuggler who smuggled in about 200 sort of low-level operatives, and maybe a few higher-level operatives. So that is the illegal side.

And then we also have the legal side, with the sham marriages. Those sham marriages, I have to say, were some of the most extensive abuse of the immigration benefit system that I studied when I did this study.

Mr. ROYCE. Sounds like we need more investigators, not less. I am very appreciative of the whistle-blower who has come forward to testify today, and to many of his colleagues who have shared information with us.

Ms. KEPHART. We need as much law enforcement support of fraud as we possibly can get.

Mr. ROYCE. Thank you. I am going to go to Mr. Sherman, the Ranking Member, for his questions.

Mr. SHERMAN. Mr. Chairman, your staff has just distributed this officer time off award document, which seems to indicate that if an officer approves, well, completes six files a day, they are eligible for a 1-day award.

Mr. Maxwell, you were talking about 16 an hour. I am off just by a little bit.

If an officer is able to complete six adjudications a day, is that thought to be relatively fast in the Agency? Or is the Agency looking to do 16 an hour?

Mr. MAXWELL. I would say that this is no longer actionable intelligence, sir. The pressure is on for the Agency to beat the backlog elimination deadline, and so they are increasing the pressure on the adjudicators to grant benefits even more quickly. So they are being told by the supervisors 12 to 16 applications per hour.

Mr. SHERMAN. Mr. Chairman, we need to make an official inquiry of the Department of Homeland Security. Because if, in May 2004, it was thought laudatory to complete six a day, and today people are being pressured to complete 16 an hour, then basically the Agency has decided to stop doing its job. And this has got substantial implications for our national security.

Mr. CULBERSON. Mr. Chairman, would the gentleman yield? For the record, I personally obtained that memo. That is actually from

the Houston CIS office, and I personally verified the accuracy of this policy.

And the witness is correct. The pressure has actually been, Mr. Sherman, to increase the number of visas that are granted, the benefits that are granted. And background checks are not being performed. The focus is customer service for the foreign national, not national security, and this is evidence of that.

Mr. SHERMAN. I think this is evidence of it, but it seems, as in Houston, they are at least giving them an hour, or slightly more than an hour, to do the job. And Mr. Maxwell is telling us about, I assume, a Washington, DC, office, where they are given 3 minutes.

And as much as I would agree with you that an hour does not make a good national security clearance process, 3 minutes is what shocks my conscience. And I want to find out whether it is an hour or—I have no doubt that this document is right, and that they are encouraged to do, oh, 10 or more, you get a week off.

So at least in the Houston office they are encouraged to do 10 a day. He is talking 16 an hour. I want to find out which it is.

Mr. Maxwell, you have brought to our attention some 2700 complaints against USCIS staff during the roughly 2 years that you were there. More than 500 of these involve criminal allegations against USCIS personnel.

Now, a lot of those are just angry applicants. And lawyers, immigration lawyers, throw in the kitchen sink. You didn't approve this, you must be corrupt.

What portion of those 2700 complaints are not from applicants and their lawyers, but rather are from elsewhere? And who else is making these complaints? Who is accusing USCIS employees of criminal activity?

Mr. MAXWELL. In my written statement I did delineate the fact that the majority of the complaints that did come in of the 2771 were, in fact, service complaints, individuals complaining that they had not received their benefit in a timely manner.

The second-largest chunk of complaints were what we considered administrative complaints. They may have been criminal, but it was unlikely that a U.S. attorney would have taken that case on for criminal prosecution. Or it may have been simply an employee misconduct case that was administrative in nature only.

The third chunk of complaints were these 528 that, on the face, referenced criminality.

All of the complaints came to us from either the DHS Office of Inspector General. Approximately 1800 of them had been referred to us by the DHS Office of Inspector General. Approximately 1,000 had come to us from the ICE Office of Professional Responsibility. The others, in much smaller numbers, had come to us from employees directly who were reporting to us that other employees had been involved in misconduct, or from other law enforcement agencies, the DEA, the State Department, or we developed leads ourselves.

Mr. SHERMAN. Now, you brought to our attention that you have told USCIS brass what was going on. Can you tell us particularly who was the highest-ranking official in USCIS or the Department

of Homeland Security that you had a face-to-face discussion with, and you said this is happening? And what was the response?

Mr. MAXWELL. As far as within USCIS, I had face-to-face discussions with Chief of Staff Tom Paar, Assistant Deputy Director Robert Divine, and the Director Emilio Gonzalez.

Mr. SHERMAN. So when you told the Director what was happening, what was his response?

Mr. MAXWELL. When he was offered the documents, his response was I may come back to you at some time for those documents.

Mr. SHERMAN. Don't call me, I will call you?

Mr. MAXWELL. That is not specifically what he said, but what he said is I may come back to you at some time for those documents.

Mr. SHERMAN. Did he?

Mr. MAXWELL. No, sir, he did not. And that was my third offer.

Mr. SHERMAN. Okay. So you repeatedly brought this to the attention of the Director of USCIS, who just didn't actually ask for—said he might be interested in looking at the documents, but never was.

Mr. MAXWELL. He stated he might come back to them at some point.

Mr. SHERMAN. Did you talk to anybody at the Department of Homeland Security, outside of USCIS?

Mr. MAXWELL. There was written correspondence and classified phone communications that did go up to the Department.

Mr. SHERMAN. Do you have any of the documents, do you have any of that written correspondence?

Mr. MAXWELL. We do have the unclassified written documents here. Yes, we do.

Mr. SHERMAN. Have you shared them with Committee staff?

Mr. MAXWELL. I believe Chairman Royce has those, yes.

Mr. SHERMAN. I know minority staff would also like to look at those, and some ought to be made part of the record if they are not classified.

Mr. ROYCE. We will share all of that information with all the Committee Members.

Mr. SHERMAN. Good.

Mr. ROYCE. Thank you, Mr. Maxwell.

Mr. SHERMAN. Do I have time for one more question?

Mr. ROYCE. Well, we are out of time. We are going to go to Mr. Tancredo, and then down the line. Thank you, Mr. Sherman.

Mr. SHERMAN. Thank you.

Mr. TANCREDO. Thank you, Mr. Chairman. Mr. Maxwell, you mentioned in your testimony the Office of Human Capital as one of the obstructionists. What is exactly the role of the Office of Human Capital? And how were they able to actually override the director?

Mr. MAXWELL. I think to best describe the Office of Human Capital would be to traditionally call them the Human Resources Department. They were responsible for all the hiring processes within USCIS.

So if I received authorization to hire some number—in this case, up to 130 personnel—it was incumbent upon the Human Capital Office to actually post those vacancies on the OPM website, and work the hiring process and put candidates in front of me on paper so I could select those candidates.

Simply by manipulating the process, they were able to slow down the hiring process, and grind it to a halt. And on September 5, 2005, the chief of human capital actually said, in an open meeting at which the acting deputy director, the chief of staff, my deputy, the head of fraud detection unit, and others, a total of 12 senior officials, she actually stated that she felt that USCIS should not have a law enforcement component. And therefore, stopped the hiring process of criminal investigators. She made that statement.

Mr. TANCREDO. So it is certainly part of the culture in USCIS that we are dealing with here. It is not just incompetence necessarily, it is not just on the part of a few people who are trying to advance their own agenda. I mean, your testimony would certainly lead me to believe that the culture inside the Agency is one that does not allow for, or is antithetical to, the actual enforcement tasks that you and the other members of your divisions were responsible for.

Mr. MAXWELL. I have heard many a time, sir, that CIS was a service organization, not a law enforcement organization.

Mr. TANCREDO. The Attorney General Gonzalez said that he promoted you just before you resigned. Could you tell us about that promotion? And under what circumstances you resigned?

Mr. MAXWELL. In December 2005 my position, the director's position, was posted on the OPM website as a GS-15 position. I had been in an acting GS-15 position prior to that date, and would have to compete after nearly 2 years in the director's position, for the permanent slot.

It came to my attention that a member of the interviewing panel for that position had been making numerous derogatory statements about me to the chief of staff, who was the hiring official, and had, in fact, made statements to DHS management that he was going to make a run for my agency, make a run at me. I was, in essence, warned that the agency was going to come after me.

So I had no confidence that despite my ability to compete with anybody for that job, that it was going to be a fair competition.

With all of that in the background, I was keeping the Director, Mr. Gonzalez, involved, CCing him on all of these emails that were coming and going back and forth from the Department, and all of the warnings that I was about to be sacked, and asked him to intervene personally to prevent the sacking of my office, and me personally. I first asked the chief of staff, and he declined to stop the attack. I asked Director Gonzalez to stop the attack.

At some point in early January, he called me at home and said, what do you think of my decision. I didn't know what he was talking about. He said well, there were a lot of surprised people today when I decided to hire you for your position. And that is where we left it.

I don't know what he meant by that. Specifically, I took it to mean that there was no way that I was going to be selected for that position based on who was going to be on that interview panel, and he just overrode that panel, made the decision himself, much to the chagrin of the chief of staff.

Mr. TANCREDO. And the director brought up apparently spies working for USCIS at a meeting. I mean, used those words, according to what I understand in your testimony?

In what context did he bring this up? What was the response? And are these, quote, spies still there?

Mr. MAXWELL. That meeting was a Wednesday morning meeting that is held every week with senior leadership at headquarters. And it caught most of us off-guard. It was an open meeting, unclassified. And he simply asked the question, how is it that two foreign intelligence agents or officers can be working an overseas post on behalf of USCIS.

Again, I think beyond that, it would be inappropriate to discuss the merits of that case. But that was the statement.

Mr. TANCREDO. Thank you.

Mr. MAXWELL. I don't know what has become of that situation.

Mr. TANCREDO. Thank you, Mr. Chairman. Thank you, Mr. Maxwell.

Mr. ROYCE. Thank you. Mr. Carnahan.

Mr. CARNAHAN. Thank you, Mr. Chairman. And to you, Mr. Maxwell, I want to say how much I am glad to see you sharing this information with this Committee, and with the American people.

We were shared the memo from Houston about the quotas that were given out in that one particular office. Do you have knowledge about these same type of quotas or incentives being used in other offices around the country?

Mr. MAXWELL. Yes, sir, I do. In fact, I met with a manager recently, since I resigned. I met with a manager who told us of benefits parties that they have at the end of a month, where they will separate employees into teams and see who can adjudicate the most benefits at the end of the month. And each team that adjudicates the most benefits at the end of the month will get some sort of prize. It may be movie tickets, it may be dinner out. It may be cash.

But we also have documentation where performance appraisals, promotions, if you will, are based upon the number of affirmative adjudications. So employees are challenged with their own promotion potential. If they don't positively adjudicate a case, they are in fear of not promoting. And I think again, that sets the system up to be skewed one way, rather than effectively looking for fraud.

Mr. CARNAHAN. And you have documents to—

Mr. MAXWELL. Yes, sir.

Mr. CARNAHAN [continuing]. Describe these benefit parties?

Mr. MAXWELL. Yes, sir. And people willing to testify, if subpoenaed.

Mr. CARNAHAN. And you have the names of people that were involved in those parties, or promoted those parties?

Mr. MAXWELL. Their statement was, if subpoenaed, they are willing to testify. But certainly, they are afraid of retaliation, for fear of their jobs, that if they come forward, you know, senior management would come after them.

Mr. CARNAHAN. I guess I am astounded to hear this, like many listening today. But why do you believe that our clear national security concerns are being ignored? Was this a function of bureaucracy, embarrassment that the system wasn't working? Political expediency? Why do you believe this was happening?

Mr. MAXWELL. It really is this convergence of factors. The system itself is broken. It is embarrassing.

The internal affairs function itself is a no-win situation for me to be in. I am not going to be bringing good news to the director of any agency. It is dirty laundry, for lack of a better term. I am not the good humor guy. So it is not an enviable place to be.

But it is the truth. And sometimes the truth hurts. And this Agency needs to face the fact that not only is the immigration process broken, but there are substantial problems, corruption problems, within the Agency. That information is embarrassing. It could damage political careers. And I believe that is why we were just obstructed from doing our job.

Mr. CARNAHAN. I guess I would like to wind up with trying to get an understanding of who was driving this policy or this culture within the Agency.

Mr. MAXWELL. At this point, sir, there is actually quite a bit of finger-pointing going on. But we have documentation that points all the way up to high levels in DHS, from Janet Hale to the deputy secretary's office, to the chief of staff within USCIS, to the acting deputy director, into other agencies, including ICE.

A lot of individuals had their hands in an attempt to influence our ability to do our job. And we provided all of that documentation to the FBI, and perhaps they would share more information with you regarding their findings.

Mr. ROYCE. Mr. Barrett of South Carolina.

Mr. BARRETT. Thank you, Mr. Chairman. Thank you all for coming today, too.

I guess, Mr. Maxwell, I want to ask you one question. We are in the middle of a major immigration debate here. The House, as you well know, erred on the side of security. The Senate, in its infinite wisdom, is trying to work on what to do with the folks that are here now.

Answer me a question. If this system is broken not only for the people coming in, but the people that are here today, what kind of sense does it make to all of a sudden open this system wide open for possibly millions more? I mean, tell me the thinking there.

Mr. MAXWELL. I think it may be, with all due respect of course, it may be inappropriate for me to comment on what may be in the future. Certainly there is plain evidence that the system that exists now cannot handle the work load that exists now.

While I was in my role as Director of OSI, I participated in early working groups regarding the temporary worker program. And if told to implement that program, as a good soldier I would have marched out and done that. I choose not to get involved in the political debate.

However, it is clear that the system that exists now, the process that exists now, cannot suitably protect the homeland based on the work load that we have now. And the thousands of pages of documents I have provided to multiple agencies, including this body, and the nine reports that have come out in the last year, all say the exact same thing: The system itself is broken as it exists today.

Mr. BARRETT. Ms. Kephart, I would like some comments from you, too. I mean, you talked about your system, and I read your testimony. And it all makes perfectly good sense. And comment on that.

And comment, too, if today all of a sudden I could wave a magic wand and make my border secure, how long would it take to implement the system that you are talking about? I mean, once everything is safe and secure, so to speak, coming in and out of the country, to implement the system that you are talking about.

Answer the question I asked first, and then about the implementation of the system, how long do you think it would take to make it fully operable.

Ms. KEPHART. Okay. In terms of a temporary worker program, I do not believe—I spent a long time on the 9/11 Commission and prior to the 9/11 Commission looking at the immigration service bureaucracy.

You know, we spent a lot of time working on our recommendations on the 9/11 Commission. So I feel like I can say about the temporary worker program that the system cannot handle it right now.

Until we have biometrics embedded in every single application, until we have traveller histories that are electronic, that all adjudicators have access to to verify those identities, and have access to forensic document expertise, we are not going to have a system that can handle a crush of millions of new applications under a temporary worker program.

It is not a sexy thing to talk about the bureaucracy. But in the end, I think that is what it comes down to. Whatever your policy view is on what we need to do in the future, some things have to be in place.

How long to implement? You know, I believe that there is a ton of really good technology right now that could ramp up our ability for adjudicators to get the information they need in a timely manner. You still need well-trained adjudicators, you still need much clearer guidelines on what is appropriate to adjudicate and how to adjudicate it, and what becomes a national security concern. And all those things of gray areas that adjudicators just don't have right now.

I was shocked when I looked at Mohammed Atta and Marwan Al Shehhi's immigration benefit to find that the adjudicator wouldn't have even thought to call the school to find out if they really needed to be in school for another 9 months. It wasn't part of her guidelines. It was just, she had what she needed in front of her to rubber-stamp, and she moved on.

So to implement that fully, I don't think it would take as long as people think, if we had everything in place policy-wise, training-wise, and technology-wise. I think you could do it in a few years. I really do.

Mr. BARRETT. Thank you.

Mr. ROYCE. Mr. McCaul from Texas.

Mr. MCCAUL. Thank you, Mr. Chairman. Before running for Congress, I worked in the Justice Department on counterterrorism investigations after 9/11. The main tool we had in getting to the terrorists was immigration violations, so I know how important this is.

Mr. Maxwell, your testimony is not only disturbing, but raises serious issues, to the extent that we, as a nation, would not only open

our arms to terrorists, but in addition give them benefits. That is appalling to me.

And I want to follow up, there is an article in the *Washington Times* that I want to follow up on a couple of issues.

The issue that a foreign intelligence agent from Iraq could have worked in our government with USCIS is very serious. When you did your investigation, it reports it turned up national security questions about nearly two dozen cases.

To the extent you can, can you comment, first of all, on this foreign intelligence agent. Secondly, on these two dozen cases that you saw.

Mr. MAXWELL. With regard to the individual himself, of course, our jurisdiction was solely limited to USCIS employees. He is no longer an employee, so our case was closed. And I would refer you to the FBI for any further information, and perhaps a closed and a classified discussion with me for more in-depth material.

But in general, there were numerous indicators in this individual's background that he had received trade-craft training from multiple foreign intelligence agencies, and should not have been hired by USCIS. That was clear in his background investigation, in his security jacket, if you will. He should not have been hired by USCIS, and had been denied employment by other Federal agencies for those same national security concerns.

Following a lengthy investigation that tracked him around the globe, primarily across the Middle East, he departed the country, resigned his employment at USCIS, and our investigation of him ended.

We then went back and looked at his work product. He was an asylum adjudicator. There is no true internal audit function within USCIS. You don't have auditors going out and proactively auditing systems and programs within CIS. They have what is called a self-audit program. They hand you a piece of paper as a department head and say tell me how healthy you are. It is like going to the doctor, and he says are you healthy. He doesn't perform a physical exam, he just prescribes the medication based on how you tell him you feel.

So we went back and looked at his work product. And in his work product we discovered that approximately two dozen of his asylum cases were, in fact, asylum candidates from countries of concern that, when entered into the database, came back with national security hits. And we referred those hits immediately to the FBI.

Mr. McCAUL. And is it your understanding the FBI is currently investigating those cases?

Mr. MAXWELL. At the time they were investigating those. And the rest of that information would be in another forum.

Mr. McCAUL. Mr. Chairman, I would now request that we do have a closed-door briefing with Mr. Maxwell, if that is possible.

Mr. ROYCE. We intend to do that, and I appreciate that suggestion.

Mr. McCAUL. That is why you said that they are using our system against us.

There is also, in this *Times* article, it says that USCIS officials had deceived Congress. Can you elaborate on that?

Mr. MAXWELL. There is a history of USCIS officials being tapped by Congress to produce documentation reports. And in their response, those reports will evolve. There will be multiple evolutions of the same report.

And typically, those reports, from version one through version two through version three through version four, tend to redact important information. I have provided some of those examples in documentation to Congress and to others. Examples of redaction regarding difficulties in obtaining national security information for adjudicators.

I think that this body, or the GAO, or the IG would perhaps be a better body to go back to USCIS and ask for multiple versions of documents, to see more examples of what I am talking about.

Mr. MCCAUL. It appears we are more concerned about customer service far more than any law enforcement component.

I have a question for Ms. Kephart, but I see my time is expired. Mr. Chairman.

Mr. ROYCE. We will have to go to Mr. Poe. Thank you, Mr. McCaul.

Mr. POE. Thank you, Mr. Chairman. I have a question for each one of you. Thank you both for being here.

Mr. Maxwell, I have spent most of my life putting folks in jail as a judge in Texas. I have had 22 years. So I don't like corruption. I don't like criminals. I don't care where they come from.

Would it make sense, since you have said there is corruption in the system, rather than continue this process of letting people game the system to get in this country to do us harm, to shut it down? Shut it down for a period of time, until all of us figure out who the bad guys are, get rid of the pollution in the system, and restructure it in a way that is best for the United States.

Mr. MAXWELL. My professional opinion is that the system itself does need to be reengineered. It has to be reengineered from the ground up, or we will just continue to replicate the problems that—

Mr. POE. What about shutting it down for a period of time, until we figure out what has occurred, and what we can do to make it—

Mr. MAXWELL. Practically speaking, if that could be done, and you could clean out the system and rebuild a system that was secure. That would be marvelous.

But to just shut down the system as if it were a computer full of viruses, and then turn the system back on and hope the viruses are gone, we know they won't be gone. It will slowly bog down, and sooner or later you come back to this catastrophic failure that we face now.

So rebooting the computer only works if you put in a new system.

Mr. POE. So we need a new system.

Mr. MAXWELL. Absolutely.

Mr. POE. Quickly, give me an estimate, in your opinion, just an estimate of people that game the American immigration system a year, and fraudulently come into this country, gaming it unlawfully coming here. Can you give me an estimate?

Mr. MAXWELL. I can't even begin to give you an estimate.

Mr. POE. Maybe Ms. Kephart can.

Ms. KEPHART. When I was on the September 11 Commission, one of the things that I did was interview senior officials. I interviewed about 75 folks in the immigration field as a staffer on the 9/11 Commission.

When I was doing immigration benefits interviews, the senior official that I spoke to said that although they had done no fraud assessments at the time, estimates were as high as 50 to 75 percent on fraud.

Mr. POE. How many people would that be?

Ms. KEPHART. I don't know how many people, because you would have to deal with the millions of applications.

Mr. POE. So 50 percent of them are gaming the system?

Ms. KEPHART. Right. But recently the fraud detection unit, in the past year, started doing for the first time ever benefit fraud assessments, extremely beneficial thing to do. They did a fraud assessment on the religious worker visa, and a fraud assessment on the replacement permanent residency card.

What they found was the fraud in religious worker benefits was 33 percent. The fraud in the permanent residency cards was 1 percent. You know what the difference was? The difference was that the religious worker visa does not require biometrics when you go for that application, whereas the permanent residency card does.

I think that, for me, is a big policy argument on biometrics. But 33 percent in religious workers, that poses some interesting questions right there.

Mr. POE. One more question. Do you think, based on your experience in the 9/11 Commission, that the United States ought to implement a universal requirement for passports for everybody that comes into the United States from anywhere? Including Mexico, the Caribbean Islands, and Canada, as a security measure?

Ms. KEPHART. Right. Actually, one of the things we did recommend on the 9/11 Commission was a verifiable biometric plus citizenship requirement for everybody, including U.S. citizens who come into the United States from Mexico and Canada. That became the Western Hemisphere Travel Initiative, which you all passed in the Intelligence Reform Bill of 2004. And I have actually testified before House Small Business, 25 pages specifically on that particular issue, sir.

Mr. POE. So the answer is yes, you think we ought to have passports.

Ms. KEPHART. Yes, sir. Thank you for asking.

Mr. POE. Instead of all these other documents, Baptismal certificates and all that stuff.

Ms. KEPHART. Right. We need a way for immigration officers, when folks are coming into the country. You have 3 minutes perhaps or an hour for an immigration adjudicator. You have about 45 seconds to a minute for your immigration inspector at a border. They need to have a document they can rely on to look at to verify information about somebody.

Mr. POE. Thank you, Mr. Chairman.

Mr. ROYCE. Mr. Poe, to answer your question, six million applications were filed last year seeking an immigration benefit. If we quote Julie Myers yesterday, Assistant Homeland Security Secretary for Immigration and Customs Enforcement, she said mil-

lions have used fraudulent documents to obtain work permits or to provide cover for criminal or terrorist activities. She cited an epidemic of bogus identification documents generated by highly sophisticated crime networks. So millions would be the answer.

We will go now to Mr. Weller of Illinois.

Mr. WELLER. Thank you, Mr. Chairman. Mr. Maxwell, Ms. Kephart, thank you for participating in today's panel.

Mr. Maxwell, you described in your testimony how terrorists have used dual U.S.-foreign citizenship to disguise their travels in and out of the United States. We also have the situation where there are countries in our own hemisphere that, for a price, will sell citizenship, or sell you a passport, implying that you are a citizen of that country. How widespread is this problem? And what are your thoughts about what we need to do?

Mr. MAXWELL. I can't specifically comment as to how widespread that problem is. I can refer you to some documentation we provided to this Committee and others that came from ICE in December that specifically talks about passport fraud in Mexico, and how passport fraud coming out of that country is a, quote, grave national security threat and terrorism threat to our country.

Again, the law enforcement-sensitive document is heavily redacted, and can be provided in another forum; unredacted, as need be. But certainly, we were able, I was able to uncover multiple instances where, even with biometric systems in place, criminals were able to defeat the biometric systems with relative ease, and use the same alien number to have a passport granted to them. Multiple individuals using the same A number were able to have benefits granted to them even with biometrics.

So with these passport issues specifically, they were able to get work documents, so on and so forth, with these fraudulent passports coming out of Mexico.

So we know it is an issue. And ICE calls it, quote, a grave national security issue with terrorism consequences.

Mr. WELLER. How about the case, though, where there are certain governments in our own hemisphere, in the Caribbean in particular, that, for a fee, that the government will sell you a passport, will give you something they call economic citizenship if you make a statement you are going to invest so much money in that particular country? What is your view of that process? And what threat do you see as a result of it? And how many people do you think are using that to enter the United States?

Mr. MAXWELL. I don't have any specific information I can provide you on that today.

Mr. WELLER. Ms. Kephart?

Ms. KEPHART. If I may go back to I think your prior question and talk a moment about biometrics.

Biometrics, I know I have mentioned it a lot. It is not the sole solution here. It has got to be coupled with traveller histories, and then on top of that you have got to have a really robust fraud detection and deterrence and interdiction program, where you have got pattern analysis and fraud assessment built into the system.

You have got to have a system where you are bouncing information, real-time, of new applicants off of old, known fraud activity. So that you can come up with assessments on an individual appli-

cation of whether this is a likely issue of an alien committing fraud or not, so it can be referred on, or the benefit granted in a timely manner.

You need a whole series, a layering of support on the fraud side, I think, to make this all work well.

Mr. WELLER. And what is your view regarding certain governments selling passports and citizenship to people who are not citizens of their country, for a fee?

Ms. KEPHART. It is a problem on the international front. One of the things I think the United States needs to do a lot more and a lot stronger is engage our international partners on terrorist travel and fraudulent travel around the world. I think it needs to become an international priority when we talk to our neighbors abroad.

It is nothing we can control unless we use other means, other types of carrot-and-stick activities with our neighbors to try to get them to stop. But it needs to be a priority when we talk to our neighbors.

Mr. WELLER. Well, we know who these countries are that are selling these documents, implying that these individuals are citizens of their country. Have we asked for a list of those from those respective governments so we know who they are?

Ms. KEPHART. I don't know, sir. You would have to ask the State Department, I think, for that.

Mr. WELLER. Okay, thank you.

Mr. ROYCE. We need to go to Mr. Culberson from Texas.

Mr. CULBERSON. Thank you, Mr. Chairman. Is Mexico one of those countries selling false passports or identification cards?

Ms. KEPHART. Mr. Weller might know the answer to that. I don't know.

Mr. ROYCE. Ms. Kephart, you could cite in your own testimony. You have an example in the Mexican Consulate overseas. Why don't you reference that?

Ms. KEPHART. Oh, right, that is true. The Hezbollah marriage scam. Actually there are two different things here. There is a marriage scam whereby they were abusing immigration, our immigration adjudicators overseas with marriage fraud.

There was another case of the alien smuggler, Bugader, who was a Mexican-Lebanese alien smuggler, who was working out of the Mexican Consulate in Lebanon. They were selling false visas, \$3,000 a shot usually, pulling people into Tijuana, and then smuggling them into the United States. So there was corruption there.

Whether selling false passports, they were visas in that particular case.

Mr. CULBERSON. Mr. Chairman, I know our time is very limited, and I don't want to take much time. But I do want to state for the record, and ask that these be entered into the record.

The White House is well aware of this. I notified the White House in a letter I have here dated May 28, 2004, of the results of my personal investigation of the Houston CIS office, which uncovered—and I brought it to the White House's attention on May 28, 2004 in this letter to Andy Card, the White House Chief of Staff—the problems that Mr. Maxwell is testifying to here.

And the response I got back was we are looking into it. And nothing ever happened. Nothing was ever done to counteract the town hall meeting that the top two Federal immigration officials in Houston participated in for illegal aliens telling them that the Bush Administration was not going to enforce immigration laws; that there would not be any raids on workplaces, putting essentially a big neon sign over the city of Houston that any terrorist could come right in, and we are not going to either run you down or attempt to identify you. I would like to have that entered into the record.

Mr. ROYCE. Without objection.

[The information referred to follows:]

COMMITTEE ON APPROPRIATIONS
 SUBCOMMITTEE ON
 TRANSPORTATION AND TREASURY
 SUBCOMMITTEE ON
 THE LEGISLATIVE BRANCH
 SUBCOMMITTEE ON
 THE DISTRICT OF COLUMBIA
 ASSISTANT MAJORITY WHIP



JOHN CULBERSON
 7TH DISTRICT, TEXAS

May 28, 2004

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The Honorable Andrew H. Card, Jr.
 The White House
 1600 Pennsylvania Avenue, NW
 Washington, DC 20500

Dear Secretary Card:

After a visit Wednesday to the United States Citizenship and Immigration Services (CIS) office in Houston I have become convinced that a clear and present danger to the national security of the United States and its citizens exists in that office, especially in light of yesterday's announcement by the FBI and the Department of Justice that terrorists have entered and are seeking to enter our country this summer to attack us once again.

I have learned first hand that the Houston CIS office has not provided ANY training to their adjudication officers (who interview applicants) on law enforcement techniques to identify or flush out potential terrorists in an interview. These adjudication officers are America's first line of defense against terrorists seeking to enter our country, and the Houston office is a wide open door for these killers because the staff is totally untrained and unprepared to spot them or stop them, and because the Houston office is widely known as an easy entry point. As a result of this reputation, the Houston office's caseload is more than ten times higher than any other in the nation.

To make this dangerous and alarming situation even worse, federal immigration officials and local law enforcement helped advertise that the immigration laws of this nation are not being enforced in Houston by participating in an April 25, 2004 town hall meeting in Houston which was called by the Association for the Advancement of Mexican Americans for the sole purpose of reassuring illegal aliens that they are safe here because federal immigration laws are not being enforced in Houston. I have a tape and transcript of the meeting. It is appalling and absolutely unacceptable that any law enforcement official would participate in a town hall meeting for law breakers to reassure them that the law will not be enforced.

If the terrorists did not know it before, they know now that the door is wide open in Houston because this town hall meeting was widely publicized for what it was – law enforcement officials reassuring law breakers that Houston does not enforce our immigration laws.

Therefore, I am asking that the Houston CIS office be closed immediately until the adjudication officers and all supervisors are trained in the best law enforcement techniques for asking the right questions and looking for the right clues to identify and flush out terrorists during an interview and background check. At an absolute minimum, an order should go out to stop all interviews of foreign nationals by untrained CIS employees. I believe this lack of training and turning a blind eye to potential terrorists probably extends far beyond the Houston CIS office, so I would also ask for a formal investigation to determine how widespread this lack of training is.

The blind eye to potential terrorists and criminal aliens appears to be pervasive in the Houston CIS office based on a large number of consistent and plausible complaints I have received from employees in that office who have asked me to maintain their anonymity for fear of retaliation. I met yesterday with Director Hipolito Acosta and his deputies and they assured me that these reports were simply not true, and I will give them the benefit of the doubt on these complaints until he is able to document his assertions. My staff and I intend to thoroughly investigate the operation of the Houston CIS office, and I will report my conclusions to you and all of the recipients of this letter as soon as possible.

I am conducting this investigation on behalf of my constituents whose lives have been put at risk by the inability of the Houston CIS office to identify potential terrorists, and on behalf of House Majority Leader Tom DeLay, House Judiciary Committee Chairman James Sensenbrenner and House Appropriations Homeland Security Subcommittee Chairman Hal Rogers, who are as upset as I am that federal and local law enforcement officials would send the message to aliens seeking to enter this country illegally that our immigration laws will not be enforced in Houston.

To magnify the threat to our national security even further, the Houston CIS office uses policies and procedures that are designed to discourage and minimize verification of the background information supplied by applicants. Adjudication officers are rewarded with time off for meeting their quota of cases completed, and the difficulty of using investigation tools and other policies all appear designed to encourage approval of an application and discourage denial. The entire atmosphere at CIS is hurry up to serve the "customer," who CIS told me was the foreign national applying for the greatest privilege ever created in the history of the world – to become a citizen of the United States of America.

At the same time CIS adjudication officers and their supervisors are being trained to flush out and identify potential terrorists, I believe it is equally important in a war like this that every CIS and ICE officer be trained to understand that the customer is NOT the foreign national, but is instead the families and children of America who are counting on all of us to keep them safe at home and at school and at work and as they travel. I have enclosed, with permission, a photograph of a kindergarten class which I showed the CIS employees yesterday to emphasize that these children are their true customers. I hope you will encourage CIS offices across the country to keep a similar photograph of local kindergartners on their walls as a reminder of who their true customers really are.

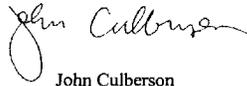
I do not intend to make any of this public since I do not want to magnify the damage already done by the town hall meeting for lawbreakers, and because I am confident my heartfelt and imminently reasonable request for immediate terrorist training for CIS personnel and to halt all

interviews by untrained personnel will receive prompt and favorable attention from the Bush Administration. We also need to organize a second very public press conference with CIS and ICE and other federal and local law enforcement officials to undo the damage done by the townhall meeting by announcing specific steps that are being taken to enforce our immigration laws in Houston.

America is at war with sneaky, cowardly lying criminals who have proven they will exploit weakness in our immigration laws. Federal immigration officials and local law enforcement have just helped light up a huge neon sign over Houston that the door for potential terrorists is wide open right here. This cannot stand.

I look forward to your reply and to swift and decisive action by the Bush Administration as I have suggested here or in any other way that you or the Bush Administration deem appropriate to remedy the clear and present danger to our national security and to the lives and safety of our families that exists in Houston.

Sincerely,



John Culberson

Addressees:

White House Chief of Staff Andrew Card
Attorney General John Ashcroft
Department of Homeland Security Secretary Tom Ridge
FBI Director Robert Mueller
House Majority Leader Tom DeLay
Senate Judiciary Committee Chairman Orrin Hatch
House Judiciary Committee Chairman James Sensenbrenner
House Select Committee on Homeland Security Chairman Chris Cox
Senate Terrorism, Technology and Homeland Security Subcommittee Chairman Jon Kyl
Senate Immigration, Border Security, and Citizenship Subcommittee Chairman Saxby Chambliss
Senate Homeland Security Appropriations Subcommittee Chairman Thad Cochran
House Homeland Security Appropriations Subcommittee Chairman Hal Rogers
Department of Homeland Security Under Secretary Asa Hutchinson
Department of Homeland Security Inspector General Clark Kent Ervin
Citizenship and Immigration Services Director Eduardo Aguirre, Jr.
Immigration and Customs Enforcement Assistant Secretary Michael Garcia
CC:
Citizenship and Immigration Services Houston District Director Hipolito Acosta
Immigration and Customs Enforcement Special Agent in Charge Joseph Webber

Mr. CULBERSON. And I also wanted to ask, Mr. Chairman, to enter into the record the memo that I obtained from the Houston CIS office proving that it is the official policy of CIS to award time off to their officers if they increase the number of applications that they approve.

And then finally, Mr. Chairman, for the record, the sworn testimony of the FBI director that I obtained under oath in front of my Subcommittee, confirming that individuals from countries with known al-Qaeda connections were assuming false Hispanic identities and entering the United States pretending to be illegal aliens, and disappearing. I would like to have that entered into the record, as well.

Mr. ROYCE. Without objection, they will be entered into the record.

[The information referred to follows:]



U.S. Department of Homeland Security
 Citizenship and Immigration Services
 P. O. BOX 670448
 Houston, Texas 77060

May 14, 2004

MEMORANDUM FOR: Section 245

FROM: Oscar Molina, SDAO

SUBJECT: Time Off Awards

Effective immediately, we will be instituting a quarterly Time Off incentive awards program for officers as well as supervisors. The time off awards for officers will be based on average completions per day during the quarter. Supervisor awards will be based on the total number of completions of their officers for the quarter. The current quarter runs from April 1 to June 30. The next quarter runs from July 1 to September 30.

OFFICER TIME OFF AWARDS

Average Completions Per Day	Time Off Award
6	1 Day
7	2 Days
8	3 Days
10 or more	1 Week

Supervisors will receive a two (2) day time off award if their group has the highest number of completions for the quarter.

SCIENCE, THE DEPARTMENTS OF STATE,
 JUSTICE, AND COMMERCE, AND RELATED
 AGENCIES APPROPRIATIONS FOR 2006

HEARINGS
 BEFORE A
 SUBCOMMITTEE OF THE
 COMMITTEE ON APPROPRIATIONS
 HOUSE OF REPRESENTATIVES
 ONE HUNDRED NINTH CONGRESS
 FIRST SESSION

SUBCOMMITTEE ON SCIENCE, THE DEPARTMENTS OF STATE, JUSTICE,
 AND COMMERCE, AND RELATED AGENCIES

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RAY LAHOOD, Illinois	CHAKA FATTAH, Pennsylvania
JOHN ABNEY CULBERSON, Texas	
RODNEY ALEXANDER, Louisiana	

NOTE: Under Committee Rules, Mr. Lewis, as Chairman of the Full Committee, and Mr. Obey, as Ranking
 Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

MIKE RINGLER, JOEL KAPLAN, CHRISTINE KOJAC, JOHN F. MARTENS,
 ANNE MARIE GOLDSMITH, and CLELIA ALVARADO, *Subcommittee Staff*

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Bureau of Alcohol, Tobacco, Firearms and Explosives ..	551



FOREIGN NATIONALS AND ILLEGAL ALIENS ENTERING THE UNITED STATES

Mr. CULBERSON. Thank you, Mr. Chairman.

Director Mueller, I want to also echo the sentiments of the Subcommittee Members in congratulating you and thanking you for the superb job you are doing at the FBI. I think Congressman Lofgren has correctly stated it, sir, with all the finger pointing going on in this town, everyone agrees that you have done a superb job in managing the agency, and you are right to thank the agents.

I want, if I could, Sir, to zero in, in particular, on accurately and securely identifying foreign nationals entering the United States. It is a particular source of concern to me, Sir; I represent the City of Houston, and an intelligence assessment that the FBI released in October of last year, that portion of the intelligence assessment that I can discuss publicly that is unclassified, states that the Houston, Texas, corridor has become a popular transit and destination point for alien smuggling operations, including the movement of special interest aliens in the United States, and that the corridor is particularly attractive because it offers established smuggling routes that have proven successful in the past.

That information, Sir, coupled with the fact that the Department of Homeland Security has identified from the period of October 2002 through June of 2004, nearly 10,000 special interest aliens from countries with known al Qaeda connections who have entered the United States. I wonder if I could ask a series of questions about securely identifying these individuals. I believe the questions that the chairman, Mr. Mollohan and others have asked focused correctly on the FBI's efforts to establish databases where you can keep track of these individuals. And obviously it is fundamental that to be able to track these individuals we have got to securely identify who they are.

I have had reports, and I wanted to ask you to confirm, Sir, that there are individuals, these special interest aliens, are you aware of special interest aliens, individuals from countries with known al Qaeda connections entering into the United States using false identities, and in particular, changing their Islamic surnames to Hispanic surnames?

Mr. MUELLER. We have had indications of that, yes.

Mr. CULBERSON. And of course, the country has done a good job of securing the airports, the ports of entry. The one area that I am deeply concerned about, seeing your intelligence assessment about Houston being a popular transit and destination point for alien smuggling was a real concern to me, and particularly when I learned what you have just confirmed, that we have got individuals from countries with known al Qaeda connections changing their Islamic surnames to Hispanic, using false identities entering the United States.

The top two Federal immigration officials in Houston participated in a town hall meeting in April of 2004, and it was a town hall meeting called for illegal aliens. And the top two law enforcement officials in the Houston area announced at the town hall meeting that the Bush Administration was not going to enforce immigration laws, that illegal aliens should not be concerned about

being rounded up or bothered, that immigration laws are not being enforced in Houston. Deeply concerning. And I would imagine you would share that concern to have sort of that announcement made.

Mr. MUELLER. I guess I would be surprised that anybody said that immigration laws would not be enforced. I know they are being enforced. I know it is a question of resources, but I do believe the Administration is intent on enforcing the immigration laws.

Mr. CULBERSON. Well, it was rather stunning to me as well. And I share your concern, sir, it was a real source of concern. And, people are coming here honestly looking for a job. We need to establish some sort of program where people can sign up in their home countries and come here legally and work; I understand the need for that, certainly as a Texan, I understand that. My concern is individuals from countries with known connections changing their identities, coming here under a false Hispanic identity or other identity for reasons to hurt the United States because they know that is a point of entry they can get in to the United States without much difficulty.

MATICRULA CONSULAR CARD

Another one of the principle sources of concern, sir, that I wanted to also ask you about. In June, 2003 your Director of the Office of Intelligence, Steve McCraw, testified at the Judiciary Subcommittee on Immigration Borders Security and Claims, that the FBI had a particular concern about the use of the matricula consular card. He testified that the Department of Justice and the FBI have concluded the matricula consular is not a reliable form of identification due to the nonexistence of any means of verifying the true identity of the card holder. Is that still the opinion of the FBI, sir?

Mr. MUELLER. Yes.

Mr. CULBERSON. He also testified that the matricula consular is a perfect breeder document for establishing a false identity; is that still the opinion of the FBI?

Mr. MUELLER. Yes.

Mr. CULBERSON. He also testified that the ability of foreign nationals to use a matricula consular to create a well-documented, but fictitious identity in the United States provides an opportunity for terrorists to move freely within the United States without triggering name-based watch lists that are disseminated to local law enforcement officers; is that still the opinion of the FBI?

Mr. MUELLER. Yes, that could happen.

Mr. CULBERSON. Yes, sir. The concern, of course, lies with not only making sure we identify these people with local law enforcement, but one of the first things a lot of these folks want to do is open a bank account; so in response to that, because of money laundering concerns, Congress enacted in the PATRIOT Act in Section 326—and I know you are familiar with this requirement, Sir, because you all worked extensively on helping the Congress, the Judiciary Committee in the House and the Senate in drafting these provisions. Section 326 of the PATRIOT Act requires, I am quoting from the statute, to be very brief, but I wanted to ask your opinion of this, sir.

Mr. CULBERSON. The Treasury Department shall adopt regulations that, at a minimum, require banks to implement rules for foreign nationals opening bank accounts that require three things: one, that the regulation requires that the bank verify the identity of any foreign national seeking to open a bank account; number two, that the bank maintain records of the information used to verify the person's identity; number three, that the bank consult lists of known or supported terrorists or terrorist organizations.

The final Treasury regulation, which they issued, simply states that foreign nationals—and I am paraphrasing here, but correct me if I misstate them, but this is what the rule says. This is in Section 103.121 of the Code of Federal Regulations, Title 31, foreign nationals opening a bank account in the United States are only required to produce one of the following: taxpayer ID number, a passport ID number, an alien identification card number, or any other government-issued document evidencing nationality and bearing a photograph.

In your opinion, does that Treasury rule comply with the statute in Section 326 of the PATRIOT Act?

Mr. MUELLER. Well, I probably shouldn't give off-the-cuff legal opinions.

Mr. CULBERSON. Within your opinion.

Mr. MUELLER. I would have to look at it more closely. I see the contrasts that you are making, however.

Mr. CULBERSON. Well, the rule that the Treasury Department enacted does not require—in fact, the Treasury Department specifically said in their justification that they eliminated the requirement that banks retain copies of the documents used to verify identity, and, so, therefore, the banks can destroy the photocopies of the identifying documents that were used by the foreign national to open the bank account; is that correct?

Mr. MUELLER. You are reading from the CFR? I would have to take a look at that.

Needless to say, from the perspective of identifying those persons who are engaged in illegal activity, whether it be terrorism and narcotics, trafficking and what have you, the more information kept by the bank, the stronger the procedures to identify and make certain that the person is who he or she says they are is important to limiting the use of banks to provide a conduit for funds for these various activities.

Mr. CULBERSON. One of the Treasury Department regulations which I know you are familiar with states that a foreign national can open a bank account using any form of photo ID card issued by a foreign government. That would essentially allow foreign nationals to open a bank account using matricular or any other type of consular card; correct?

Mr. MUELLER. Again, I would have to look at it. From what you are saying, that would seem to be the case.

Mr. CULBERSON. Yes, sir. And the rule, based on the way the Treasury Department has issued it, does not require banks to consult lists of known terrorists, to your knowledge, does it?

Mr. MUELLER. I understand your concern about that.

Mr. CULBERSON. Yes, sir.

Mr. MUELLER. I don't have it in front of me, and I would have to—

Mr. CULBERSON. Sure. Are you familiar with all the discussions that went back and forth between the FBI and the Departments of Justice and Treasury before the Treasury Department promulgated these rules?

Mr. MUELLER. In fact, I am not that tuned in to those discussions. I am sure there were discussions, but I am not certain what the discussions were, so I—

Mr. CULBERSON. Okay.

Mr. MUELLER [continuing]. Must confess that I am not that familiar with those discussions.

Mr. CULBERSON. In general, do you know whether the Treasury Department rules adopted for foreign nationals opening bank accounts makes it more or less difficult for the FBI or law enforcement to identify foreign nationals, for example, laundering money or the true identity of foreign nationals opening bank accounts? Does it make it more or less difficult for law enforcement to do their job?

Mr. MUELLER. Well, let me—not having it in front of me, let me just say that we, as Agent McCraw testified before earlier, we are supportive of having identification that will enable the banker to determine that the person is whom he or she says he or she is. It would be in the interests of law enforcement, quite obviously, to maintain that information for a period of time.

Mr. CULBERSON. To comply with the PATRIOT Act as written?

Mr. MUELLER. To comply with—well, yes. Apparently, to comply with the PATRIOT Act as written.

Again, I would have to go back and look at the regulation in order to—and it would require some analysis.

Mr. CULBERSON. Sure. If I could, what could you tell us about the number of individuals entering the United States from countries with known al Qaeda connections that are changing their surnames, adopting false identities and entering the United States among those entering the country illegally?

Mr. MUELLER. I would have to check on number of instances we have had where somebody from, say, a Middle Eastern country has come in, having adopted a name, a Hispanic name in an attempt to come in. I am not certain how many instances there might have been.

I can tell you we are concerned, that Homeland Security is concerned about special interest aliens coming into the United States. We work closely with the Border Patrol and ICE to interview those when they are apprehended. We have an ongoing, for example, investigation together into smuggling organizations that may be assisting in getting special agent aliens across the border. It is a tremendous concern to us, and I know it is of tremendous concern to Homeland Security, and we are working together to identify those smuggling organizations and to take them out of business.

Mr. CULBERSON. If I could, Mr. Chairman, a couple of questions, and I will wrap it up.

These are not just Hispanic surnames these individuals are adopting other false identities as well, sir?

Mr. MUELLER. I would have to go back and check—

Mr. CULBERSON. Okay. What countries are these individuals coming from, to your knowledge, the ones that you are aware of that are adopting false identities, including the Hispanic false identities and crossing over the border, hiding among the illegal aliens.

Mr. MUELLER. I would have to check.

Mr. CULBERSON. Could you get back to me on that, sir.

Mr. MUELLER. Sure.

[The information follows:]

ILLEGAL ALIEN BORDER CROSSINGS

Individuals from countries including Afghanistan, Egypt, Pakistan, Somalia, Saudi Arabia, South Africa, Turkey and Yemen are known to use illegal alien border crossings. The Federal Bureau of Investigation has an on-going initiative to identify aliens who have entered the United States in the past two years from those countries.

Mr. CULBERSON. I would really like to work with someone in your office and obtain this information.

I wanted to also ask, I have gotten reports—and then I will pass, Mr. Chairman. We may have some follow-up later.

I have had some reports, very reliable reports, that there are special interest aliens travelling into Brazil, changing their identities and then crossing into Mexico, and because these are visa waiver countries these individuals are then crossing, using false identities, into the United States from these countries that have visa waivers. Are you aware of this, sir?

Mr. MUELLER. Yes.

Mr. CULBERSON. And can you talk about that to us here?

Mr. MUELLER. That is an issue—I believe it has been raised with—I know the State Department is interested in this issue and dealing with our counterparts in Mexico; and, of course, Brazil is down by the tri-border area, which is of substantial concern to us. It is an issue that I know is being addressed not only by us in Homeland Security but also by State Department.

Mr. CULBERSON. Have you seen a surge or a spike in the number of special interest aliens travelling to Brazil and into Mexico using these identities because there are visa waivers? Has there been a spike in recent years?

Mr. MUELLER. I wouldn't call it a spike. I would say there have been instances that have come to our attention in which this is happening.

Mr. CULBERSON. Okay. I would like to, if I could—I will follow up in writing with you, sir; I will provide you copies of the Treasury Department rule, but, if I could, I really would like to ask your opinion and talk about how we can fix this problem and have the ability to accurately identify foreign nationals in the country.

Mr. WOLF. Thank you.

Do you have a legal attache in the tri-border area?

Mr. MUELLER. Let me just check. I know we had an agent who was TDY there for a period of time. I would have to get back on that. I had thought we had sent him back in, but I would have to confirm that.

Mr. WOLF. It seems he should be there.

[The information follows:]

TRI-BORDER LEGATS

The FBI has Legal Attaché offices, or Legats, in Buenos Aires, Argentina; and Brasilia, Brazil. Legat personnel also have a presence in Santiago, Chile; Caracas, Venezuela; and Bogotá, Colombia.

TERRORISTS PURCHASING GUNS

Mr. WOLF. Is Hezbollah active in the United States?

Mr. MUELLER. Yes.

Mr. WOLF. Following up on Mr. Fattah's comment, and I think the answer is somewhat obvious, but do you think suspected terrorists should be able to purchase guns, and does the law need to be changed to prevent this from occurring in the future?

Mr. MUELLER. I think we ought to look at the law and see what modifications could be made. When NICS has somebody who is seeking to purchase a weapon and the person is on the watchlist, the first thing that happens is that the agent who has that case is notified; and, as the report indicates, in several instances, when the agent was notified, they were able to determine a disability or a disqualifying factor. In one instance, for instance, a person was an illegal alien. In another case, a person had some mental instability. That would preclude that individual from getting a gun.

But in that area where we cannot find a disqualifying factor and the person is a suspected terrorist, I think one ought to look at what in addition can be done to perhaps modify the law to limit that person's access to a weapon.

I can tell you that when we are alerted to the fact that a person on the watchlist is going to be allowed to have a weapon, then we don't let it go. In other words, we will follow up on that. Once alerted that the person does not have a disqualifying factor and may well be able to purchase a weapon, then we follow up on that.

Mr. WOLF. You said Hezbollah is active. Is Hamas active in the United States?

Mr. MUELLER. Yes.

Mr. WOLF. So let the record show both Hezbollah and Hamas—Hezbollah who killed 241 Marines in the bombing in Lebanon—you were in the Marines, if I recall.

Mr. MUELLER. Yes.

Mr. WOLF. We also understand that the Department of Justice Inspector General is currently doing a review of the Terrorist Screening Center. We are going to ask the IG to review your plans to integrate the Terrorist Screening Center's database with a secure flight program. Will you work with the IG to insure that they have all the information they need to conduct a thorough review?

Mr. MUELLER. Yes.

Mr. WOLF. Thank you.

RECRUITMENT/RETENTION

We provided you a variety of new personnel authorities to recruit and retain talented staff and provided \$30 million to pay them. We want to make sure that all of these, not just some, but all of the new authorities and funding are used effectively.

One of the new authorities was provided for retention and relocation bonuses for critical staff. What criteria are being used to determine who will receive a bonus? Will critical staff in high-cost areas

and research TSC policies and procedures, congressional/public affairs staff to address media and congressional inquiries and interest in the operation of the Secure Flight Program, and the space and equipment needed for the additional personnel. In the year since the TSC was established, operating costs have been evaluated, and it is clear that operating costs exceed the initial TSC budget allocation. New initiatives will significantly increase TSC operating costs.

QUESTIONS SUBMITTED BY REPRESENTATIVE CULBERSON

Subcommittee on Science, State, Justice, Commerce, and Related Agencies,
House Committee on Appropriations, March 2005

Matricula Consular ID Cards

QUESTION: Does the government of Mexico have a centralized database to coordinate the issuance of Consular ID cards?

ANSWER: We are not aware of a centralized database maintained by the Government of Mexico (GOM) to coordinate the issuance of Consular ID cards.

QUESTION: Does the government of Mexico have a standardized or verifiable way to assure that Mexican birth certificates are valid before issuing a Consular ID card based on a Mexican birth certificate?

ANSWER: We are not aware of a standardized or verifiable means by which the GOM assures that Mexican birth certificates are valid before issuing Consular ID cards based upon them. In fact, it is relatively easy to obtain a fraudulent birth certificate in Mexico, since a birth certificate (including a "legitimate" new birth certificate) requires only information provided by two witnesses.

QUESTION: Does the FBI and Department of Justice consider the Matricula Consular card to be a reliable form of identification? Would you please specify the reasons for the opinion of the FBI and Department of Justice regarding the reliability of the Matricula Consular card as identification?

ANSWER: The Department is working expeditiously on this response and will transmit it to the Committees on Appropriations as soon as it is complete.

[Clerk's note.—The Department of Justice did not submit a substantive response to this question prior to the publication of this hearing transcript.]

QUESTION: Would a foreign national who was legally present in the United States need or be limited to using a Consular ID card?

ANSWER: We defer to DHS with respect to immigration matters such as this. [Clerk's note.—The Department of Justice did not submit a substantive response to this question prior to the publication of this hearing transcript.]

QUESTION: What other forms of ID are available to foreign nationals who are legally in the United States?

ANSWER: We defer to DHS with respect to immigration matters such as this. [Clerk's note.—The Department of Justice did not submit a substantive response to this question prior to the publication of this hearing transcript.]

QUESTION: If a depositor presents only a Matricula Consular card as identification to open a bank account in the U.S., how certain can the bank be of the depositor's true identity? Why?

ANSWER: We defer to the Department of the Treasury or other bank regulating agencies regarding this matter, as they are in a better position to explain standard banking practices.

[Clerk's note.—The Department of Justice did not submit a substantive response to this question prior to the publication of this hearing transcript.]

USA PATRIOT Act

I am concerned that the Treasury regulation issued under Section 326 of the USA PATRIOT Act does not comply with the statute. I have attached the relevant sections of the USA PATRIOT Act and the CFR for your review.

QUESTION: Does the Treasury regulation comply with the three explicit requirements of Section 326 of the USA PATRIOT Act? Why or why not?

ANSWER: The Department of Justice has determined that the Treasury regulation complies with the three explicit requirements of Section 326 of the USA PATRIOT Act.

QUESTION: Does the Treasury regulation as written make it easier or more difficult for foreign nationals to open bank accounts in the U.S. using false identities? Why or why not?

ANSWER: By requiring that financial institutions establish customer identification procedures, the regulations enacted by the Treasury Department have made it more difficult to open bank accounts using false identities. These procedures and the intense scrutiny of suspect accounts have combined to assist our pursuit of terrorism financing. The scrutiny of these accounts has been facilitated by a greater understanding of the problem (including improved global awareness on the part of law enforcement, regulators, policy-makers, the private sector, and foreign governments) and more sophisticated and effective processes and mechanisms for addressing and targeting terrorist financing.

QUESTION: Does the Treasury regulation as written make it more or less difficult for U.S. law enforcement authorities to accurately identify foreign nationals who use the U.S. banking system? Why or why not?

ANSWER: The Treasury regulations clearly define how financial institutions can share information with law enforcement, establishing the procedures by which exchanges are documented while protecting financial institutions' customers. These regulations have improved our ability to obtain this information, enhancing our ability to identify, investigate, and resolve potential terrorist financial activity quickly.

Al Qaeda Entering the United States at the Borders

In your testimony to the Subcommittee, you confirmed that individuals from countries with known Al Qaeda connections have entered the U.S. illegally over our southern or northern borders using false Hispanic identities.

QUESTION: To the fullest extent possible, without revealing case specific information that could endanger ongoing investigations, would you please estimate, to the best of your ability, how many of these individuals using false Hispanic identities may have or did enter the U.S. illegally by any means, including using smugglers or simply by walking or entering illegally on their own or with the help of others?

ANSWER: While we are concerned with any individual who enters the United States by illegal means, we are not able to accurately estimate the number of individuals using false Hispanic identities who have entered the U.S. illegally, due to the very nature of illegal entry. The Department of Homeland Security (DHS) may be better able to provide an estimate.

QUESTION: Where and how are they entering the U.S.?

ANSWER: Anecdotal information, including information obtained through FBI sources, indicates that illegal entry from Mexico includes the use of established points of entry accessed on foot and by car, and the use of both commercial and privately owned aircraft.

QUESTION: Are they assuming false identities other than Hispanic?

ANSWER: The FBI has received reports that individuals from countries with known Al Qaeda connections have attempted to enter the U.S. illegally using alien smuggling rings and assuming Hispanic appearances. An FBI investigation into these reports continues.

QUESTION: What other type of identities are they assuming?

ANSWER: For complete information regarding border crossings and arrests, we defer to DHS. The FBI has no confirmed evidence that individuals connected to terrorism have assumed nationalities significantly different from their true backgrounds when crossing U.S. borders.

QUESTION: Would you please elaborate on the circumstances and/or techniques used individuals to assume a false identity, enter the U.S. and then tell us how many of these individuals the FBI and Department of Justice can locate today? Where and how are they entering the U.S.?

ANSWER: The means employed used by illegal aliens differs by region and circumstance. A limited number of subjects of FBI counterterrorism (CT) investigations have used false and/or altered documents, in some cases under false names, in order to cross U.S. borders. The FBI has no information to suggest a consistent or centrally organized method to gain illegal entry, or more than occasional or individual use of such a method. The FBI defers to DHS with respect to the number of individuals involved; since FBI information is source based and anecdotal in nature.

QUESTION: What type of criminal or terrorist activity could these individuals be involved in?

ANSWER: It appears to the FBI that most illegal aliens desire only to work in the United States and send money home to their families. However, they often accomplish this through illegal entry into the United States, false statements on employment verification forms, failure to register with the government, and the commission of other criminal offenses. Though it is clearly true that illegal aliens, resident aliens, and even citizens have the opportunity to engage in terrorist and other criminal activity, the FBI has not developed information indicating a direct correlation between illegal status and terrorist activity.

QUESTION: Have Special Interest Aliens adopted other false identities to enter this country? What forms of ID are these individuals using?

ANSWER: As indicated above, a limited number of subjects of FBI CT investigations have used false and/or altered documents, in some cases under false names, in order to cross U.S. borders.

QUESTION: How can we fix this problem to ensure that the Federal government has the ability to accurately identify foreign nationals entering the country?

ANSWER: Recent increases in law enforcement personnel and continued close cooperation and information sharing, including between DHS's Immigration and Customs Enforcement (ICE) and the FBI, will facilitate the Federal government's identification of those illegally entering the country. Both ICE and the FBI have been working hard to increase the efficient use of biometrics (the automated recognition of individuals based on physical or behavioral characteristics), and have been coordinating closely with foreign government to improve the security and fraud resistance of travel documents. The FBI additionally focuses on the identification and disruption of organizations involved in smuggling foreign nationals into the country and providing them with false identification, which allows them to travel freely throughout the United States.

QUESTION: In the FBI Director's testimony, he confirmed that special interest aliens from countries with known Al Qaeda connections have entered the U.S. by going through Brazil and then Mexico. Would you please elaborate?

ANSWER: The FBI's information indicating that illegal aliens have traveled to the United States by way of Brazil and then Mexico is based on intelligence sources that have been neither corroborated nor disproven at this time. As with all intelligence information, this may be only a small piece of what is really happening, and the FBI is not prepared to state conclusively that the Brazil route is being traveled more heavily than other routes. It is important to recognize that, just because an individual is from a country with known Al Qaeda connections, this does not necessarily mean the individual is connected to terrorism, and the FBI does not believe that all or even most individuals from those countries have personal connections to Al Qaeda.

QUESTION: How and where are these individuals entering the U.S.?

ANSWER: As indicated above, anecdotal information, including information obtained through FBI sources, indicates that illegal entry from Mexico includes the use of established points of entry accessed on foot and by car, and the use of both commercial and privately owned aircraft.

QUESTION: Are they adopting false identities? What type of IDs are they using? Can their identities be confirmed using these types of ID? Why or why not?

ANSWER: As indicated above, a limited number of subjects of FBI CT investigations have used false and/or altered documents, in some cases under false names, in order to cross U.S. borders. A false or fraudulently obtained passport or visa may allow an illegal alien to obtain valid U.S. identification and, with that, access to all the benefits of lawful presence in the United States. Although illegal entry may be accomplished without a passport or visa, illegal aliens would need some form of fraudulent identification in order to obtain documents indicating lawful United States presence.

QUESTION: Why is it a problem for law enforcement to have these SIAs entering the U.S. through Brazil and Mexico?

ANSWER: One of the primary aims of border security is to ensure that the people who seek to enter the United States are legally eligible to do so. In order to accomplish this goal, we must know who they are and must have an opportunity to inspect them upon arrival. Aliens who evade inspection and successfully enter the

country illegally are unknown to the Government and pose a potential risk to the United States. Likewise, aliens who enter the country through the use of fraudulent documents may conceal their true identities or intentions. Controlling our southern border with Mexico is particularly challenging to law enforcement for many reasons, including geography, volume of traffic, and resource considerations.

The ease with which individuals can enter into Mexico and then the United States is illustrated by the following example. In July 2004, a South African female was arrested at McAllen-Miller International Airport in Texas as she tried to board an airplane for New York. The subject carried a pair of muddy, wet pants in her luggage, approximately \$7,300 in various currencies, and a passport with three double-sided pages missing. Border Patrol agents determined that the subject did not have a valid visa for entry into the United States. Flight itineraries she carried indicated that she had traveled from Johannesburg to Dubai (United Arab Emirates), to London, and then to Mexico City. She passed easily through checkpoints, because South Africans do not need visas to travel in those countries. The subject then crossed into the U.S. illegally by wading across the Rio Grande.

QUESTION: How many of these individuals have entered the U.S. using this route?

ANSWER: With respect to specific illegal immigration patterns and statistics, we defer to DHS.

QUESTION: (a) [w]hat type of criminal activity have they engaged in the past, and (b) [w]hat type of criminal activity could they be engaged in the U.S.?

ANSWER: Because of the very nature of illegal entry, we cannot identify all those who enter the United States illegally and, consequently, we cannot identify their past criminal activities (this would be difficult in any event because it would depend on the quality of foreign criminal histories and the willingness of those countries to share this information). Once in the United States, our ability to investigate and prosecute any crimes in which they might engage (which are limitless) may be inhibited by our inability to ascertain their identities with certainty.

QUESTION: How many of these individuals can the FBI and Department of Justice locate today?

ANSWER: As indicated above, because of the very nature of illegal entry, whether through Brazil and Mexico or otherwise, we cannot identify (or later locate) all those who enter the United States illegally, because the illegal entry circumvents our security process and limits our ability to conduct effective screening through review of visa applications and interviews.

QUESTION: What is being done to prosecute them?

ANSWER: As a preliminary matter, we should note that there is no standard definition of "special interest alien." The Department, however, often in conjunction with DHS, vigorously investigates and prosecutes individuals and organizations that facilitate the illegal entry of aliens into the United States, particularly where the individuals or organizations may present potential risks to the national security.

Individuals and Immigration Status

QUESTION: The Houston Police Department and several other police departments in cities across the country, including New York and San Francisco, have policies that prohibit officers from even asking individuals who are stopped or detained their immigration status. Does this policy hinder Federal law enforcement? Why or why not?

ANSWER: The Department is working expeditiously on this response and will transmit it to the Committee on Appropriations as soon as it is complete. (Clerk's note.—The Department of Justice did not submit a substantive response to this question prior to the publication of this hearing transcript.)

QUESTION: Two provisions signed into law in 1996 prohibit States and localities from barring their officials from providing immigration information to the Federal government: § USC 1572(a) and Pub. L. No. 104-193. In the Attorney General's opinion, do the policies in Houston, New York, and San Francisco comply with these statutes? Why or why not? What other states or localities have policies that bar officials from providing immigration information to the Federal government? Are these policies in compliance with these Federal statutes?

ANSWER: The Department is working expeditiously on this response and will transmit it to the Committee on Appropriations as soon as it is complete.

(Clerk's note.—The Department of Justice did not submit a substantive response to this question prior to the publication of this hearing transcript.)

QUESTION 28: A recent report released by the Center for Immigration Studies states that it is commonplace for foreign nationals to apply for the diversity visa lottery program multiple times using many different aliases and other false personal information. In addition, the visa lottery program has spawned a cottage industry featuring sponsors in the U.S. who falsely promise success to applicants in exchange for large sums of money. Ill-informed foreign nationals are willing to pay top dollar for the guarantee of lawful permanent resident status in the U.S. in conjunction with the State Department. What steps is the Justice Department taking to correct threats and flaws in the diversity visa lottery system?

ANSWER: The Department is working expeditiously on this response and will transmit it to the Committees on Appropriations as soon as it is complete.

(Clerk's note.—The Department of Justice did not submit a substantive response to this question prior to the publication of this hearing transcript.)

QUESTIONS SUBMITTED BY REPRESENTATIVE MOLLOHAN

IDENT/IAFIS

QUESTION: What is the timeline for the initial deployment of an IDENT/IAFIS interface?

ANSWER: An interface used by the Department of Homeland Security's Customs and Border Protection (CBP) to transmit fingerprint search requests to the Integrated Automated Fingerprint Identification System (IAFIS) was originally piloted in 2000 using ten-print image submissions. In 2001, the Department of Justice (DOJ) developed integrated IDENT/IAFIS workstations to allow simultaneous searches of both systems (two-print searches of DHS's Automated Biometric Identification System, or IDENT), and ten-print searches of IAFIS) and to refine the method by which CBP searches IAFIS (using Ten-Print Rap Sheet (TPRS) submissions). The FBI received funding in FY 2005 to enhance IAFIS' capacity to support the increased workload resulting from DHS's nationwide deployment of these integrated workstations. The enhancement of IAFIS capacity is scheduled to be completed by the summer of 2006 with the following objectives:

- Provide IAFIS capability to support the increased use of the TPRS. Currently, IAFIS can support 5,000 TPRS transactions per day; this project would allow IAFIS to process up to 20,000 TPRS transactions per day.
- During system availability (currently, 48.43%), reduce TPRS response time from 10 minutes to two minutes for 90% of the TPRS submissions, and to three minutes for the remaining TPRS submissions.
- Identify enhancements that will provide 99% system availability for TPRS transactions.
- Implement enhancements that will allow IAFIS to process an additional one million criminal transactions per year.

Linguists/Foreign Language Program

The FBI is seeking an additional \$26.3 million and 274 added positions for the foreign language program. The FBI's translation needs in support of counterterrorism investigations has grown by 45% since FY 2001. Most of the requested additional resources would be used to enhance the FBI's ability to translate quickly information gathered in a foreign language and help provide a permanent staff for the National Virtual Translation Center.

QUESTION: The attrition rate for contract linguists has been around 11%; for language specialists, the attrition rate is closer to 7%. What do you propose to do to lower those attrition rates? Are there efforts underway to implement new retention programs? Is there anything proposed in this budget for foreign language incentive pay?

ANSWER: The FBI is in the process of implementing a Foreign Language Proficiency Pay Program. Under the first phase of this program, FBI Language Analysts and IAs will be offered pay incentives for language use, maintenance, and achievement. This program is expected not only to improve retention rates for FBI employees with proficiencies in critical languages, but also to stimulate career-long language learning among a broad spectrum of FBI employees.

The President's 2006 request for 274 additional Language Analyst positions is designed to allow the FBI to offer employment to many of its most highly qualified

Contract Linguists (CLs), permitting them to benefit from the Language Analyst retention programs cited above. (Currently, nearly two-thirds of the FBI's translation services in Arabic, Urdu, and Farsi are being provided by CLs.) Beyond this, the FBI's market analysis in preparation for the renewal of linguist contracts on 10/01/06 will ensure our CLs are paid a competitive hourly rate consistent with their responsibilities and external demand factors.

Currently, over 3,000 FBI employees and contractors have certified foreign language proficiency scores at or above the working proficiency level, including 406 Language Analysts and 331 CLs. Strong demand for their language skills from other government agencies and the private sector is well documented. It is due in large part to this demand that annual attrition among FBI Language Analysts has increased nearly 4% since 09/11/01. Many departing employees have cited the lure of higher salaries and upward mobility as the primary reasons for their separation. More than 95% of the FBI's 1,300+ linguists are native speakers of their foreign language and hold Top Secret (TS) security clearances. Their native-level fluencies and long-term immersions within a foreign culture ensure not only a firm grasp of colloquial and idiomatic speech, but also of heavily nuanced language containing religious, cultural, and historical references. Beyond these qualities, over 80% of FBI linguists hold at least bachelor's degrees and 37% hold graduate-level degrees. These qualities make them extremely valuable to the FBI's intelligence program, but also particularly attractive to other employers seeking these scarce skill sets. The initiatives we have outlined above should help us increase retention of our highly qualified linguists in the face of increasing market demand.

QUESTION: Today, nearly all of the counterterrorism intelligence the FBI gathers is translated within 24 hours. Is that also true for other forms of intelligence the FBI gathers?

ANSWER: The FBI now has sufficient translation capability to promptly address all of its highest priority CT intelligence, typically within 24 hours. This is due to the FBI's unprecedented efforts to hire linguists since 09/11/01, with a focus on Middle Eastern and South Asian languages.

FBI translation resources required to support other FBI intelligence investigations not presenting such grave and immediate threats to national security are assigned a level of priority consistent with the FBI's Foreign Intelligence Threat Assessment and the National Intelligence Priority Framework. This process ensures the most effective and efficient use of finite translation resources. While much of this collected intelligence is reviewed within 24 hours by FBI linguists, some of it is not. Given the FBI's first priority of protecting the United States from another terrorist attack, linguists are assigned, as circumstances warrant, to the live or near-live Title III wiretap or Foreign Intelligence Surveillance Act monitoring of high priority terrorist targets that present a direct threat of violent activity. Such assignments are highly manpower intensive, but are essential to prevent terrorist attacks. The President's 2006 request for 274 additional Language Analyst positions is designed to assist the FBI in closing this performance gap.

QUESTION: The FBI requests an additional \$5 million for contract linguists. The FBI has received significant increases for contract linguists in recent years, usually earmarked for counterterrorism and counterintelligence. Would the \$5 million request most expanded criminal translation needs?

ANSWER: Full funding of the President's 2006 enhancement request is expected to provide the FBI with the translation capacity required to meet its needs through FY 2006. FBI demand for translation services has increased across all investigative program areas since 09/11/01. Because of the FBI's strategic emphasis on disrupting and dismantling terrorist activities in the United States, it is increasingly common for FBI criminal investigations to have a CT nexus. When such a nexus exists, funds earmarked for CT linguist needs can be used to support the criminal investigation.

The FBI uses a combination of both Language Analysts and CLs to meet translation requirements. While there is little functional difference between a Language Analyst and a CL, a Language Analyst is an employee of the FBI, while a CL serves under a performance-based labor-hour contract. Non-personnel funding authorized to support the FBI's CL Program totaled \$66,130,002 in FY 2004, including a \$38,545,000 nonpersonnel funding enhancement authorized by the FY 2003 Emergency Wartime Supplement (P.L. 108-11), of which \$9.3M recurred. For FY 2005, \$36,039,885 is available to the FBI for CL services and travel.

QUESTION: For the next several years, the FBI is projecting an increased translation workload in Middle Eastern and South Asian languages, in the vicinity of 15%. Are you also anticipating increases in the translation workload for more traditional counterintelligence languages such as Chinese?

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Mr. CULBERSON. And also ask, if I could, Mr. Maxwell, is our CIS adjudication officers trained in law enforcement techniques to spot or identify potential terrorists coming through their offices, to your knowledge?

Mr. MAXWELL. No, sir, they are not.

Mr. CULBERSON. So an adjudication officer, is it also true, as a result of what I learned from the Houston CIS office and other investigation, that CIS adjudication officers are often told don't ask questions you might not like the answers to. Is that a fair characterization?

Mr. MAXWELL. Anecdotally, I have heard similar statements. I have no documentation to support that, but I have heard similar verbal statements.

Mr. CULBERSON. And is it also true that CIS adjudication officers are denied access to, in many cases, criminal background databases that would allow them to even perform a criminal background check on an individual sitting in front of them applying for citizenship or a green card?

Mr. MAXWELL. Yes.

Mr. CULBERSON. Mr. Chairman, our time is so short here today, and the testimony of these two witnesses is so profoundly important to the national security of the United States, that I would like to suggest, as a Member of the Appropriations Committee, that we work with you, Mr. Chairman, and convene a closed hearing.

I sit on the Subcommittee on Appropriations with jurisdiction over the FBI and the Department of Justice. I would like to suggest that we hold a joint hearing in closed session with these witnesses, and witnesses from the FBI and the Department of Justice, as well as CIS, and get Chairman Rodgers and Chairman Wolf involved, and talk about this in closed hearings in a very careful, methodical, and thoughtful way. And then talk about solutions.

This is of such immense importance, Mr. Chairman, that I think our other Committees need to be involved, as well.

Mr. ROYCE. Good suggestion. We will take that under consideration, Mr. Culberson.

Mr. CULBERSON. Thank you.

Mr. ROYCE. I am going to go to Mr. Tancredo for one final question.

Mr. TANCREDO. Just one final question. When we started to talk about the culture inside of the Agency, Mr. Maxwell. It is my understanding that you have actually heard statements to the effect that immigration is a right, and it trumps national security. Or immigration is a right, not a benefit. Is that accurate?

Mr. MAXWELL. The exact statement, sir, was immigration is a right, not a privilege.

Mr. TANCREDO. Not a privilege. Again, when you start talking about what is wrong with the culture inside the Agency, what better description can you give than just that. Immigration is not a right. That is the perception of the people who run the Agency.

Mr. MAXWELL. The statement made to me, sir, is immigration is a right, not a privilege.

Mr. TANCREDO. Excuse me, is a right, not a privilege, not a benefit. Thank you very much.

Mr. ROYCE. I want to thank our two witnesses, especially for coming forward on such an important issue concerning our national security. And of course, that underlying issue is our ability to check terrorism.

I think we all learned a great deal today from our two witnesses. And I believe the Subcommittee greatly appreciates, also. I just want to commend Mr. Maxwell for coming forward today. And I want to commend Ms. Kephart for all her good work and all her published works on this vexing problem.

Thank you both very much.

We stand adjourned.

[Whereupon, at 11:50 a.m., the Subcommittee was adjourned.]

