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VISA OVERSTAYS: CAN THEY BE ELIMINATED?

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BEFORE THE

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HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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VISA OVERSTAYS: CAN THEY BE ELIMINATED?

Thursday, March 25, 2010

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
WASHINGTON, DC.

The committee met, pursuant to call, at 10:06 a.m., in Room 1334, Longworth House Office Building, Hon. Bennie G. Thompson [Chairman of the committee] presiding.

Present: Representatives Thompson, Sanchez, Harman, Jackson Lee, Cuellar, Carney, Clarke, Richardson, Pascrell, Cleaver, Titus, King, Smith, McCaul, Dent, Bilirakis, and Broun.

Chairman THOMPSON [presiding]. The Committee on Homeland Security will come to order.

We would like to thank Congressman Rahall for allowing us to borrow one of the Natural Resources Committee rooms. Our rooms are being modified. Congressman Rahall was so gracious to allow this to occur.

The committee is meeting today to receive testimony on, "Visa Overstays: Can They be Eliminated?"

Today's hearing expands our examination of visa security. This examination began, without question, about the issuance of a visa to the Flight 253 Christmas bomber. It will continue today as we examine the issue of foreign travelers who arrive in this country with a proper visa, but then violate the terms of that visa.

Today, we are concerned about those travelers who stay longer than allowed under the terms of the visa. These are the "overstays." This is not a new issue. In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress required the attorney general to develop an automated entry-and-exit system to collect and match an immigrant's arrival and departure records. Such a system would allow for easy identification of those who remain beyond their period of authorized stay.

Many are aware of the overstay issue because of media reports that four of the September 11 terrorists entered the United States on a legitimate visa, but stayed beyond the authorized period. After September 11, Congress again sought to address overstays in the Intelligence Reform and Terrorism Prevention Act of 2004. That act required deployment of a biometric entry-and-exit system.

Many of us believe that the overstay issue would be addressed by the full implementation of the US–VISIT program. But in December 2006, the Department hinted that they were considering abandoning the exit portion of US–VISIT. This hint did not clearly indicate the abandonment. But on November 2009, General Ac-

counting Office report made it clear that the US–VISIT exit capability will not happen.

So I think we can all safely conclude that despite spending at least $1.7 billion, the previous administration did not develop a centralized means to track overstays. The question now becomes whether such a system is likely in the immediate future. I look forward to the assessment of the witnesses.

The Chair now recognizes the Ranking Member of the full committee, the gentleman from New York, Mr. King, for an opening statement.

Mr. KING. Thank you very much, Mr. Chairman, and thank you for the hearing.

I want to thank the witnesses in advance for their testimony.

Mr. Chairman, the inability of the Federal Government to identify, track, and remove foreign nationals who overstay their visas has created a serious security vulnerability that has, and will continue to be, exploited by terrorists. The 9/11 Commission reported that a fully functioning biometric entry-and-exit system would be an essential investment in our National security. Yet, almost 15 years, as you mentioned, after Congress first passed legislation requiring an entry-exit system in 1996, as part of illegal-immigration reform, we still do not have the ability to collect biometric data on those exiting the country.

There have been numerous instances in which individuals have overstayed or violated terms of their visas and attempted, or actually carried out, terrorist attacks. Of course, there were—a number of the 9/11 hijackers overstayed their visas, including, of course, Mohammed Atta, Zacarias Moussaoui, who violated terms of his student visa and is now serving a life sentence. There is also Sheik Abdel Rahman, who is serving a life sentence for attempting to bomb New York City landmarks in 1990. He also overstayed his visa.

Fully implementing the US–VISIT exit system mandated by Congress is one of the most effective ways to close the security gap that results from our inability to determine whether foreign visitors on temporary visas leave when they are required to leave. A fully functioning biometric exit system would provide enhanced counterterrorism capabilities by improving our ability to stop the increasingly sophisticated methods criminals and terrorists are using to obtain fraudulent documents that facilitate terrorist travel.

Such a system would decrease the number of non-credible leads that are forwarded to ICE for investigation—leads that consume scarce agent time and resources, and impede the pursuit of more credible cases. Unfortunately, the Department of Homeland Security has not developed a comprehensive way forward for implementing US–VISIT capabilities, nor funded this effort. In fact, this year, the fiscal 2011 budget request completely eliminates funding for a comprehensive biometric exit. This is a sum of $22 million.

So I look forward to the hearing. I would like to hear the witnesses from the Department explain the rationale for eliminating this funding, and also what plans they have as we go forward.

With that, Mr. Chairman, I yield back the balance of my time.

Chairman THOMPSON. Thank you very much. The other Members of the committee are reminded that, under committee rules, opening statements may be submitted for the record.

[The statement of Hon. Richardson follows:]

PREPARED STATEMENT OF HONORABLE LAURA RICHARDSON

MARCH 25, 2010

Mr. Chairman, thank you for convening this hearing today on the Department of Homeland Security's efforts to address the homeland security-related concerns posed by individuals who overstay their visas in the United States. I thank our distinguished panel of witnesses for appearing before us today to share with us the work they are doing on this issue and their recommendations for what else can be done.

I am a firm believer that our immigration system is broken and needs comprehensive reform. We need a system that will strengthen our National security, make hiring fair for the entire American workforce, treat immigrant workers with respect, and create economic growth. An efficient and effective visa system is a key component of our immigration process, and I am pleased that today this committee will get a chance to delve into these issues.

One of the fundamental problems we must address in our visa system is the problem of "overstay," when temporary aliens are legally admitted to the United States but fail to depart when their visas expire. Four of the 9/11 terrorists were visa overstays, and of the 12 known terrorists who committed crimes between 1993 and 2001, 7 were visa overstays.

It concerns me that the Office of Inspector General (OIG) report identified issues such as lack of staffing and lack of dedicated funding as potential contributors to the problems associated with visa overstay. Most Immigrations and Customs Enforcement (ICE) do not have enough dedicated Compliance Enforcement Unit (CEU) agents to investigate leads referred by headquarters. ICE has also failed to request dedicated funding for CEU activities in the last two budgets. If we do not make funding this program a priority, it will be difficult to alleviate the problem of visa overstay. I realize that addressing this problem has been a difficult challenge for the Department of Homeland Security. While it may be impossible to eliminate the problem of visa overstay entirely, we can certainly improve DHS's efforts to ensure compliance with better technology, staffing, and funding. I look forward to the testimony of our distinguished panel of witnesses as to where these improvements need to be made.

Thank you again, Mr. Chairman, for convening this hearing. I yield back the balance of my time.

Chairman THOMPSON. I welcome our witnesses for the hearing today. We will have one panel of witnesses. I must add, at this point, that I couldn't think of a better star panel than what we have before us today.

Our first witness, Mr. Rand Beers, is the Under Secretary for the National Protection and Programs Directorate. Our second witness is Mr. John Morton, Assistant Secretary for Immigrations and Customs Enforcement. The third witness is Mr. Richard Skinner, with the Department of Homeland Security—Inspector General. Our final witness for the panel is Mr. Edward Alden. Mr. Alden is the Bernard Schwartz fellow at the Council on Foreign Relations.

We want to, again, thank our witnesses for being here today. Without objections, the witnesses' full statement will be inserted in the record.

I now recognize Under Secretary Beers to summarize his statement for 5 minutes.

STATEMENT OF RAND BEERS, UNDER SECRETARY, NATIONAL PROTECTION AND PROGRAMS DIRECTORATE, DEPARTMENT OF HOMELAND SECURITY

Mr. BEERS. Thank you, Chairman Thompson and Ranking Member King, and distinguished Members of this committee. I am pleased to be joined by my colleague, Assistant Secretary Morton, Inspector General Skinner, and Mr. Edward Alden today, to discuss how the Department is dealing with the challenges of visa overstays.

It is no secret that identifying these overstays has been a challenge for the United States for decades. The 9/11 attacks led to a new sense of the urgency to address this problem. Since 2001, the Federal Government has created new systems to ensure that immigration officials, our frontline decision-makers, have information that they need about foreign travelers at every potential interaction, from attempting to travel to the United States, to entering the country, to leaving the country, and to any immigration benefit request in between.

Shortly after the Department was created, DHS established the US–VISIT program to help manage and share pre-entry, entry, status management and exit information about foreign travelers with authorized decision-makers. Although most people are familiar with US–VISIT's role in biometrically identifying visa applicants and travelers arriving at ports of entry, the program's behind-the-scenes work to identify visa overstays is less well-known, but equally important to the integrity of our immigration system.

Currently, US–VISIT uses technology and trained analysts to provide ICE with credible leads on potential visa overstays who are still in the United States, and they are called in-country overstays, or to flag visa overstays who have subsequently left the United States. They are known as out-of-country overstays.

US–VISIT uses its arrival-and-departure information system, known as ADIS, which integrates biographic, biometric, and encounter information from various systems to match arrival and departure records. These systems primarily include IDENT, CBP's TECS, USCIS's Computer-Linked Application Management System 3, or CLAIMS 3, and the Student and Exchange Visitor Information System, or SEVIS.

If ADIS does not receive a matching departure record to an arrival record prior to the expiration of an individual's term of admission, US–VISIT investigates to determine if the person is truly a visa overstay who still appears to be in the United States. If further analysis determines that that person appears to be a visa overstay, and meets ICE National security criteria, then US–VISIT sends that overstay information to ICE for investigation.

If ADIS receives a departure record matching to an arrival record after the individual's term of admission expires, U.S. investigates to determine if, in fact, that person truly overstayed. If addition information reviewed determines that the person did overstay their period of admission, then the individual is added to both biographic and biometric watch lists as a confirmed overstay, with identification of the number of days overstayed.

US–VISIT's investment in building capabilities to track overstays is paying dividends. Last year, US–VISIT identified and promoted

almost 17,000 out-of-country overstays to its watch list. This work enabled the State Department to deny visas to 1,065 overstays, and for CPB to intercept 1,437 overstays trying to reenter the United States.

In fact, for the last 3 years straight, we have seen double and triple-digit increases in the number of immigration violators intercepted because they were identified and flagged by US–VISIT. Also, last year, US–VISIT provided ICE with thousands of leads on in-country visa overstays leading to 568 arrest of in-country visa overstays by ICE.

We are proud of this success. But recent events, like that involving Hosam Smadi, remind us that we have to do more to identify visa overstays, and we have to do more, faster. We are currently looking at working to address three main challenges. First, we are continually at work to improve the algorithms used to match data in ADIS. US–VISIT is working with the Lawrence Livermore National Laboratory to study and improve its ADIS algorithms.

Second, we are striving to perform at the same level, despite a constantly increasing transaction volume. Every day, 1 million transaction records are added to ADIS. US–VISIT continues to make system upgrades to handle this volume and to ensure system availability and performance for users.

Third, information-sharing is still not automatic in many cases. To address this, we plan to further automate the ADIS information-sharing with other immigration agencies. We will do this by executing data-sharing upgrades with the State Department, USCIS, and ICE. For State, the upgrade will automate a previously manual process. For USCIS, we will improve the ability to match unique individuals. For ICE, we will provide a daily extract that will be used to better identify unique individuals who require enforcement actions.

As we pursue these and other upgrades, we have confidence that the information US–VISIT provides to ICE will be increasingly credible and actionable, helping them to effectively enforce our immigration laws.

Chairman Thompson, Ranking Member King and Members of this committee, with your assistance, US–VISIT's overstay analysis will help DHS to continue to protect America, and to ensure the integrity of our immigration system. I want to thank you for your continued support, and look forward to addressing your questions.

[The statement of Mr. Beers follows:]

PREPARED STATEMENT OF RAND BEERS

MARCH 25, 2010

INTRODUCTION

Chairman Thompson, Ranking Member King, and distinguished Members of the committee, I am pleased to appear before you today to discuss the Department of Homeland Security's (DHS) ability to identify and locate potentially dangerous individuals who overstay their visas.

BACKGROUND

The United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program within the National Protection and Programs Directorate (NPPD) expedites the identification of aliens encountered across the homeland security environment and serves as the Department's designated provider for biometric and asso-

ciated biographic identification and analysis services for automated entry and exit. US–VISIT maintains databases that store and share biometric information such as fingerprints, digital photographs, and certain biographic information. Authorized DHS personnel who are responsible for deciding eligibility for immigration benefits or admissibility into the United States; taking law enforcement actions; or granting access rights to sensitive facilities may query US–VISIT data to help them accurately identify the people they encounter and determine whether those people pose a risk to the United States. In addition to DHS components, other users of US–VISIT's capabilities include the Departments of State, Justice, and Defense; State and local law enforcement; and the intelligence community.

In addition to supporting the work of its customers on the front lines of homeland security, US–VISIT continues to fulfill its original mission of implementing an integrated entry and exit data system for the United States. A core US–VISIT function is to provide immigration and border management officials with the biographic and biometric records of entries and exits of individual aliens, including whether an alien has overstayed his or her admission period. This data allows officials to make more informed decisions on eligibility for determinations on visa issuance, admission into the United States, and other immigration benefits.

IDENTIFYING VISITORS WHO OVERSTAY THEIR VISAS

Over the past several years, DHS has made significant strides in its ability to identify foreign nationals who have overstayed their authorized periods of admission. DHS currently has programs in place that use airline manifest information; border crossing records; travel document information enabled by the Western Hemisphere Travel Initiative (WHTI); and information collected under the US–VISIT program that allow us to record who enters and exits the country for the vast majority of individuals.

US–VISIT's Data Integrity Group (DIG) uses a multilayered system that includes automated data searches, manual data searches, and manual verification by human analysts to identify aliens who remain in the United States beyond their authorized periods of admission. These aliens are commonly called visa overstays.

The process of identifying visa overstays begins with the Arrival and Departure Information System (ADIS). ADIS is a database that matches biographic data on arrivals, departures, extensions, and changes or adjustments of status to identify individuals who have overstayed their authorized terms of admission.[1] ADIS data is comprised of records from or linked to the following sources:

- Automated Biometric Identification System (IDENT);
- TECS (including entry and exit records from the Advanced Passenger Information System and I–94s), which is operated by U.S. Customs and Border Protection (CBP);
- Computer-Linked Application Management Information System 3 (CLAIMS 3), which is operated by U.S. Citizenship and Immigration Services (USCIS);
- Student and Exchange Visitor Information System (SEVIS), which is operated by U.S. Immigration and Customs Enforcement (ICE).

If an alien has remained beyond his or her authorized period of admission, the ADIS system provides an overstay status indicator. The overstay status indicator shows whether a person is believed to be inside or outside the United States. Out-of-country overstays are individuals who have departed the United States, but who, based on the arrival and departure data in ADIS, stayed beyond their authorized periods of admission. In-country overstays are individuals for whom we have no departure record and therefore who may have exceeded their authorized terms of admission by remaining in the United States. US–VISIT follows separate processes for managing records identified as in-country and out-of-country overstays.

Out-of-Country Overstay Identification and Enforcement Process

US–VISIT manually reviews records for aliens identified by ADIS as out-of-country visa overstays. Manually vetting these records enables US–VISIT to eliminate false system-identified overstays. After manual review, biographic and biometric lookouts are created for confirmed out-of-country overstays who are no longer eligible to enter the United States.

The Visa Waiver Program (VWP), established by Section 217 of the Immigration and Nationality Act, enables nationals of 36 participating countries to travel to the United States for tourism or business for stays of 90 days or less without obtaining a visa. Since January 12, 2009, VWP travelers have been required to obtain an elec-

[1] ADIS receives arrival/departure manifests (APIS), officer-confirmed arrivals (TECS), and changes/extensions/adjustments of status (CLAIMS 3 and SEVIS).

tronic authorization to travel after being screened against multiple law enforcement and security databases. VWP travelers who have exceeded the terms of authorized admission are no longer eligible for admission under the VWP. Therefore, out-of-country overstay lookouts are posted for VWP travelers who exceed their authorized periods of admission by more than 7 days.

By statute, an individual who exceeds his or her authorized period of admission by 180 days is ineligible for admission for no less than 3 years. As a result, out-of-country overstay lookouts are posted for visa-holding individuals when they exceed their authorized periods of admission by 180 days.

The lookouts that US–VISIT creates in TECS and IDENT for these individuals are then available to all TECS and IDENT users, including:

- CBP officers, when an individual attempts to enter at a port of entry;
- USCIS, when a person applies for an immigration benefit;
- ICE, when a person is encountered in an immigration enforcement context; and
- Department of State consular officers, when an individual applies overseas for a U.S. visa.

In fiscal year 2009, US–VISIT manually reviewed 44,284 records identified as being out-of-country overstays. Of these, US–VISIT automatically created lookout records for 16,640 who were likely inadmissible to reenter the United States. These lookout records led to 2,502 individuals being stopped from reentering the United States, including 1,437 interceptions by CBP officers at ports of entry and 1,065 visa refusals by U.S. consular officers.

The following data shows the number of out-of-country lookouts that were created for the past 4 years, along with corresponding entry or visa refusals, and demonstrates that US–VISIT's system is an effective tool in preventing out-of-country overstays from reentering the United States.

Fiscal Year	Out-of-Country Lookouts Created	Port/Visa Refusals Based on Lookouts
2009	16,691	2,502
2008	13,276	1,441
2007	7,357	451
2006	457	5

In-Country Overstay Identification and Enforcement

The records of individuals whose status indicates they are possible in-country overstays undergo additional verification and validation, which includes four automated searches. The first search identifies those individuals who meet ICE parameters for overstay records of interest based on National security and intelligence criteria, and this search removes 89 percent of the potential overstays from further review. The remaining records are identified as priority in-country overstay records.

Priority in-country overstay records undergo three additional automated searches, in sequential order:

- The ADIS reverse search reverses the first and last names, searching ADIS a second time for those instances where names may be reversed from ADIS data sources.
- The CLAIMS 3 search identifies records that match recent immigration benefit applications, such as extensions of stay or adjustments of status.
- The Automated Targeting System (ATS) search identifies records that match departure records that ADIS may not have.

Historically, these three automated searches have reduced the number of priority in-country overstay records by an additional 40 percent. US–VISIT analysts then manually verify and validate the remaining priority in-country overstay records to ensure that only credible leads are forwarded to ICE. The manual verification and validation process checks the following additional systems:

- ADIS;
- TECS Central Index System (CIS);
- Consular Consolidated Database (CCD);
- SEVIS;
- Enforcement Case Tracking System (ENFORCE);
- Enforcement Alien Removals Module (EARM; replaced Deportable Alien Control System);
- Refugee Asylum Parolee System (RAPS);
- Web Image Storage and Retrieval System (Web–ISRS).

Typically, the manual process reduces the number of priority in-country overstay records by an additional 53 percent. Records that cannot be closed after manual review are transmitted to the ICE Compliance Enforcement Unit as unconfirmed in-country overstay leads. In fiscal year 2009, US–VISIT manually reviewed 37,408 priority in-country overstay records and referred 16,379 leads to ICE.

The following table provides the number of in-country overstay leads sent to ICE, with corresponding ICE arrests, over the last 4 years.

Fiscal Year	Priority In-Country Leads Referred to ICE	ICE Arrests Based on Referrals [1]
2009	16,379	568
2008	13,343	715
2007	12,372	338
2006	4,155	139

[1] The ICE/Compliance Enforcement Unit provided the data concerning actual arrests based on referrals.

Under current policy, the unconfirmed in-country overstay leads transmitted to ICE are not included on the biographic or biometric watch lists immediately. An individual is included on the biographic and biometric watch lists once the overstay lead is confirmed or all leads by ICE are exhausted.

IMPROVEMENTS UNDER WAY IN IDENTIFYING OVERSTAYS

Improving Information-Matching Capabilities

Identifying visa overstays begins with matches in US–VISIT's ADIS system; therefore, the system's effectiveness depends on using the best possible matching algorithms. Efforts to identify and deploy new ADIS algorithms have already improved record-matching performance and will serve as the primary driver enabling entry to exit matching with 95 percent accuracy. To achieve this entry-to-exit goal, US–VISIT has partnered with the Lawrence Livermore National Laboratory (LLNL) to initiate a program that independently assesses, in a scientifically supportable manner, the accuracy of ADIS record matching. In addition, LLNL will examine the effects of changes made to the current record-matching logic and algorithms in comparison to the performance of other similar record-matching algorithms or currently available commercial off-the-shelf or Government off-the-shelf products. This detailed analysis of the data and matching capabilities of the system will provide reliable benchmarks of record-matching accuracy and is necessary for US–VISIT to achieve its match rate goal.

Reducing Backlogs of Un-reviewed Records

Between fiscal year 2007 and fiscal year 2009, a backlog of 1.3 million un-reviewed potential in-country overstay records accumulated because of changes in foreign traveler volume, automated algorithm changes, and ICE search criteria. US–VISIT expects to reduce this backlog by 50 percent in fiscal year 2010 through automated and manual matching and estimates that 47,000 leads could be forwarded to ICE's Compliance Enforcement Unit.

Before fiscal year 2009, VWP overstay records constituted a significant portion of these un-reviewed records. However, during fiscal year 2009, US–VISIT prioritized review of all VWP in-country overstay records and has now eliminated the VWP backlog and remains current in reviewing these records.

INTEROPERABILITY EXPANDS ENFORCEMENT OPPORTUNITIES

US–VISIT's IDENT database provides a centralized system for immigration and border management officials to check whether an alien is a visa overstay during numerous encounters, including when a person applies overseas for a visa; attempts to enter at a port of entry; applies for an immigration benefit; or is encountered in an immigration enforcement context.

As a result, the administration of immigration benefits is more accurate—and there are more opportunities for enforcement—than ever before. Enforcement opportunities are also being significantly increased as a result of IDENT becoming interoperable with the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation. This interoperability supports ICE's Secure Communities initiative, which notifies ICE when a local law enforcement agency participating in Secure Communities arrests an immigration violator, including identified overstays, for a crime. The IDENT system provides the local law enforce-

ment agency with identifying information such as a photograph, name, and date of birth. ICE then determines the appropriate response based on multiple factors including the type of crime, previous violations, and the availability of ICE personnel to respond. US–VISIT is supporting ICE's implementation of Secure Communities through the deployment of IDENT/IAFIS interoperability Nation-wide.

CONCLUSION

The Department believes that an effective entry and exit system is a critical tool in managing immigration and border processes, enforcing immigration laws, and enhancing National security. US–VISIT has made significant progress over the past several years to enhance the quality and credibility of overstay data by improving the automated matching of entries to exits; increasing production, efficiency, and performance in providing ICE with priority in-country overstay leads; and reviewing and creating biographic and biometric lookouts for all out-of-country overstays. Through this work, and the sharing of overstay information through IDENT, not only has US–VISIT significantly enhanced DHS' enforcement efforts, it also it has improved the integrity of our immigration system to a level that did not exist before.

While DHS has made significant, tangible progress on the challenge of identifying and presenting actionable leads on visa overstays, we recognize there is still much to do to fulfill the vision for a more automated entry-exit system. I appreciate this opportunity to testify about the difference that the Department's US–VISIT program has made so far, and I look forward to working with you to continue to improve it.

Thank you for holding this important hearing. I would be happy to respond to any questions you may have.

Chairman THOMPSON. Thank you for your testimony. I allowed you to go over, because I think the committee needed to hear, going forward, what you plan to do to improve the overstay issue. Thank you for your testimony.

I now recognize Assistant Secretary Morton to summarize his statement for 5 minutes.

STATEMENT OF JOHN T. MORTON, ASSISTANT SECRETARY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY

Mr. MORTON. Mr. Thompson, Mr. King, Members of the committee, thank you very much for inviting me here.

Today, we address the enforcement challenges posed by temporary visitors to the United States who come here and fail to depart as required—individuals we commonly refer to as visa overstays. This issue is an important one as the Congress considers questions of immigration reform.

On the one hand, it is very much in our interest to encourage generous lawful trade and travel to the United States. On the other hand, we need an immigration system. We need border controls that are marked by integrity and credibility. No one is well served if our visa and visa-waiver programs can be abused with little consequence.

While precise figures are hard to come by, we estimate that as many as 40 percent of the people that are here in the United States illegally are here as overstays. Most Americans, however, do not think of illegal immigration in terms of overstays; rather, they think of the illegal border-crosser dodging the Border Patrol along the Southwest border. Visa overstays, however, don't need to evade the Border Patrol. They have permission to come to the United States lawfully. They enter the country lawfully, and then they simply remain. In short, the lawful become the unlawful.

Enforcing the law against visa overstays largely falls to ICE as part of its interior enforcement duties. ICE carries out this enforce-

ment as resources permit, and in balance with other enforcement requirements—important requirements such as the removal of criminal aliens or the removal of fugitives and the removal of recent border-crossers apprehended at the border.

Most of ICE's overstay efforts are concentrated in our Compliance Enforcement Unit, our CEU. This unit targets overstays identified through the Student Exchange Visitor Information System, or SEVIS, the National Security Entry-Exit Registration System, or NSEERS, and US–VISIT.

These three programs and their data systems allow ICE to access information about millions of students, tourists, and temporary workers present in the United States at any one time, and to identify those who may have overstayed their visas. Due to resource constraints, however, almost all of the CEU's work is focused on cases with a link to National security or public safety.

The CEU relies on the efforts of about 360 special agents and corresponding support staff. In addition, we have about 42 contract analysts who work to conduct individual record checks of the various DHS databases to identify and refine the various leads that we receive.

Each year, the CEU analyzes records of hundreds of thousands of potential status violators from SEVIS, NSEERS and US–VISIT, not just simply US–VISIT. These are reduced to cases worthy of field investigation, and sent to local field offices for action. On average, ICE opens about 6,000 investigative cases annually, and assigns them to our agents in the field. Of these 6,000, about 1,800 result in an arrest by CEU personnel. Other overstays are arrested by our detention-and-removal officers through our General Enforcement Program; for example, in our jail programs and in our worksite programs.

As I discuss in my written remarks, the estimated number of individuals who have overstayed beyond the terms of their admission has remained at about 300,000 per year for the last 3 fiscal years. It goes without saying that this is a problem for which we need a reasoned and systematic enforcement solution. Additional targeting and enforcement actions could certainly serve as a significant deterrent to visa overstays, and could reduce the overall number of visa overstays in the United States.

To this end, I am currently reviewing our policies, programs, and procedures concerning visa overstays, and exploring ways on how I can best address this problem in a world of finite and limited resources.

Given the sheer number of overstays, however—I am going to be candid—there is obviously no easy enforcement solution. I would like the committee to know, however, that I am personally open to working with the various Members who have an interest in this issue on innovative and creative solutions.

I thank all of the Members of the committee for their continued support for ICE, our mission. Of course, I am happy to answer any questions you may have.

[The statement of Mr. Morton follows:]

PREPARED STATEMENT OF JOHN T. MORTON

MARCH 25, 2010

INTRODUCTION

Chairman Thompson, Ranking Member King, and distinguished Members of the committee: It is my honor and privilege to appear before you today to discuss the efforts of U.S. Immigration and Customs Enforcement (ICE) to confront the problem of visa overstays. This issue of visa overstays and other forms of status violation blends two critical areas of ICE's mission—National security and immigration enforcement. In my view, ICE plays an important and effective role in enforcing the law related to visas, including working with the Department of State (DOS) in combating visa fraud and removing those who overstay their visas. ICE's Compliance Enforcement Unit (CEU) was created in 2003 to help confront the problem of visa overstays and other status violations, thereby enhancing National security.

Today, through the CEU, ICE proactively develops cases for investigation in cooperation with the Student and Exchange Visitor Information System (SEVIS), the National Security Entry/Exit Registration System (NSEERS), and the United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program. These programs and their related data systems enable ICE to access information about the millions of students, tourists, and temporary workers present in the United States at any given time, and identify those who have overstayed or otherwise violated the terms and conditions of their admission.

As we move forward, it is imperative that we expand the Nation's enforcement efforts concerning overstays and other status violations. This includes our continued focus on targeting overstays and other status violations that, based on available intelligence, may threaten National security. We must also expand our focus to other priority classes of status violations. Efficiently targeting and removing more aliens who overstay their authorized periods of admission, or who have otherwise violated their status, as early as possible, will help preserve valuable prosecutorial and investigative resources and improve our National security. Accordingly, ICE is analyzing various approaches to this issue, including sharpening the focus of proven programs that currently address vulnerabilities exploited by visa violators.

The Compliance Enforcement Unit

In June 2003, the ICE Office of Investigations (OI) established the CEU, the first National program dedicated to the enforcement of non-immigrant visa violations. Previously, no resources had been dedicated exclusively to the enforcement of visa non-compliance. As such, at its inception, the CEU was staffed almost entirely with personnel on temporary assignment. The CEU has grown considerably since then as ICE has prioritized its expansion. The first official funding for the CEU came in the fiscal year 2004 appropriations, in which $6.7 million was provided for 51 positions. Roughly one-third (16) of the fiscal year 2004 CEU positions were placed at ICE headquarters. The remaining 35 were placed in field offices throughout the country. At the end of fiscal year 2004, ICE obligated an additional $1.4 million toward compliance enforcement efforts. The total dollar amount spent includes the salaries, expenses, and other costs for 59 full-time equivalent (FTE) investigative positions. During fiscal year 2009, ICE expended $68.3 million (272 investigative FTE) toward compliance enforcement activities from appropriated resources. In addition, $21.2 million was expended from student exchange fees.

ICE received the following funding increases for compliance enforcement investigations since the CEU's inception in 2003:

- Fiscal year 2004.—$6.7 million;
- Fiscal year 2005.—$8.3 million;
- Fiscal year 2007.—$10.0 million;
- Fiscal year 2008.—$9.0 million;
- Fiscal year 2009.—$3.9 million.

Each year, the CEU analyzes records of hundreds of thousands of potential status violators, after analysis of data from SEVIS, NSEERS, and US–VISIT, along with other information. These records are resolved by further establishing potential violations that would warrant field investigations, establishing compliance or establishing departure dates from the United States. Between 15,000 and 20,000 of these records are resolved by in-house analysts each month. Since the creation of the CEU in 2003, analysts have resolved more than 1 million such records. On average, ICE opens approximately 6,000 investigative cases annually, and assigns them to our agents in the field for further investigation. On average, these cases have resulted in over 1,400 arrests per year.

A recent ICE investigation in Las Cruces, New Mexico, highlights how the CEU functions. As a result of CEU data analysis and field investigation, last month ICE agents arrested two foreign nationals who were admitted as F–1 nonimmigrant students and violated the terms and conditions of their admission. Both individuals were referred for investigation after their status was terminated in SEVIS for failure to maintain student status. These individuals possessed several other indicators of National security concerns.

Agents and analysts in ICE monitor the latest threat reporting and proactively address emergent issues. This practice has contributed to ICE's counterterrorism mission by initiating or supporting high-priority National security initiatives based upon specific intelligence.

In order to ensure that the potential violators who pose the greatest threat to National security are given priority in targeting, ICE uses intelligence-based criteria, developed in close consultation with the intelligence and law enforcement communities. ICE assembles the Compliance Enforcement Advisory Panel (CEAP) on a triannual basis to ensure that it uses the latest threat intelligence to target nonimmigrant overstays and status violators who pose the highest risks to National security.

Through the CEU, ICE also supports and promotes school fraud investigations through the Student and Exchange Visitor Program (SEVP). In March 2010, ICE's Compliance Enforcement Group in Miami, Florida, initiated "Operation Class Dismissed," a criminal investigation that led to the indictment of the owner/operator of a Miami-based foreign language school and one of its employees on four counts of conspiring to commit a criminal offense against the United States. The owner and employee were suspected of fraudulently sponsoring foreign students by certifying student status to non-immigrants, without requiring them to maintain full courses of study as required to lawfully comply with the terms of their admission. The ICE investigation uncovered information that only approximately 5 percent of the school's students attended class on any given day. In addition to the indictment, follow-up investigation by ICE resulted in the administrative arrests of 81 student visa violators purported to be attending the school from countries including Thailand, Syria, Honduras, South Korea, Japan, Colombia, Dominican Republic, Turkmenistan, Turkey, Indonesia, Venezuela, Brazil, and Kyrgyzstan.

Coordination With US–VISIT and Other DHS Components

Through the CEU, ICE works in close collaboration with US–VISIT, part of the Department of Homeland Security's National Protection and Programs Directorate (NPPD). US–VISIT supports the Department of Homeland Security's mission to protect our Nation by providing biometric identification services to Federal, State, and local government decision-makers to help them identify the people they encounter accurately, and determine whether those people pose risks to the United States. DHS's use of biometrics under the US–VISIT program is a powerful tool in preventing identity fraud and ensuring that DHS is able to rapidly identify criminals and immigration violators who try to cross our borders under a new name. Biometric information sharing between the Federal Bureau of Investigation's Criminal Justice Information Services and US–VISIT also provides critical support to ICE's Secure Communities Program.

Through Secure Communities, aliens—including those who have overstayed their visas or otherwise violated their immigration status and are then encountered by law enforcement—can be identified when booked for crimes by State and local law enforcement. Currently, this capability is available in 119 jurisdictions in 16 States. US–VISIT also supports the Department's ability to identify international travelers who have remained in the United States beyond their periods of admission by analyzing related biographical information. US–VISIT stores biographic entry and exit records in the Arrival and Departure Information System.

ICE receives nonimmigrant overstay and status violation referrals from US–VISIT's Data Integrity Group (DIG). ICE currently receives three types of nonimmigrant status violator leads from US–VISIT.

The first type, Nonimmigrant Overstay Leads, is a used by the CEU to generate field investigations.

A second type of lead pertains to the CEU's Visa Waiver Enforcement Program (VWEP). The Visa Waiver Program (VWP) is the primary source of nonimmigrant visitors from countries other than Canada and Mexico. Although the overstay rate from this population is less than 1 percent, we created a program dedicated to overstays arising from this VWP population given the high absolute number of individuals in this category. Prior to the implementation of the VWEP in 2008, there was no National program dedicated to addressing overstays within this population. ICE receives a weekly list of individuals that US–VISIT has identified as potential

overstays who entered the United States under the VWP. In accord with its intelligence-based criteria, a relevant portion of this report is imported into the CEU's internal lead tracking system for review and possible field assignment.

The third type of lead is generated from biometric data collected by US–VISIT. US–VISIT routinely receives fingerprint records from a variety of governmental sources and adds them to a biometric watch list of individuals of National security concern. These new watch list records are checked against all fingerprints in the Automated Biometric Identification System, managed by US–VISIT, to determine if DHS previously encountered the individual. If US–VISIT identifies a prior encounter, such as admission to the United States, the information is forwarded to ICE for review and possible field assignment. Similarly, US–VISIT monitors records for individuals who, at the time of admission to the United States, were the subject of watch list records that did not render the individuals inadmissible to the United States. Therefore, if such individuals overstay their terms of admission, information on the subjects is forwarded to ICE for review and possible referral to investigative field offices for follow-up.

Additionally, the CEU develops potential overstay and status violation leads from SEVIS and NSEERS. The CEU imports these leads directly from those databases, and applies its intelligence-based criteria to determine whether investigative referral is appropriate.

Broadening the Mission of the Compliance Enforcement Unit

In 2004, the United States Government Accountability Office (then called the United States General Accounting Office) estimated that one-third of the illegal alien population had entered the United States legally but had overstayed their periods of authorized stay.[1] According to annual overstay analysis produced by US–VISIT, the number of individuals who overstayed the terms of their admission each year has remained above 300,000 for fiscal years 2007, 2008, and 2009. The Pew Hispanic Center estimates the total number of visa overstays in the United States at approximately 4.4 million.[2] ICE is currently reviewing its policies, programs, and procedures concerning visa overstays, and continues to explore how to most effectively allocate its finite resources. Additional targeting and enforcement actions could provide a significant deterrent to overstays and could reduce the overall number of visa overstays in the United States.

CONCLUSION

I thank the committee for its support of ICE and our law enforcement mission. Your support is vital to our work. Your continued interest and oversight of our actions is important to the men and women at ICE, who work each day to ensure the safety and security of the United States.

I would be pleased to answer any questions you have at this time.

Chairman THOMPSON. Thank you for your testimony.

I now recognize Inspector General Skinner to summarize his statement for 5 minutes.

STATEMENT OF RICHARD L. SKINNER, INSPECTOR GENERAL, DEPARTMENT OF HOMELAND SECURITY

Mr. SKINNER. Good morning, Chairman Thompson, Ranking Member King, and Members of the committee. Thank you for inviting me today to testify on visa overstays.

First, let me point out that over the past 5 years, my office has spent countless hours reviewing the Department's immigration programs. However, on the subject of visa overstays, we completed

[1] U.S. General Accounting Office "Overstay Tracking: A Key Component of Homeland Security and a Layered Defense", 5/1/2004, *http://www.gao.gov/new.items/d0482.pdf*.

[2] Pew Hispanic Center, "Modes of Entry for the Unauthorized Migrant Population", 5/22/2006, *http://pewhispanic.org/files/factsheets/19.pdf,* The estimate assumes the range of 4–5.5m for overstays and 250,000–500,000 for Border Crossing Cards. The Pew estimate is based on an assumption that visa overstays represent 40–50 percent of the unauthorized population. The estimate for visa overstays and visa waiver overstays employs the middle of the range based on conversations with the DHS Office of Immigration Statistics. The estimate of border crossing card overstays employs the higher estimate based on a recommendation from OIS that BCC overstay population increases each year. The Office of Immigration Statistics agrees the Pew analysis is the best existing estimate on the visa overstay population.

only two reviews, and both were completed in calendar year 2005. So please excuse me if some of the issues we raised in those reports seem to be dated today.

Those reports dealt with the Department's US–VISIT program and ICE's Compliance Unit—Enforcement Unit. While some of the issues addressed in those reports may have changed, the challenges of identifying and removing visa overstays has remained unchanged, or may have even intensified over time.

Most approved visitors in the United States leave before their visas expire, but many don't. Some estimates suggest that as many as 4 million overstays are in the United States today. Overstays perpetuate the illegal-immigration problem by using the visa process to remain unlawfully in the United States. Moreover, some overstays represent a very real National security threat. Ranking Member King, I think you even mentioned this—that at least six of the 9/11 hijackers were, in fact, visa overstays.

In an effort to reduce the number of aliens residing in the United States who have violated the terms of their visa, ICE has established the Compliance Enforcement Unit to track and pursue foreign students, exchange visitors, and other non-immigrant visitors who violate their immigration status. Essentially, ICE draws up on three databases to gather and analyze leads on visitors to the United States.

These are, at first, US–VISIT, which verifies the identities of incoming visitors and ensures compliance with visa and immigration policies; second, the Student and Exchange Visitor Information System, which maintains data on roughly 1 million non-immigrant foreign student and exchange visitors; and, third, NSEERS, the National Security Entry-Exit Registration System, which is a registry of selected foreign visitors who, based upon country of origin or other intelligence-based criteria, may present an elevated National security concern.

Between January 2004 and January 2005, which was the scope of our study, ICE reviewed over 300,000 leads compiled from these three databases. Of these leads, only about 143,000 were processed. That is about 47 percent—of which, about 139,000 were closed as "non-actionable"—that is the individual either left, or we couldn't verify addresses. About 4,100 were actually referred for investigation, which resulted in 671 apprehensions.

Our review of ICE's program to identify and remove visa overstays disclosed that ICE did not always validate the veracity of actionable leads. As a result, viable staff time was wasted chasing down false leads. It did not have a means to match available resources with workload demands. Consequently, limited resources were not always being used in the most efficient manner possible. Finally, it did not always document the reasons for not pursuing violator leads. Consequently, ICE could not be sure it had a complete record about a violator when chasing down any subsequent leads about that violator.

Adding to the complexity of the overstay issue is the large number of travelers who are exempted from enrollment in US–VISIT, such as the Mexican Border Crossing Card holders, who account for almost nearly half of the land-border crossings. Implementing US–VISIT at the land ports of entry is more complex and challenging

than air and sea ports, both of which offer an array of logistical control features such as scheduled arrival and departure times.

Land ports of entry must be able to accommodate larger and constant flows of traffic. Small increases in processing time can translate more quickly into travel delays and impede border crossing. In early 2008, GAO criticized DHS for not having a comprehensive strategy for controlling and monitoring the exit of foreign visitors. In a report released earlier this year, GAO again criticized DHS for not adopting an integrated process scheduling, executing, and tracking the work that needs to be accomplished to deliver the exit strategy.

We recognize that ICE has already made considerable process in managing and prioritizing its workload of National security cases, criminal-alien cases, and fugitive-alien cases. We also recognize that enhancements have been made to the Department's visitor databases, which, in turn, enhances ICE's ability to locate and remove visa overstays. However, even if the Department can monitor these exit of foreign visitors through US–VISIT, it is highly unlikely that it can eliminate visa overstays altogether.

The Department can, however, improve its efforts to remove those overstays that pose the biggest threat to our society—that is terrorists, criminals, and fugitives—by continuing to invest in ICE's enforcement and compliance operations.

Mr. Chairman, this concludes my statement. I will be happy to answer any questions you may have.

[The statement of Mr. Skinner follows:]

PREPARED STATEMENT OF RICHARD L. SKINNER

MARCH 25, 2010

Chairman Thompson, Ranking Member King, and Members of the committee: Thank you for inviting me to testify on visa overstays. While most visitors leave by the time their visas expire, many thousands remain in the United States illegally. Overstays perpetuate the illegal immigration problem by using the visa process to break the law to remain in the United States. Moreover, some overstays represent a very real National security risk to the Nation. At least six of the 9/11 hijackers were visa overstays.

The Department of Homeland Security estimates that approximately 10.8 million unauthorized immigrants live in the United States. In an effort to reduce the number of aliens residing in the United States who have violated the terms of certain types of visas, U.S. Immigration and Customs Enforcement established the Compliance Enforcement Unit (CEU) in June 2003. The CEU tracks and pursues overstays including, foreign students, exchange visitors, and other non-immigrant visitors who violate their immigration status. The CEU draws upon various Government databases to gather and analyze leads on visitors to the United States, identify potential security or criminal threats, and ensure full compliance with immigration laws. Additionally, the CEU supports enforcement actions as a result of visa revocation actions taken by the Department of State (DOS).

The CEU develops leads on immigration violators by collecting and examining data from three key National databases:

- The U.S. Visitor and Immigrant Status Indicator Technology program, administered by DHS, verifies the identities of incoming visitors and ensures compliance with visa and immigration policies. US–VISIT collects travel information and biometric identifiers such as fingerprints to verify the identity of visitors to the United States upon their arrival and departure.
- The Student and Exchange Visitor Information System is an internet-based program, administered by ICE, which maintains data on roughly 1 million non-immigrant foreign students and exchange visitors during their stay in the United States. SEVIS was developed in 2002 to improve Nation-wide coordination and communication in monitoring student visa activity.

- The National Security Entry-Exit Registration System is a DHS-administered registry of selected foreign visitors who, based upon country of origin or other intelligence-based criteria, may present an elevated National security concern.

Since its creation in June 2003, the CEU has reviewed more than 500,000 leads compiled from these databases. Of these leads, nearly 16,000 revealed potential violations of U.S. visa or immigration law, which were referred to ICE field offices for investigation. To date, these investigations have resulted in more than 3,000 arrests.

In September 2005, we conducted a review to evaluate the efficacy and effectiveness of ICE CEU in identifying, locating, and apprehending aliens who have violated the purpose and terms of their admission into the United States.

Based on our review of the number of cases referred to the CEU and the procedures and systems used to collect, analyze, and process these referrals, we identified several deficiencies in the CEU process. We made four recommendations:

1. Ensure that data quality issues are addressed, in conjunction with officials from the various lead referral systems, and that validity checks are performed to increase the number of "actionable" leads referred to CEU.

2. Assess the CEU workflow process, establish, and closely monitor processing performance measures to ensure that CEU staff is working efficiently, and determine when staffing adjustments are needed to ensure timely processing of all violator leads.

3. Ensure that adequate justification exists for lead closure and that this justification is documented.

4. Redistribute policy and guidance documents to ICE field offices and consolidate current policy memoranda into a set of Standard Operating Procedures (SOPs) for distribution to all ICE field offices; and, establish an ICE-wide resource for access to the CEU SOPs, as well as other current information regarding CEU activities.

We closed recommendations 2 and 3 based on ICE's response to our draft report. For recommendation 2, ICE stated that the CEU has refined how it prioritizes leads that pose the greatest potential threat to National security and public safety. The CEU will make staffing adjustments to address increased workloads by adding additional research analysts and, when necessary, detailing ICE investigators to the regions with the highest workloads. This will facilitate research of additional leads. The CEU has a Student and Exchange Visitor Program liaison assigned to review Student Exchange Visitor Program leads before they are transmitted to the field for investigation.

Regarding recommendation 3, in its response to our draft report, ICE stated that CEU policy and guidance memoranda are either currently available through ICE's proprietary website or are in the process of being added. Additionally, the CEU will make field managers responsible for CEU operations aware that CEU-related policy memoranda are available on-line. ICE also provided two agents from each Special Agent-in-Charge office with training on CEU operations and how to access SEVIS and US–VISIT information. Insofar as many CEU leads are sent directly to Resident Agent-in-Charge (RAC) offices, we believe that agents assigned to ICE RAC offices would also benefit from this training.

On February 6, 2006, we closed recommendations 1 and 4. For recommendation 1, ICE reported that the CEU had refined or established new business processes with the DOS, the Student Exchange Visitor Program, and US–VISIT Program that will enable CEU to focus investigative resources on a smaller set of high quality records, thereby reducing the number of non-actionable leads. These processes include access to the DOS data systems, which will allow for rapid referrals of visa revocations to ICE field offices for investigation, and the correction of data errors in SEVIS to identify individuals who are no longer residing in this country. The Student Exchange Visitor Program office is also exploring the use of the unique personal identifier, which will allow for the consolidation of foreign student records in SEVIS and facilities interoperability with US–VISIT and U.S. Citizenship and Immigration Services systems. The US–VISIT Program office is retrieving additional departure records not found in the Arrival and Departure Information System (the entry-exit component of US–VISIT) to ensure that all US–VISIT overstay records forwarded to CEU are thoroughly researched through all available entry-exit databases.

In addition, for recommendation 4, ICE verified that CEU policy and guidance memoranda are currently available on the ICE Office of Investigations proprietary website. The CEU has conducted eight training classes for its field agents.

We also reported that the sum of deficiencies in the systems, in the CEU's output, and other factors in the apprehension and removal process resulted in minimal im-

pact in reducing the number of overstays in the United States. Adding to the complexity of the overstay issue is the large number of travelers who are exempt from enrollment in US–VISIT. This includes Mexican Border Crossing Card (BCC) holders. BCC holders, who accounted for nearly half of foreign nationals land border crossings, are exempt from enrollment when they enter under BCC provisions.

Implementing US–VISIT at land ports of entry (POE) is more complex and challenging than air and sea POEs; both of which offer an array of logistical and control features, such as scheduled arrival and departure times, accommodations for delayed travel, and advanced passenger information. Land POEs must be able to accommodate larger and constant volumes of foreign nationals. At land POEs, small increases in processing times translate more quickly into travel delays that impede border crossing, which can have deleterious economic effects for both border nations. For example, we examined the impact of a 20-second increase in inspections time for 3.5 million vehicles. We calculated that it would take the approximate equivalent of 2.22 additional calendar years to inspect these additional vehicles. Although other variables could affect the equation, the increase of 2.22 calendar years in inspections time could translate into significant resource implications for U.S. Customs and Border Protection, as well as significant increases in waiting time for travelers.

In February 2008, the General Accountability Office (GAO) reported that DHS has partially defined a strategic solution for meeting US–VISIT's goals. In particular, the US–VISIT program office has defined and begun to develop a key capability known as "Unique Identity," which is to establish a single identity for all individuals who interact with any immigration or border management organization by capturing the individual's biometrics, including 10 fingerprints and a digital image, at the earliest possible interaction. However, in that same report, GAO criticized DHS for not having a comprehensive strategy for controlling and monitoring the exit of foreign visitors.

In our report, we stated "A US–VISIT exit component is not in place at land POEs. Without the exit component, US–VISIT cannot match entry and departure records and cannot identify those non-immigrants who may have overstayed the terms of their visas." However, in a GAO report released this year, the GAO credits DHS for having established a comprehensive exit project within the US–VISIT program that consists of six components that are at varying stages of completion. Again, however, GAO criticizes DHS for not adopting an integrated approach to scheduling, executing, and tracking the work that needs to be accomplished to deliver an exit solution. GAO contends that without a master schedule, DHS cannot reliably commit to when and how work will be accomplished to deliver a comprehensive exit solution to its 300 POEs, and cannot adequately monitor and manage its progress toward that end.

On December 9, 2009, Secretary Napolitano stated in her testimony before the Senate Committee on the Judiciary that "DHS has continued to enhance US–VISIT's capabilities by implementing 10-fingerprint processing. Ten-fingerprint scanners have now been deployed to all major ports of entry, providing the capability to capture 10 fingerprints from travelers. This has improved accuracy of identification, enhanced interoperability with the FBI and the Department of State, as well as with State, local, and Tribal governments, and increased our ability to conduct full searches against latent fingerprint databases."

"We [DHS] also have continued to test US–VISIT biometric exit procedures for travelers departing U.S. airports and seaports. From May to June 2009, US–VISIT conducted two air exit pilots at the Detroit Wayne Country Metropolitan Airport and Hartsfield-Jackson Atlanta International Airport. In October, we provided an evaluation of these pilot tests to Congress and the Government Accountability Office."

"Currently, we [DHS] are reviewing public comments from the Notice of Proposed Rule Making the Department published in the Federal Register in April, 2009 proposing an exit system for airports. We will continue to work with Congress and industry partners to weigh our options and develop an effective system that meets our security objectives while facilitating lawful travel."

The US–VISIT program office reviews and analyzes information in the Arrival and Departure Information System (ADIS), a US–VISIT module used to store biographic, biometric indicator, and encounter data on aliens who have applied for entry, entered, or departed the United States. ADIS consolidates information from various systems in order to provide a repository of data held by DHS for pre-entry, entry, status management, and exit tracking of immigrants and non-immigrants. Its primary use is to facilitate the investigation of subjects of interest who may have violated their authorized stay.

OTHER OIG WORK THAT SPOTLIGHTS APPREHENSION, DETENTION, AND REMOVAL ACTIONS

In March 2007, we issued a report on ICE's Fugitive Operations Teams. Fugitive Operations teams perform under the auspices of the Office of Detention and Removal Operations' National Fugitive Operations Program. The purpose of the National Fugitive Operations Program is to identify, apprehend, and remove fugitive aliens from the United States. The ultimate goal of the program is to eliminate the backlog of fugitive aliens. Fugitive aliens are non-United States citizens not currently in the custody or control of ICE who have failed to depart the United States pursuant to a final order of removal from the Executive Office for Immigration Review. The orders require the aliens to be removed from this country.

Our review's objectives were to determine the adequacy of performance measures used to assess the effectiveness of the teams and their progress in reducing the backlog of fugitive alien cases. We assessed the sufficiency of the teams' staffing levels, factors affecting the teams' operations, such as coordination activities with internal and external entities, and training policies and practices for the teams.

We determined that despite the teams' efforts, the following factors limited their effectiveness:

- Insufficient detention capacity;
- Limitations of its immigration database, the Deportable Alien Control System, which is the Office of Detention and Removal Operations' system of records;
- Inadequate working space;
- Team members performing non-fugitive operations duties contrary to the Office of Detention and Removal Operations policy; and,
- Insufficient staffing.

Additionally, ICE could not calculate the removal rate of fugitive aliens apprehended by the teams because the Office of Detention and Removal Operations' reports did not specify whether removed aliens were fugitive or non-fugitive aliens or whether a Fugitive Operations Team or non-team member made the apprehensions. Moreover, since the office does not distinguish between fugitives and non-fugitives in its removal figures, we could not determine the percentage of fugitive aliens removed from the country. More specifically, it is unknown how many of the fugitive aliens apprehended by the teams were removed. When fugitive aliens have not been removed, they are likely released into the United States on their own recognizance or under an order of supervision, which is similar to a parole.

Finally, we determined that the teams have basic law enforcement training and most have completed the requisite training to conduct fugitive operations. In addition, while teams are encouraged to seek refresher training, there is no National requirement for it.

We made seven recommendations to address these issues. ICE concurred with each of the seven recommendations. For example, we recommended that ICE develop a detailed plan to ensure adequate employee workspace. To address this recommendation, ICE is coordinating a Space Allocation Survey with several entities, including the General Services Administration and U.S. Customs and Border Protection, to identify the need for additional workspace and then assessing available resources to accommodate such request. In addition, in October 2006, in order to facilitate the deployment of fiscal year 2007 Fugitive Operations Teams, ICE specifically asked affected field offices whether new and pre-existing sites needed additional storage and parking space, gyms, and holding facilities.

We also recommended that ICE provide appropriate resources to detain, process, and remove fugitive aliens. ICE explained that it created the Detention Operations Coordination Center to coordinate the movement and placement of detained aliens to allocate detention space effectively. In addition, ICE's Office of Detention and Removal Operations units are engaged in activities to develop a comprehensive infrastructure that would improve coordinated removal efforts and management of detention space.

Although ICE has taken positive steps to improve its capability to detain, process, and remove aliens, ICE identified several external factors that impede the Office of Detention and Removal Operations' ability to execute removal operations, such as:

- Foreign embassies and consulates refusal or delay of issuing travel documents;
- Grants of relief, motions to reopen, issuances of stays, and other legal decisions from the Executive Office for Immigration Review and the Federal courts; or
- The United States Supreme Court order barring prolonged detention after 180 days, if removal of an alien in ICE custody is not reasonably foreseeable.

The teams are successfully liaising and coordinating with other entities to locate, apprehend and obtaining information on fugitive aliens and enlisting other entities' participation in Fugitive Operations Team-led apprehensions through information-

sharing agreements and partnerships with Federal, State, and local law enforcement agencies. The teams' reliance on formal information-sharing agreements and other agencies for information gathering provides added resources that might not have been available to the teams otherwise.

In June 2001, the Supreme Court ruled that an alien with a final order of removal generally should not be detained longer than 6 months. To justify an alien's continued detention, current laws, regulations, policies, and practices require the Federal Government to either establish that it can obtain a passport or other travel document for the alien in the "reasonably foreseeable future," or certify that the alien meets stringent criteria as a danger to society or to the National interest. ICE is responsible for ensuring compliance with the Court's ruling and final order case management.

In February 2007, we issued a report on ICE's compliance with two U.S. Supreme Court decisions governing the detention period for aliens with a final order of removal. We reviewed ICE's compliance with detention limits for aliens who were under a final order of removal from the United States, including the reasons for exceptions or noncompliance. ICE has introduced quality assurance and tracking measures for case review; however, outdated databases and current staffing resources limit the effectiveness of its oversight capabilities. Based on our review, approximately 80 percent of aliens with a final order are removed or released within 90 days of an order. Custody decisions were not made in over 6 percent of cases, and were not timely in over 19 percent of cases.

Moreover, some aliens have been suspended from the review process without adequately documented evidence that the alien is failing to comply with efforts to secure removal. In addition, cases are not prioritized to ensure that aliens who are dangerous or whose departure is in the National interest are removed, or that their release within the United States is adequately supervised. Finally, ICE has not provided sufficient guidance on applying the Supreme Court's "reasonably foreseeable future" standard, and does not systematically track removal rates—information that is necessary for negotiating returns and for determining whether detention space is used effectively.

The weaknesses and potential vulnerabilities in the post order custody review process cannot be easily addressed with ICE's current oversight efforts, and ICE is not well-positioned to oversee the growing detention caseload that will be generated by DHS' planned enhancements to secure the border.

We recognize that ICE has already made considerable progress in managing National security cases. The Headquarters Custody Determination Unit (HQCDU) should have at least one officer working full-time on each of the National security, terrorism, war criminal, and human rights abuser caseloads. However, at the time of our report, only one officer was working on National security, terrorism, war criminal and the human rights abuser caseloads in addition to other duties. With adequate staffing, the unit could take a more proactive approach to monitoring and prioritizing the whole caseload, which might secure faster returns and fewer or better-supervised releases.

ICE's Office of Detention and Removal Operations makes thousands of decisions on Post Order Custody Review cases each year, and many should be analyzed to identify the effect on removals for a number of factors. During the period under review, available statistics indicated that 40 percent of habeas corpus challenges were followed by a release, indicating that Government entities are finding the decisions made under the existing system could not be supported when challenged. Making the process more objective and transparent will enable HQCDU to support its decisions when they are challenged. While the HQCDU makes all 180-day and post 180-day Post Order Custody Review decisions, once the 180-day decision has been made, responsibility for monitoring cases and initiating subsequent reviews shifts to deportation officers in the field. Without a written decision from the unit, deportation officers would not have necessary information to determine when to initiate a review of post-180-day detention. Reviewing a decision at the request of a field deportation officer does not automatically compel the HQ Custody Determination Unit to release the alien. Tracking statistics on removal rates will provide additional information on which to base their decision, but will not constrain them from taking into account changes in country conditions, on-going negotiations, the circumstances of the individual alien, or their expertise and experience.

ICE regulations and procedures provide less oversight and review after an alien has been held 180 days, despite the increasing burden on the Government to establish that an alien's removal will occur in the reasonably near future. These cases would benefit from a broader range of strategies to ensure regulatory compliance and the most effective use of existing resources, such as detention space. Oversight should include periodic field office meetings with local pro bono organizations. Pro

bono organizations are a source of information on potential compliance issues, can assist in resolving post 180-day cases, and can—and do—raise compliance issues in court if they are not resolved at the local field office level.

To address these challenges, we made five recommendations. ICE concurred and subsequently complied with all except one recommendation. First, we recommended that ICE require each Field Office Director to report case-specific compliance with Post Order Custody Review regulations and guidance to the HQ Custody Determination Unit on a quarterly basis, which would provide this information to the Assistant Secretary semi-annually until such information can be obtained through ENFORCE data system.

Second, we recommended that ICE ensure that existing vacancies in the Travel Documents Unit are filled and, as staff or funding becomes available, ensure this office upgrades its intranet.

Third, ICE needs to develop and staff a program to identify and prioritize cases involving aliens who represent a violent threat to the public or are National security or National interest cases, so that efforts to secure travel documents are expedited, and placement procedures are initiated early for those who might require eventual release within the United States. This recommendation is an issue of resources rather than of commitment.

Our fourth recommendation concerns ICE's need to develop an objective and transparent methodology for determining whether there is a significant likelihood of removal for all cases, which considers: (1) The Supreme Court's requirement for increasing scrutiny over time; (2) the factors outlined in ICE regulations; and, (3) comprehensive statistics on actual removal rates for all Post Order Custody Review cases forwarded to the Travel Documents Unit.

We also recommended that ICE develop and staff a program to improve oversight of all aliens who have been in detention longer than 180 days after a final order of removal.

In November 2006, we issued a report, entitled *Review of the U.S. Immigration and Customs Enforcement Detainee Tracking Process.* Our audit objectives were to determine whether ICE had an effective system to track the location of detainees and respond to public inquiries. Detainees are often transferred from one facility to another for various reasons including medical, security issues, or other ICE needs. ICE field offices use the Deportable Alien Control System to track detainees. This system automates many of the clerical control functions associated with the arrest, detention, and deportation of illegal aliens. The system provides management information concerning the status and disposition of individual cases, as well as statistical and summary data of cases by type, status, and detainee-specific information including the detainee assigned number, name, country of origin, book-in date, and detention facility.

Our audit determined that the detainee tracking system, for five of the eight ICE detention facilities tested, did not always contain timely information. At the five facilities, data for 10 percent of the detainees examined were not recorded in the ICE tracking system within the first 5 days of detainment. ICE procedures stipulated that detainee data should be recorded in Deportable Alien Control System as soon as possible, usually within 2 business days from the date of detainment.

At six of eight ICE detention facilities tested, Deportable Alien Control System and detention facility records did not always agree on the location of detainees, or contained information showing the detainee had been deported. Inaccurate detainee information reduces ICE's ability to correctly identify the actual location of detainees and to verify that individuals have been detained. There is also the potential for ICE to under- or overpay detention facilities because of incorrect data.

ICE had no formal policy regarding what information it would provide to anyone inquiring about detainees in their custody. However, the four field offices we visited and the eight detention facilities contacted said that they would confirm whether the detainee was held in their facility. Requests for more detailed information would be referred to ICE headquarters.

To address these challenges, we made three recommendations. We recommended that ICE:

- Issue formal instructions to field offices requiring timely Deportable Alien Control System entries and proper supervisory review;
- Perform daily/periodic reconciliations of system data; and
- Obtain a reimbursement of the $7,955 in ICE net overpayments.

ICE concurred with all three recommendations.

In summary, I believe we all can agree that significant number of foreign visitors, who enter the United States legally, overstay their authorized period for admission, and enforcing the law and ensuring that foreign visitors leave the country as scheduled while continuing to make the United States a welcome place for foreign trav-

elers is an important but challenging balance to maintain. Biometrically-enabled entry capabilities are operating at the vast majority of air, sea, and land ports of entry, and is identifying previous visa violators and others whose admissibility is questionable. However, the use of a comparable exit capability remains unclear.

Mr. Chairman, Members of the committee, you can be sure that my office is committed to continuing our oversight efforts for this challenging and complex issue in the months and years ahead.

This concludes my prepared statement. I would be happy to answer any questions you or the Members of the committee may have.

Chairman THOMPSON. Thank you for your testimony.

I now recognize Mr. Alden to summarize his statement for 5 minutes.

STATEMENT OF EDWARD ALDEN, SENIOR FELLOW, COUNCIL ON FOREIGN RELATIONS

Mr. ALDEN. Chairman Thompson, Ranking Member King, distinguished Members, thank you very much for inviting me to testify on the issue of visa overstays.

I just want to set this hearing into a bit of context. I have been observing and writing about U.S. efforts to secure the borders since 9/11. I was reflecting this morning on what an extraordinary undertaking this has been. The United States has historically been an open country in which the Federal Government knew very little about who was coming or going. That openness has been a great strength, bringing to our shores the talented, restless, and ambitious from across the world.

But in the new age of terrorism, that same openness also proved a dangerous weakness. We are still in the early stages of trying to figure out how, in this new world, to manage the borders, to manage visa policy, and to manage immigration in a way that preserves America's strengths, but reduces its vulnerabilities. That is not an easy thing to do. There have been, and will be, mistakes in both directions.

On the issue before us, Congress has long pushed for a biometric system that would identify all those who come lawfully to the United States, but then overstay their visas. Considerable progress has been made, and pilot projects have been tested, but such a system has yet to be deployed. This hearing serves as an excellent opportunity to reassess future directions, and to ensure that, in dealing with visa overstays—that perfect will not be the enemy of the very good.

I have four points to make briefly. First, even without a biometric exit system, the Department of Homeland Security has made considerable progress through the use of passenger manifest data. DHS collects from all airlines advanced information, including names and nationalities and passport numbers, on all incoming passengers. That information has been vital in helping to identify potential terrorists and criminal threats.

Since February 2008, DHS has also required airlines to transmit the same passenger information for departures to determine whether those who arrive by air are leaving before their visas expire.

There are certainly limitations in using this data to track visa overstays. A traveler could arrive by air and leave over the land borders, for instance, and not be traced. Or a dual national could

enter on one passport and leave on another. Therefore, DHS cannot know for certain that a particular traveler has remained illegally in the United States.

These are real issues. If identifying visa overstayers were critical for preventing future terrorist attacks, that uncertainty would be an unacceptable risk. But that is not the case—which leads to my second point. The reason to track overstays is to discourage illegal immigration. Exit tracking is not a counterterrorism tool. There are other, better means available for dealing with those who violate their non-immigrant visas. I would be happy, in the questions, to talk about the Atta and Rahman and Smadi cases, because I think they are often misunderstood.

The fundamental challenge with regard to foreign-based terrorists is to keep them out of the United States. Congress and this administration have correctly made it a priority to improve entry screening systems such as US–VISIT entry, electronic system of travel authorization for visa-waiver countries, and international data-sharing on lost and stolen passports.

Even if all overstays could be positively identified, Immigration and Customs Enforcement lacks the resources to routinely track down, arrest, and deport those individuals. ICE is rightly focused on removing illegal immigrants who also have criminal records or otherwise pose a greater risk. Certainly, there is much the United States can do to stop individuals from overstaying their visas and remaining illegally.

Last year, the State Department rejected more than 2 million visa applicants, most because they were considered potential overstayers. There are harsh penalties, including 3- and 10-year bars for those who overstay visas. Indeed, sometimes, those need to be implemented with greater flexibility than we have seen.

It has become easier to identify overstayers. Just in the past year, all State Department consular officers can now search the DHS database that identifies most air travelers who leave after their visas expire. That information will soon appear automatically on the screen of every consular officer who adjudicates the visa.

Third, the Government must be very careful that any additional measures to prevent overstays do not discourage other travelers and would-be immigrants. Overseas travel to the United States fell sharply after 9/11, and had yet to recover even before the current recession. Foreign-student numbers dropped as well. This has hurt the U.S. economy and harmed our image abroad by preventing people from coming to see this country for themselves.

In working towards biometric exit, the Bush and Obama administrations should both be praised for proceeding cautiously to avoid new measures that drive away lawful travelers, which leads me to my final point. The costs of deploying a full biometric exit capability as currently envisioned by Congress are likely to exceed the benefits.

Central philosophy underpinning DHS since its creation is in the idea of risk management; but the costs of new security procedures should be carefully weighed against the expected benefits. A biometric exit system does not pass that test.

Congress and this administration should instead look at whether further accuracy in tracking visa overstays could be realized

through a combination of biographic and biometric means, rather than through a pure biometric approach.

Thank you. I look forward to responding to your questions.

[The statement of Mr. Alden follows:]

PREPARED STATEMENT OF EDWARD ALDEN

MARCH 25, 2010

Chairman Thompson, Ranking Member King and distinguished Members of the Committee on Homeland Security, thank you for the opportunity to testify today on the issue of "Visa Overstays: Can They be Eliminated?". Congress has long sought the creation of a system to allow the U.S. Government to identify accurately those who come lawfully to the United States but then overstay the terms of their entry. Considerable progress has been made, but a range of obstacles has so far prevented its completion. This hearing serves as an excellent opportunity to reassess future directions, and to ensure that, in the effort to discourage visa overstays, the perfect will not be the enemy of the very good.

I will make four points in the testimony that follows:

First, the problem of identifying all those who overstay their visas or other entry conditions remains unsolved, but the Department of Homeland Security (DHS) has made significant and under-recognized progress for air departures through the use of passenger manifest data. Congress should encourage the administration to build on these accomplishments rather than insisting on a fingerprint-based, biometric exit system for identifying visa overstayers.

Second, the primary value of a system for tracking overstays is to bring greater integrity to U.S. immigration laws and to discourage illegal immigration. Exit tracking has little or no utility as a counterterrorism tool, and there are other better tools available for discouraging illegal immigrants who choose to overstay their non-immigrant visas.

Third, the Government must be extremely vigilant that the deployment of additional measures to prevent overstays does not have the unintended consequence of deterring lawful travelers to the United States. Travel to the United States fell sharply following the September 11 terrorist attacks, and overseas travel had yet to recover to pre-9/11 levels even before the current recession. Discouraging foreign travel has hurt the U.S. economy, and damaged America's ability to project its values by encouraging people to come to the United States and see the country first-hand rather than through a foreign media lens.

Finally, the costs of deploying of a full biometric exit capability as currently envisioned by Congress are likely to exceed the benefits. The United States should consider seriously other options at the land borders, especially better use of RFID capabilities already embedded in many identity documents and data sharing with the Canadian and Mexican governments that would allow the United States to access records for those entering Canada and Mexico across the land border.

IT REMAINS DIFFICULT TO IDENTIFY ALL VISA OVERSTAYERS, BUT THERE HAS BEEN SIGNIFICANT PROGRESS IN TRACKING AIR DEPARTURES

There has long been considerable uncertainty about how many of those living out of status in the United States initially entered the country on legal visas. Demographers at the old Immigration and Naturalization Service estimated that 41 percent of the illegal immigrant population had entered legally but then overstayed non-immigrant visas. That 40 percent figure is the one still most commonly cited. A 2002 study by Douglas Massey and others based on survey data produced a similar estimate that 42 percent of the illegal immigrant population had overstayed a visa. The Pew Hispanic Center in 2006 estimated that about 45 percent of the illegal immigrant population was overstayers.

These are only estimates, however, because the Government still has no fully reliable method for tracking those who overstay. Everyone entering the United States on a nonimmigrant visa is required to fill out a form I–94 Arrival/Departure record, or an I–94W for visitors from Visa Waiver Program (VWP) countries. When an individual is inspected by a Customs and Border Protection (CBP) officer at the arriving airport or at the land border, the bottom third of the form is detached and given to the traveler. That departure record is supposed to be returned to the airline or shipping agent upon departure, or to Mexican or Canadian officials for land border exits. Those departure stubs are then matched against arrival records as part of DHS's Arrival and Departure Information System (ADIS) created in 2002 to help monitor visa overstays. In practice, however, matching is well short of 100 percent

for a variety of reasons, including lost stubs, fraud, failure by airlines to collect the forms, individuals changing their visa status after they arrive in the United States, or individuals entering by air and leaving by land.

Congress first legislated the creation of a comprehensive entry-exit system to track visa overstays in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). As I detail in my book, *The Closing of the American Border: Terrorism, Immigration and Security Since 9/11,* that requirement was strongly resisted by State and local governments and businesses along the land borders with Mexico and Canada, which feared that an exit tracking system would create costly delays and damage cross-border travel and trade. Among the opponents of the 1996 provision was Tom Ridge, then the Governor of Pennsylvania. Partly as a result of such opposition, the scheme never made it past the pilot stage.

Since the 9/11 attacks, Congress has mandated and the administration has pursued the creation of a comprehensive entry-exit system in which the identity of arriving and departing travelers would be verified through biometrics. On the entry side, the DHS has fulfilled this mandate by establishing the United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program at all international airports, and at nearly all land border ports of entry. Through US–VISIT, CBP officers collect fingerprints and photographs for all arriving overseas travelers. At the land borders, however, the entry system exempts both Mexicans and Canadians, which means that only third-country nationals are enrolled in US–VISIT when they enter the country via land. This has been a practical necessity. Given the volume of daily crossings at the land borders—about 300 million land inspections occur each year, down from more than 400 million a decade ago—taking fingerprints from all arriving travelers would be impossible without unacceptable delays to cross-border commerce and movement of people. Instead, DHS has moved forward with the Western Hemisphere Travel Initiative (WHTI), which requires secure documentation such as passports, enhanced driver's licenses or trusted traveler cards for cross-border travel. The WHTI is still in the process of full implementation, but the initial indications are that the requirement has produced substantial improvements in document security with little or no disruption to the flow of cross-border travel.

Efforts to establish an exit system have faced greater hurdles. The most recent Congressional deadline for establishment of a biometric exit system from U.S. airports passed June 30, 2009 with no system deployed, though pilot programs have tested different alternatives. The administration published a proposed rule in April, 2008 that would require the airlines to collect and transmit to DHS the fingerprints of departing foreign nationals leaving the United States. But the airlines have pushed back strongly, and are opposed to absorbing the costs of the new system or to finding themselves in the middle of contentious disputes over privacy. DHS has done several pilots on biometric exit. From 2004 to 2007, the Department carried tests at a dozen airports with kiosks that required travelers to present themselves for exit. The technology was successful but compliance rates were low. Last year, DHS undertook two additional pilots. In Detroit, CBP officials were deployed to departure gates to record fingerprints of departing foreign nationals. In Atlanta, Transportation Security Administration (TSA) officials collected biometrics at the TSA check-in points. In both cases the pilot tests showed that the technology was adequate and that traveler delays were minimal, but both tests required intensive use of Government personnel which would be costly to replicate at all international airports. No airline has yet agreed to participate in a pilot test.

Despite the difficulties in meeting the Congressional mandate for a biometric entry-exit system, DHS has made considerable progress in improving the tracking of departures from U.S. airports through the use of passenger manifest data, which is entered into the ADIS database. The collection and use of such data is one of the great success stories of the post-9/11 DHS. Immediately following the terrorist attacks, one of the highest priorities for CBP was to begin collecting from all foreign airlines advanced information (including name, nationality, and passport number) on all incoming passengers. That data has been vital in helping DHS to identify passengers who should be kept off planes entirely (the "no-fly" list), those on terrorist watch lists who require intense scrutiny, and others who should be pulled aside for secondary screening when they arrive in the United States.

Since February, 2008 DHS has also required airlines to transmit the same passenger manifest information on passengers departing from the United States. Compliance with this requirement is in the range of 99 percent, according to DHS officials. That has allowed the Department to match up passenger data for arriving and departing passengers, giving DHS a much more complete picture of whether individual foreign nationals are departing before their visas expire.

The biggest success in this regard has been the VWP, which accounts for the majority of overseas travel to the United States. In November, 2008, then-DHS Secretary Michael Chertoff certified that DHS had met the Congressional requirement to match positively the identification of 97 percent of foreign nationals departing the United States by air. That system continues to improve as airlines have enhanced their collection and dissemination of passenger manifest data.

There are certainly limitations in using manifest data for tracking overstays. A traveler who arrives by air could leave over the land borders, for example, and not be traced. Or a dual-national could enter the country on one passport and leave on another. Given those possibilities, it is difficult for DHS to conclude with certainty that a particular traveler who has failed to return home in time has in fact remained in the United States in violation of his or her entry terms. The Government Accountability Office has pointed out these and other shortcomings in the methodology used by DHS to meet the 97 percent match rate.

These are real issues, and if identifying visa overstayers were a critical matter for protecting the United States against future terrorist attacks, that uncertainty would be an unacceptable risk. But that is not the case.

OVERSTAY TRACKING IS PRIMARILY A TOOL FOR MANAGING AND ENFORCING IMMIGRATION LAWS, NOT FOR PREVENTING OR DISCOURAGING TERRORIST ATTACKS. THERE ARE MORE EFFECTIVE TOOLS AVAILABLE FOR CURBING ILLEGAL IMMIGRATION

The initial post-9/11 impetus for tackling the issue of overstays was the fear of another terrorist attack. In particular, some in the Justice Department seized on the fact that several of the 19 hijackers in the plot had overstayed tourist visas and were thus in the United States unlawfully at the time of the attacks. Significantly, three of the hijackers had been stopped for traffic violations when they were living illegally in the United States, including the pilot Ziad Jarrah who was cited for speeding just 2 days before the attacks. If the information that those individuals had overstayed visas had been available to local law enforcement officials, in theory several of the hijackers might have been detained and deported, potentially disrupting the 9/11 plot.

In response, in September, 2002 the Justice Department launched the National Security Entry-Exit Registration System (NSEERS), sometimes called Special Registration. The program requires that all males between the ages of 16 and 45 from roughly 2 dozen countries considered as potential terrorist risks, as well as selected others, be routed through secondary screening and registered upon arrival in the United States. Those admitted to the United States on nonimmigrant visas under NSEERS can only leave the United States through designated airports and land border facilities at which special exit facilities have been established. The idea was to establish a functioning entry-exit system for a small subset of travelers considered higher risk, and one that would allow for law enforcement officials to be alerted to visa overstayers. That system remains in place today.

The practical limitations of using overstay data as a terrorist tracking tool far exceed the potential benefits, however. Why?

First, the fundamental challenge with regard to foreign-based terrorists is to keep them out of the United States in the first place. Quite simply, those who come to the United States to carry out a terrorist attack are unlikely to leave. Congress and the administration have therefore correctly put priority on improving entry screening systems—including visa screening, the US–VISIT entry procedures, advanced passenger information and passenger name records, the creation of the Electronic System of Travel Authorization (ESTA) for VWP countries, and international data sharing on lost and stolen passports. Those are the systems that need to be made as nearly foolproof as possible. The near-miss Christmas bombing showed both the strengths and continued problems that remain in the entry systems. CBP analysts had identified Omar Farouk Abdulmutallab as someone deserving extra scrutiny while his flight was en route to Detroit. Unfortunately that same judgment needed to be reached earlier, before he boarded the plane.

Second, Immigration and Customs Enforcement (ICE) is far short of the resources that would be necessary to routinely track down, arrest, and deport visa overstayers. Under the Secure Communities program, ICE has rightly put its focus on identifying and deporting illegal immigrants who also have criminal records, not on trying to arrest and detain all unauthorized immigrants. If the rough estimates of visa overstays are correct, there may be as many as 4 or 5 million illegal immigrants who are visa overstayers, requiring that there be some priorities set in deploying limited ICE resources to track and arrest such individuals.

Third, and more plausibly, DHS could routinely make information on visa overstayers and other visa violators available for local law enforcement officials through

the FBI's National Crime Information Center (NCIC) database. That would allow for overstayers to be identified through routine traffic stops and other encounters with local police who had been authorized to check for immigration violations under the 287(g) program. But that would still raise the issue of limited ICE resources to detain and deport those individuals, and would further expand the 287(g) program, which has been resisted by most local police forces as potentially interfering with their fundamental mission of maintaining peace and security in their communities.

Some will point to the recent case of Hosam Maher Husein Smadi, a 19-year-old Jordanian visa overstayer who was accused of attempting to blow up a Dallas office tower last September. The issue of whether an exit tracking system might have stopped him received front page treatment in the *New York Times* last October because Smadi was pulled over by a sheriff in Ellis County, Texas for driving with a broken taillight just 2 weeks before the attempted bombing. Critics have argued that if the evidence that Smadi was a visa overstayer had been available to the sheriff, Smadi would have been detained and handed over to ICE for removal. Instead he was jailed overnight and released. But given the circumstances of the case, that claim does not hold up to scrutiny. Under the improved information-sharing arrangements put in place since 9/11, the sheriff was able to learn immediately that Smadi was the subject of an FBI investigation. Indeed, it appears that the FBI ordered Smadi to be released. The attempted bombing of the Dallas skyscraper turned out to be a sophisticated sting operation mounted by the FBI; had Smadi been held on immigration charges by local police, the sting would have been disrupted and Smadi would potentially have faced only deportation rather than criminal terrorism charges.

The limitations of overstay tracking as an effective counterterrorism tool have long been recognized by Congress. For instance, a Senate Judiciary Committee report on 1997 legislation that would have exempted the land borders from an automated exit system stated the following:

"The Committee is keenly aware that implementing an automated entry-exit system has absolutely nothing to do with countering drug trafficking, and halting the entry of terrorists into the United States, or with any other illegal activity near the borders. An automated entry-exit control system will at best provide information only on those who have overstayed their visas. Even if a vast database of millions of visa overstayers could be developed, this database will in no way provide information as to which individuals might be engaging in other unlawful activity. It will accordingly provide no assistance in identifying terrorists, drug traffickers, or other criminals."

Stewart Baker, the former assistant secretary for policy at DHS in the George W. Bush administration, has rightly said that an exit system is "an immigration accounting system. It's less about safety and more about immigration record-keeping."

So does this mean that the United States can do nothing to discourage individuals from overstaying their visas and remaining illegally to live and work in this country? Not at all.

Indeed, under the current system, enforcement against visa overstayers has increased significantly. The primary enforcement tool for penalizing visa overstayers is to deny them re-entry to the United States should they attempt to return. Even with the limits of the current exit tracking system through the I–94s and passenger manifest data, the number of individuals denied visas or stopped from re-entering the United States has increased significantly each year. Congress already has strong laws on the books that penalize visa overstayers. Under IIRAIRA, those who overstay a visa by more than 6 months and then depart are barred for 3 years from returning to the United States. Those who overstay by a year or more are barred for 10 years. Indeed, the real problem with the current implementation of IIRAIRA is not lack of penalties, but the need for greater flexibility in implementation to ensure that people who inadvertently fall out of status are not wrongly barred from returning to the United States.

The effort to prevent overstays is already one of the primary missions of State Department consular officers. In fiscal year 2009 nearly 2 million out of 7.7 million visa applicants were refused, most because the consular officer suspected they would overstay their visa. Over the past year, all State Department consular officers have acquired access to the ADIS database, which allows them to do a special query to determine if the visa applicant has been identified by DHS as a visa overstayer. The State Department will soon be able to deploy ADIS so that the overstay information automatically appears on the screen of each consular officer during the visa adjudication process. As travelers become aware of this capability, the deterrent effects for potential visa overstayers will grow.

What about those who remain in the United States and make no effort to return home? Here, the tools should be the same ones that can be used to discourage any sort of illegal immigration. With respect to enforcement of immigration laws, there is no reason to treat visa overstayers differently from other unauthorized migrants. Their mode of entry may have been different, but otherwise they are the same as an illegal immigrant who crossed between the ports of entry. Indeed, efforts by the State Department and CBP to improve entry screening before or at the ports of entry are largely analogous to efforts by the Border Patrol to strengthen enforcement between the ports of entry. The most effective interior enforcement tool is to deny jobs to unauthorized immigrants, and the E-Verify system shows promise here despite its growing pains. But enforcement should coupled with a comprehensive overhaul of immigration laws that includes reforms to create new legal paths for those who wish to live and work temporarily or permanently, and an earned legalization program that would allow many unauthorized migrants (including visa overstayers) to earn to right to remain in the United States. The *Independent Task Force on U.S. Immigration Policy,* which was chaired by Jeb Bush and Mack McLarty and for which I served as project director, makes a series of bipartisan recommendations for reforming the U.S. immigration system along these lines.

ANY NEW MEASURES TO IDENTIFY VISA OVERSTAYERS SHOULD BE DONE IN WAYS THAT DO NOT DISCOURAGE LAWFUL TRAVEL TO THE UNITED STATES, WHICH BENEFITS BOTH THE U.S. ECONOMY AND AMERICAN DIPLOMATIC EFFORTS

The recently released DHS Quadrennial Homeland Security Review states that: "Secure, well-managed borders must not only protect the United States against threats from abroad; they must also expedite the safe flow of lawful travel and commerce." It sets out three central goals for U.S. policies to protect the homeland: Security against terrorist and criminal threats; resilience to allow for rapid recovery in the event of attacks or natural disasters; and customs and exchange, expediting and enforcing rules for lawful trade, travel, and immigration.

One of the successes of the US–VISIT entry program is that it has been implemented with little disruption to the entry of lawful travelers into the United States. The program was carefully piloted, and then rolled out initially for visa travelers when it became clear that it was possible to capture two digital fingerprints rapidly for each traveler. That success allowed for the later expansion to visa waiver travelers, and then to the more recent capture of ten fingerprints rather than two, which increases accuracy and improves security. Each step was taken by DHS only when it became clear that security enhancements were possible without significant disruption to lawful travelers. The carefully negotiated agreements with the European Union that resulted in the sharing of passenger information and the creation of ESTA were similarly implemented with minimal impacts on air travelers. The WHTI at the Northern and Southern borders and for Caribbean air and ship travel is also improving security with little or no negative impact on cross-border flows.

The same cannot be said of some of the other border security measures enacted following the 9/11 attacks. The additional scrutiny of visa travelers under the Visas Condor and Visas Mantis programs, for example, contributed to a sharp drop in visa travel to the United States for several years, with the number of visas issued dropping from over 7 million in 2000 to fewer than 5 million by 2003. As recently as last year, long delays continued to plague visa applicants from China, India, and Russia who were working in technology fields because of the National security reviews required for these individuals.

The impact was especially acute with NSEERS, which has proved highly burdensome to travelers from the targeted 2 dozen countries. Travel to the United States from these countries remains sharply depressed at roughly 60 percent of pre-9/11 levels. The number of visas issued for Pakistanis, for instance, was 88,000 in the year 2000; last year it was just 33,000. From Indonesia the drop has been from 70,000 to 42,000. These are the very countries where the battle for hearts and minds is being fought, and where the United States should be encouraging more people to see this country through their own eyes rather than through the distortions of local media.

While travel to the United States had partially rebounded before the current recession, the United States has lost ground as a destination for international travelers. The U.S. travel industry has estimated that an additional 68 million visitors would have come to the United States over the past decade if it had simply kept pace with global long-haul travel trends.

In considering the creation of a biometric exit system, then, both the Bush and Obama administrations should be praised for proceeding cautiously to ensure than any new measures do not unduly discourage lawful travel. The premature rollout

of an exit system at the land borders in particular could have extraordinarily negative consequences for cross-border travel and trade with Mexico, the largest and third-largest U.S. trading partners respectively. The last detailed evaluation of the land border exit option by the Government Accountability Office, in December 2006, concluded that, given current technologies, a biometric exit system would require a costly expansion of land port facilities and would produce major traffic congestion. This would come even as major improvements are still needed in the land border entry facilities, though funds provided through the stimulus package are beginning to address some of those needs.

THE COSTS OF DEPLOYING OF A FULL BIOMETRIC EXIT CAPABILITY AS CURRENTLY ENVISIONED BY CONGRESS ARE LIKELY TO EXCEED THE BENEFITS

The central philosophy underpinning DHS since its creation has been the idea of risk management, that the costs of new security measures should be carefully weighed against the expected benefits. By any measure, deployment of a biometric exit system will be expensive. While DHS has not released official estimates, biometric exit in the air environment is certain to run into the billions of dollars, particularly if CBP or TSA staff must be used to capture the biometrics. A land border exit system would be more expensive still, and the potential for disruption of two of the largest cross-border trade and travel relationships in the world is significant.

Given the costs and difficulties associated with biometric exit, Congress and the administration should take a serious look at whether further accuracy in tracking visa overstays could be realized through a combination of biographic and biometric means rather than a pure biometric approach. The use of passenger manifest data has demonstrated the promise of this approach in the air environment. Congress and the administration would do well to build on this approach rather than continuing to hold out for a costly biometric exit system that would bring only minimal gains in terms of additional accuracy. Unless a fully functioning biometric land exit system can also be constructed, biometrics in the air environment will still not allow the United States to know with certainty if an individual has overstayed a visa and remains illegally in the United States. As such, biometric exit at airports would be a very costly addition with very small benefits in terms of additional information on overstayers.

At the land borders, a biographic approach also shows greater promise. The new rules under WHTI have required American, Mexican, and Canadian travelers to acquire secure documents that allow for accurate records of who is crossing the border into the United States and, potentially, who is leaving. Everyone exiting across the land borders of the United States is also entering either Canada or Mexico. The administration should explore the possibility of data sharing with both countries regarding their inbound travelers. In the case of Canada, there have been on-again, off-again discussions between the two countries sharing data, so that Canada would inform the United States on its border entries and vice-versa. There are certainly difficult impediments to such a negotiation. Canada does not currently have the same document entry requirements as the United States, and would have to move forward on those. The fact that four Canadian provinces have already adopted WHTI-compatible enhanced driver's licenses would make such a transition reasonably easy for Canada. It would also be easier to negotiate an agreement that was initially limited to third-country nationals, assuaging Canadian concerns about sharing data on their own citizens. If the United States continues to insist on a biometric exit system, however, there is little prospect of success in such a negotiation, since Canada is unlikely to establish biometric entry requirements at its land borders.

If such a deal cannot be negotiated, there continue to be promising developments in RFID technology that could allow for a remote scan of the identification documents of cross border travelers as they are leaving the United States. WHTI-compliant documents are already RFID-enabled, so the building blocks are in place for a system that could identify travelers departing by car through remotely-read documents, without requiring drivers to stop and give a fingerprint or other biometric upon exiting the land borders. While there are still hurdles to overcome, such a system shows particular promise for the southwest border, where cooperation with the Mexican government poses even greater obstacles than on the north border.

CONCLUSION

To conclude, my answer to the question posed by this hearing—Can visa overstays be eliminated?—is "not entirely," at least if there is any reasonable calculation made of costs and benefits. But there has already been a great deal of progress over the past several years, and DHS and other Federal agencies should be encouraged to

build on that progress rather than investing heavily in the creation of a new biometric exit capability.

Thank you, and I look forward to responding to your questions.

Chairman THOMPSON. I thank all the witnesses for their testimony.

I remind each Member that he or she will have 5 minutes to question the panel.

I now will recognize myself for questions.

I guess the point, to start with, is, according to the testimony of the witnesses, there are some of the number of illegal people here in this country—40 percent that—I would assume that is around 4 million. That is the kind of the number we are talking about? Okay.

Can you describe for me, Mr. Beers, how the Department proposes—and you outlined those three issues—is that realistic given the budget that we have been submitted by the Department?

Mr. BEERS. Sir, with respect to the improvements that we have instituted in the system, I think that they are all within the budget capabilities of our current and requested budgets for US–VISIT. If you are asking the larger question with respect to biometric air exit, I can go on, on that particular issue.

Chairman THOMPSON. Well, I think the question is framed so that we need to ensure a system that minimizes, if not eliminates the number of overstays, and whether or not the budget that is requested would allow that to occur—looking at all the issues, whether it is the air exit or whatever.

Mr. BEERS. Yes, sir.

With respect to the US–VISIT contribution, independent of the issue of biometric air exit—with respect to the US–VISIT contribution to the identification of overstays, which is what our role in this process is, we believe that the budget that we have currently, and the budget that we are requesting, is adequate to allow us to identify the individuals who overstay, based on the entry data and the type of visa that they have, so that we can flag any individual that we do not have matching data, with respect to the exit information that we currently receive, which is biographic information. That allows us to flag those individuals and to provide to ICE those individuals that fall under the National security criteria that ICE has given us to pass that information, in detail, to them.

We, in addition to simply matching that biographic information that we receive at exit against the entry information, also look at other information, other databases, to provide any other assistance that we might be able to, on an individual, when we pass that information to ICE, so that as much of the preliminary data collection as possible can be done by US–VISIT, rather than giving ICE simply a name and a visa number.

That is the information sharing that we have agreed upon with ICE.

Chairman THOMPSON. Thank you very much.

Mr. Morton, can you provide for the committee—of those names that you referred to for overstay to—what percentage of those individuals do we apprehend?

Mr. MORTON. A very, very small fraction.

Chairman THOMPSON. Why is that?

Mr. MORTON. A number of reasons.

First of all, what we get from US–VISIT—they have done their best to do some initial screening. But a great deal of further screening is needed to be done to see whether or not the people, in fact, left; whether or not we have an address to even start an investigation.

Then, there is a very real challenge for us of competing enforcement requirements: Do I devote resources to trying to investigate whether somebody has overstayed their visa, for example, in Orlando? Or do I put those same resources to the identification of an absconder; to assist the Border Patrol with removing somebody who was apprehended at the border; or to go to the local jail? Yes, sir?

Chairman THOMPSON. Thank you.

Mr. Skinner, you have heard the existing system of how we do and manage overstays. I know some of your information is a little dated. But based on what you heard, can you provide the committee with what recommendations, or any, that you have had, to the Department?

Mr. SKINNER. What we have seen since we issued our report in 2005 is a buildup of CEU. When we did our audit, they were a maturing organization. Now, we think they have matured. They do have policies and procedures in place. They do have better access to IT systems. So we are seeing improvements.

We are also seeing that we are not going to be able to—because of resource issues—and I don't know if we could ever have sufficient resources to address all of the overstays. But what we need to do, and what I think CEU is doing—CEU—the Compliance Enforcement Unit in ICE—is targeting those that are the biggest threat to our society—those that are criminals; those that have the potential of being terrorists; and those that are fugitives.

I think until we could have a—and I don't think we ever will have all the resources needed to go after all overstays—and until we can do a better job at that, I think what we are doing now, in ICE and in the CEU, the Compliance Unit, is focusing on those that are the biggest threat. I think we need to continue to do that. We need to continue—invest in those operations.

Chairman THOMPSON. Thank you very much.

I now recognize the Ranking Member of the full committee, the gentleman from New York, Mr. King, for questions.

Mr. KING. Thank you, Mr. Chairman.

I will direct this question to Mr. Beers and Mr. Morton, and, you know, give you as much time as you need to answer it.

I mentioned the, you know, biometric entry-and-exit system, which the 9/11 Commission said would be an effective tool in fighting terrorism. Mr. Alden seems to suggest that it is not effective; it is more for controlling immigration than it is for being a tool against terrorism.

Since the Department is not funding the program this year, has the Department made a decision as to how worthwhile it is to pursue it? Have you decided not to pursue it? How do you evaluate it in the hierarchy of tools combating terrorism?

Chairman THOMPSON. To the extent you could—if you could pull the mic as close to you as possible, it, I think, would help everyone. Thank you.

Mr. BEERS. Congressman King, the Department has not made a final decision on biometric air exit. The study which was commissioned in the past administration was completed in July of the past year. The review of the pilot study, which focused on collection of biometric information at the screening point of entry into the concourse, and at the gate—the first by TSA, and the latter by CBP—that review of the pilot study was completed in the September time frame. It was, then, reviewed in terms of what the options looked like.

As a result of that review, another option was added to the series of choices. That review and costing estimates was done by the end of December. Secretary Napolitano reviewed that initial review, and asked a series of questions which are now complete. The second review by her is on her calendar. We expect to have an answer to that question.

But short answer is, "No, we are not opposed to it." The reason that there was not any funding in the fiscal year 2011 budget was that the fiscal year 2011 budget was prepared in a time sequence which did not allow us to provide an accurate budget estimate for a biometric air exit system.

We do have $50 million that is available, which could start an initial operating capability program based on what the decision is, and when the rule that would govern that decision is in a position to be implemented.

So we can begin that based on the decision process sometime at the end of this fiscal year, or the beginning of next fiscal year. We would, then, if—we would, then, be requesting money in the fiscal year 2012 budget to go to full operating capability.

Mr. KING. Now, you have enough real-life problems to deal with. But in the theoretical sense, assuming this system could work, do you believe it is an effective tool against terrorism?

Mr. BEERS. I think it would add to our ability to know who had left the country, with a higher degree of confidence than the biographic information that is currently available.

Folks can argue about how much, how little. But there is not a question that it would add to the certainty of the identity of the people who left the country under this system.

Mr. KING. Mr. Morton, do you have any comment?

Mr. MORTON. I agree with that. I take some slight quarrel with Mr. Alden on a stark division between National security and general immigration enforcement, when it comes to US–VISIT. I do think it is an important National security tool. I agree that it shouldn't be overstated that it is a—the sort of sole solution. But with regard to specific cases, it is very important. That is obviously how we orient the CEU.

In addition, I think that general immigration enforcement is good National security work. Now processes and procedures that people exploit to come to the United States unlawfully can be exploited by people with more nefarious intentions. It is important to make sure that our system has credibility to keep those folks out.

Mr. KING. Mr. Morton, I hate to ask you a question with 20 seconds to go.

I would just say that, I think, one thing that we have learned on this committee over the last 6, 7 years, is that there is no silver bullet. There is no one technique or tactic that is going to stop terrorism. But we believe in multiple layers of defense. I would think that the biometric entry-and-exit system would be another layer.

So, I mean, you go to a doctor—they take various tests. Maybe there is no one test that shows what you have. But look at all of them, they can come up with a diagnosis. It would seem to me that this is an essential layer to be used in the struggle against terrorism.

But I would ask your comments now.

Mr. ALDEN. Yes, I would just briefly say I agree with you on the notion of a layered approach. But I think the most important layers are the entry layers. So the question, here, is, first, "What would the resource costs be for deploying the sort of system we are talking about?" The problems at the land border dwarf those in the air environment. So there is just a fiscal cost of doing it.

The second cost is—what is the cost going to be in terms of disruption of lawful travelers? So that means this has to be a very efficient system that you can carry out, without making it so difficult for people traveling to the United States, that they don't want to come here anymore.

So if you could do that—if you could do it within limited cost; if you could do it in a way that did not harm ordinary, lawful travelers, then I would be more enthusiastic about it. I don't think we are there yet. It is not that we might not get there down the road. I just think there are other higher priorities at the moment.

Chairman THOMPSON. Thank you very much.

The Chair will now recognize other Members for questions they may wish to ask the witnesses.

In accordance with our committee rules, I will recognize Members who are present at the start of the hearing, based on seniority on the committee, alternating between Majority and Minority. Those Members coming in later will be recognized in order of their arrival.

The Chair now recognizes the gentleman from Texas, for 5 minutes, Mr. Cuellar.

Mr. CUELLAR. Mr. Chairman, thank you very much for having this meeting.

I guess, when we look at the two broad classes of aliens that are issued visas, you have the immigrants and the non-immigrants. I guess, to address this issue, you are looking at resources—and I am trying to follow the line that the Chairman was just following—the resources; technology and personnel; and, then, the strategy as to what sort of priority do you put—and I guess the most violent individuals is the priority that we are looking at right now.

But on the technology part, isn't there something besides using the biometric system at the border?—and all of us on the border were concerned about putting those huge lines there. But there has got to be a way of using technology to track those individuals.

If somebody is supposed to be there, let us say—a visa—how long is visa usually—or student visa? Any kind—business visa, student visa—or, generally speaking, Mr. Morton, what is it?

Mr. MORTON. A tourist visa, for example—more typically, 30, 60, or 90 days.

Mr. CUELLAR. Okay.

Isn't there something that allows you—to prompt you when that time comes out—that we can use? I mean, we don't have to develop a fancy technology. I am sure there is something available right now that can prompt you. Even if you asked those individuals—"Hey, call," or do something. If you don't get that—and I know you don't need to have ICE agent to do that work. You can have civilians to do that work and then give it to the ICE agents—to the deportation folks who go get them and find them.

But isn't there something that we can look at, using the technology—and, keep in mind, that there are—a large number of people have been here for a long time. At least, before they set their roots—that they have set their roots already for a long time—at least start that system when the new folks are coming in and staying—isn't there something that is available that we can use at this time?

Mr. MORTON. I think that is an excellent question. I think you have touched on the promise of US–VISIT, in a nutshell. I will let Mr. Beers sort of get into the details. I think there are some things that do have some real promise from a technology perspective. Just the way we treat visa-waiver-program applicants versus actual visa-holders holds promise.

Right now, for the visa-waiver program, before you even come to the United States, you go on-line, through a program known as ESTA. You provide a great deal of information to the Government, all automated, in fields that we determine. As a result, we have a great deal more information about you, in case you don't follow the rules.

With your visa, you fill out your I–94 on the airplane, and that is where it can be a bit of a challenge for ICE. Even with the very best screening at US–VISIT, if all you put down on that form is, "I am staying at the Marriot in—in Orlando," it is going to be real tough for us 60 days later, to try to find you, and——

Mr. CUELLAR. Mr. Morton—I mean, if you let something get cold—and I think the longer you give it time, you know very well, the harder it is. Again, I am saying—at least looking for some sort of priorities to address that.

Mr. Chairman, I am going to ask again if all four of them could give us—following your line of questioning, Mr. Chairman—if you can give us some ideas, because we need to think outside the box on this. I agree we have got to set the strategies, and all that. But there has got to be some systems and protocols and technology that we can use right now.

Now, if you can ask, Mr. Chairman—a certain period of time—I will let you decide on that time—if you all can submit those ideas following—the other question I had, before my time is coming over—I am looking at an AP story. One of my former colleagues in the State legislature, Senator Eddie Lucio of Brownsville, is talking about—I think the State prisons has about 11,400 foreign nationals

that—and I understand the argument. Some are rapists. Some are murderers. Maybe some of them are there for a lesser time of period. I am talking about prison.

I would like for you to help me respond to my former colleague at the State legislature. I understand. I don't want to let out the rapists and the murderers. I am in full agreement. But are there any folks that you all can screen, and—because they are going to be coming up—the State legislature is going to come up with that. I can tell you—I have served in the State legislature 15 years—about 15 years. I know what my colleagues are going to do.

Mr. MORTON. Mr. Cuellar—and the short answer to your question is, "Yes," we do receive, from State authorities, early releases. That you have already noted—one of the important issues is that, when we receive somebody, we receive them for purposes of removal, so that to the extent that people are being released to us, they won't complete the full range of their sentence. But we already accept early releases from a number of States. I would be happy to help you with Texas.

Mr. CUELLAR. Okay. Thank you very much.

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

The Chair now recognizes the other gentleman from Texas, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

First of all, Mr. Skinner, I appreciated what you said in your report about the problem being, I think, twofold—limited resources that are not efficiently used—and I appreciated what Mr. Beers said are the three steps that they are going to take to try to increase that efficiency. I know Mr. Morton is working on it as well. I visited with him personally, and know that he is trying hard to implement some of those proposals.

What I would like to do, first, is get a real sense on the extent of the problem. Mr. Morton said that he thought 40 percent of the people in the country illegally were visa overstayers. Mr. Skinner, you have said you thought it was 4 million people. I assume the number you are using, therefore, is about 10 million people in the country illegally? Is that correct?

Mr. SKINNER. There are studies that suggest that there could be between 10 million to 11 million people in this country illegally.

Mr. SMITH. Ten million to 11 million.

Now, as I understand it further, those are individuals who are in the country full-time, as opposed to individuals who are in the country for a few days or a few weeks or a few months. If you use that snapshot of a figure as to how many people are in the country illegally today, for example, it would be closer to 20 million. If that is the case, would the number of visa overstayers be closer to 8 million than 4 million?

Mr. SKINNER. I wouldn't suggest that it was that high. Figures that I am using are just based on studies——

Mr. SMITH. Right.

Mr. SKINNER [continuing]. That have been generally accepted——

Mr. SMITH. Okay, well——

Mr. SKINNER [continuing] By the Department as——

Mr. SMITH. Well——

Mr. SKINNER [continuing]. Reasonably accurate.

Mr. SMITH. Right. Again, it is how you define who is in the country illegally or not.

Mr. Morton, you were, I think, nodding in agreement with me. Do you agree with the fact that the "10 million or 11 million people" refers to individuals who are in the country full-time?

Mr. MORTON. That is right—the 10.8 million estimate.

Mr. SMITH. Therefore, if we were to count people who were in the country not full-time, but part-time, the figure could be closer to 20 million people?

Mr. MORTON. The figure would be larger. I, frankly, don't know——

Mr. SMITH. Therefore, the number of visa overstayers might be larger than 4 million people as well?

Mr. MORTON. It could be in the range. It could be less. It could be more. But, yes. I would note—I mean, the ranges on visa overstays are anywhere from a third—the GAO report—to as much as 50 percent. We have settled on 40 percent, which is roughly 4.4 million, if you accept the 10.8 million.

Mr. SMITH. Let us call it 4 million to 8 million—whatever the exact figure may be.

It sounds to me—I think this may have been Mr. Beers who said it—that of those 4 million to 8 million people, we arrest 500 to 600 per year. Is that accurate?

Mr. MORTON. That we arrest 600 through the US–VISIT lead—we also have NSEERS and SEVIS and, then, the General Enforcement. So the 600 figure is too low. But your basic point of—that it is a fraction—is correct.

Mr. SMITH. The fraction is actually one out of every 8,000, I believe, if you use the 4-million figure. It could be one out of 16,000.

Mr. MORTON. It is a very small number.

Mr. SMITH. It is, obviously, a problem. We are addressing only a tiny, tiny fraction of it.

This administration would be more credible in arguing that one explanation is that they don't have sufficient resources if they had actually requested an increase in resources. As you all know, whether it be the U.S. exit or US–VISIT—this administration chose not to ask for a significant increase in resources. Therefore, I think that that perpetuates the problem.

Mr. Skinner and Mr. Morton—I think it is Mr. Beers and Mr. Morton—I do appreciate your acknowledging—and I realize it is not easy to disagree with a fellow panelist—but I was glad that you all at least acknowledged that the visa overstayers could, in fact, represent a National security threat to our country.

One aspect of that that was not mentioned—and one explanation for that—could also be the fact that visa overstayers might become radicalized and, therefore, become terrorists after they have already entered the country. Surely those individuals—and we have seen examples and heard of examples of those individuals today, from 9/11 on—are examples of individuals who have become radicalized, are terrorist threats. Therefore, that does show the danger of having so many visa overstayers in this country and, in my judgment, not taking sufficient action to try to arrest more than one out of 8,000, at the very conservative figure.

I know you are trying to improve that situation. But, right now, the message that this administration is sending, frankly, is that once you get into this country, and if you don't commit another crime, you are basically home free. I think that that also sends a signal that results in an increase in illegal immigration, when people figure if they can get away with that and not get arrested again, they have passed go and are going to collect, sometimes, literally, a lot of money from the Government.

So I hope that that is something that you all will address better in the future as well. I thank you for your testimony.

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

The Chair now recognizes the gentleman from New Jersey, Mr. Pascrell, for 5 minutes.

Mr. PASCRELL. Thank you, Mr. Chairman.

Mr. Chairman, in comparing 2008 to 2009, there was a tremendous improvement under the present administration in enforcement of our immigration rules, contrary to what we have been hearing for a full 12 months in attacks on our own patriotism, let alone the facts speak for themselves, whether you are talking about worksite enforcement or whether you are talking about overstay enforcement.

I would ask all the members of this panel to examine those numbers very, very carefully, because they tell very different story than we have heard from those people who like to wave the flag and talk. The numbers speak for themselves.

I won't go through them right now. But if you want me to, I will.

On the issue of immigration, one fact that often escapes this debate, I think, is that we know that anywhere from 31 percent to 57 percent of the illegal immigrants in this country entered legally. They actually got here in some legal manner, shape, or form. I just am curious—Mr. Skinner, do you have any—can you tell us how many of those folks that are caught, and we bring them to justice, were working? Do we have any of those facts?

Mr. SKINNER. I don't.

Mr. PASCRELL. Does anybody?

Mr. SKINNER. ICE may have statistics, when you put it in its totality.

Mr. PASCRELL. Secretary Morton.

Mr. MORTON. I don't have exact figures, but I will tell you that our general experience is that people who overstay, obviously, overstay for purposes of living here, and they get a job, and they are employed.

Mr. PASCRELL. This flies in the—not a right for foreign citizens. They should only be issued to individuals with clean records. All visa guidelines, especially the date of exit, must be fully enforced. Otherwise, our visa system will just be seen as a free ticket into our Nation.

I would respond to Mr. Alden—you weren't suggesting that the Government—in the beginning of your statement—doesn't have a right to know every person who is coming into this country and every person that is leaving this country? You do believe that the Government has that right, correct?

Mr. ALDEN. No question. I just think it is very difficult to do practically. We have to be careful that the costs are worth the benefits. That is my argument.

Mr. Skinner and Mr. Alden—thank you—some people propose that the Department of Homeland Security should place a priority on worksite enforcement as a way to reduce visa overstays. Do you believe that this is necessary? My second question is: Should the Department of Homeland Security put more resources into improving E-Verify as part of its approach to addressing the many overstays that exist in the United States?

Mr. SKINNER. Congressman, we have not studied the issue of worksite enforcement. That is something that is on our radar screen, however. As far as "should" or "should not," the Department—make that a priority. I believe the Department has a responsibility to enforce the laws. If the laws do, in fact, prohibit employers from using illegals, then I think—then we have an obligation to enforce those laws. Until those laws are changed, I think we need to pursue illegals, or the employer that is hiring those illegals.

Mr. PASCRELL. There were 503 on-site document audits in the last year of the Bush administration. In the first year of the Obama administration, there was 1,444 on-site document audits. Now, one could take this and say, "Well, it wasn't a priority with the prior administration; it is a priority with this administration." The results are very interesting as to how many employers were sanctioned.

The very people who don't want to look at the facts of this situation, and simply want to make every immigrant a criminal—and the prior administration—they didn't go after the employers who hire these folks in the first place. The numbers speak for themselves. If we don't expose the hypocrisy, Mr. Chairman, who will? Who will?

Thank you.

Chairman THOMPSON. The gentleman's time is expired.

The gentleman from Georgia, Mr. Broun, for 5 minutes.

Mr. BROUN. Thank you, Mr. Chairman.

Gentlemen, it is good to have you all here today.

As the Chairman and Ranking Member have identified, visa overstays are a huge security gap that must be closed as soon as possible, along with securing our borders, and the illegal aliens being expelled. What I found most troubling is the lack of actual arrests and deportations of those with visa overstays—those that we are aware of, as well as to those that are still here that we are not pursuing and not aware.

According to Mr. Morton's testimony today, 40 percent of unauthorized persons in this country can be attributed to visa overstays. In fact, four of the 9/11 hijackers have—as it has already been stated—had overstayed their visas. If individuals such as these were able to overstay their visas without being caught, then who else is out there? Who else might be within our borders, planning to harm Americans?

The gravity of this situation is evident, gentlemen. It is my sincere hope that the Department is fully committed to doing what-

ever it takes to catch those who have overstayed their visas; who are criminals who have broken the law.

This leads me to my question, which is for you, Mr. Skinner. What recommendations do you have for improving overstay identification and apprehension, and deportation?

Mr. SKINNER. First is investment of resources. Second is establishing priorities—who are the most dangerous? Who are those that we need to target? We can't target everyone. We have to recognize that. We don't have the resources. Third is an investment in technology. We can do a better job of integrating the systems that are currently available to us across Government—at the Department of State, within the Department of Justice itself.

We need to continue to invest in integrating those systems so that we can have a comprehensive database from which we can, then, better target those that we think need to be identified and located and removed.

Mr. BROUN. How about using local and State law enforcement?

Let me tell you a little story. I have a county commission chairman in my district that told me about three people who had broken the law, were in prison, who were illegal aliens, or who had overstayed their visas. He called ICE and asked them to come pick these folks up. ICE told him, "Just let them go, because we are not going to do anything about this."

Now, this is deplorable, as far as I am concerned. Utilizing local and State law enforcement to apprehend, to do the processing, and then deport these folks, I think, is absolutely critical. I just throw that out as a point.

My next question is to you, Mr. Morton. Do you believe that providing DHS with more authority and control over the process by which visas are issued, on the front end, as Mr. Alden has talked about, and those that are revoked, would help reduce the overstay population; and if so, how so or why not? Also, if granted, would DHS use this authority to be tougher on those sponsors who overstay their visa?

Mr. MORTON. I do agree with Mr. Alden that one part of the solution to this problem is the best up-front screening possible so that we only give visas to those individuals that have a high likelihood of complying with the law, and that we get as much information up-front from these individuals—I would say their mobile-phone number, credit-card information—things like that—so that if they don't follow the law, it is a lot easier for the agents that work for me—for the officers that work for me—to go and actually find the people when they don't comply.

The Department has a fair amount of authority already. It is one that we share with the secretary of state. So I think much of what is needed to do a better job has already been provided by Congress. It is a question of improving the technology and improving the automated collection of more information up-front, screening people, ICE doing more visa security screening.

The building blocks are there. It is really an implementation question. But in short, I do agree with Mr. Alden on much of that.

Mr. BROUN. Thank you, Mr. Morton.

Mr. Chairman, I would like to make a remark about Mr. Pascrell's comments. I resent it, because I think that the Bush ad-

ministration was totally wrong in not securing the borders. It was totally wrong in its immigration policies and not dealing with the illegal aliens in this country. I hope the Obama administration will have this as an objective. It is a National security issue that this committee, and you, Mr. Chairman, have pursued.

The thing is, as far as I am concerned, when he points a finger and talks about hypocrisy—I think he needs to be very careful with that, Mr. Chairman. I resent his comments. He is totally off-base in——

Chairman THOMPSON. Thank you very much.

I wish he had been here to hear it. But we will go forward.

Mr. BROUN. I wish he had been here, too, Mr. Chairman.

Thank you.

Chairman THOMPSON. Oh, yes, he——

[Laughter.]

I recognize the gentleman from Missouri, Mr. Cleaver, for 5 minutes.

Mr. CLEAVER. Thank you, Mr. Chairman.

To some degree, I want to associate myself with the comments of Mr. Broun, to the extent of asking—because I think if it is a fact we have got a problem, are ICE authorities authorized or instructed to tell people who—and local law enforcement—to release illegal immigrants or undocumented workers? Is that policy ubiquitously spread across the country, or regionally, or what——

Chairman THOMPSON. Excuse me just a minute. There you go; all right. We want to get your time right. You got your full 5 minutes now. Thank you.

Mr. CLEAVER. Mr. Cleaver, here is—it is not that ICE directs the release of people otherwise independently arrested by State and local law enforcement. What does happen—and it does happen with some frequency—is that we tell State and local law enforcement that we, ICE, are not in a position to respond to arrest and detain someone they believe is here in the country unlawfully. It is for the very simple reason that we don't have enough officers, detention space, to address the millions of people that are here unlawfully.

We have to place rational priorities on the use of the limited resources we are provided. So, in some instances, we simply don't have the officers or detention space to respond to a particular set of individuals that State and local law enforcement believe are here unlawfully.

Mr. CLEAVER. If this is a significant issue, and if it is, in fact, a threat to the safety and security of the—of the public, then it seems to me that it needs to be dealt with as a significant issue.

In terms of issues facing this country, where would you rank this issue? I am interested in all four of your comments in terms of the major issues facing the people of the United States. We don't want to talk about health care. We want to talk about, you know, other issues facing the country, with regard to security.

Where does this issue fit in?

Mr. BEERS. Congressman Cleaver, I think that, at least from my own perspective of having thought about National security issues for the last 40 years of my life, I have to say that the highest priority has to be accorded to preventing weapons of mass destruction

from being used against the United States or, in fact, anywhere in the world.

With respect to the second issue of terrorism, I think that that—and in particular, terrorists with weapons of mass destruction—represent a priority National security threat to this country. To the extent that overstays represent, as they did in 9/11, a contribution to that, then it is a serious National security issue. But it is also a extraordinary challenge to identify those particular individuals, out of the millions of people who come to the United States every year.

Mr. CLEAVER. Do all of the others agree with that?

Yes, sir.

Mr. ALDEN. I would just add two things. I would agree with that. But I would—in terms of the topic of this hearing, I think the biggest priority in terms of terrorism and homeland security is better and improved entry-screening methods to keep out people who might harm us. We saw this in the Christmas bombing—the Abdulmutallab case—the breakdowns in entry screening.

With respect to immigration enforcement, I think the improvements in worksite enforcement, the need for some kind of identification system that allows employers to know that the people they are hiring are authorized to work. I think there is a need for a broader overhaul of immigration laws to make those laws work better.

I would put all of those ahead of completing an exit system, as priorities.

Mr. CLEAVER. Okay.

The reason I raised the question—my time is about to expire. But, you know, we are going to hire about 16,000 new IRS agents to cut down on fraud and abuse in Medicare. We need to do that. But I am saying we need to also argue and fight for the kind of dollars that are needed for us to do this job, if it, in fact, poses a threat to the safety and security of the American public.

Thank you very much, Mr. Chairman. I yield back the balance of my time.

Chairman THOMPSON. Thank you very much.

The Chair now recognizes the gentleman from Florida, Mr. Bilirakis, for 5 minutes.

Mr. BILIRAKIS. Thank you, Mr. Chairman. Thank you.

First question is for Mr. Morton. Assistant Secretary Morton, I have been concerned about the inadequate oversight of student-visa issuance and compliance. There have been numerous examples, as you know, of individuals violating the terms of their student visas, including the terrorists involved in the 1993 and 2001 World Trade Center attacks.

Most recently, ICE disrupted visa-fraud schemes in Florida and in California. We must do more to ensure that terrorists do not use our student-visa process as a back door into our country. I think everyone agrees with that.

My questions are: What is the Department doing to ensure that these students are properly vetted prior to obtaining these visas? Do ICE visa-security unit personnel review student-visa applications? How is the Department working with colleges and universities to ensure that students who receive the visas are showing up

to class and meeting the visa requirements? What is the Department doing to ensure that these student visas—these students don't overstay their visas?

Mr. MORTON. First of all, the basic sentiments that you expressed, that we have to have integrity in our student and exchange programs—I completely agree. As you noted, we spend a lot of time, unfortunately, investigating and uncovering schools that are essentially visa-fraud mills on a fairly grand scale.

To sort of note your basic concern, and to tie it in a little bit with what Mr. Cleaver was speaking about—from my perspective, it is both a National security risk—and, plus, it is just basic good government. I mean we shouldn't have a system—an immigration system, a student-exchange system, that is marked by lawlessness, regardless of the National security concerns—that there is an importance in having integrity and credibility in what we do.

Very quickly, in response to your specific questions—we have our SEVIS program. We have dedicated analysts. We have got a great deal of room for improvement. We have come a long way. We work very closely with the academic community. We are moving to a new version of SEVIS. Right now, we basically track the certificate of eligibility, but not the student him- or herself. That is where we need to be—is focusing on the student him- or herself. So that is a big reform that is in the works.

We are working with the academic community to get that done. I am hoping—but it is a knock-on-wood hope—that we will be able to make some real progress on the technological front—that a lot of this is about the changes that we need to make in terms of technology, to get us to a student-specific monitoring and enforcement.

We are having weekly dumps of data now. We generate a lot of SEVIS leads. One of the beauties of the SEVIS program is it is completely within ICE. We do generate a lot of leads. I don't want to suggest to you that we don't have room for improvement. We do. We need to do it both in terms of monitoring the individual applications from a civil immigration perspective—"You are not going to school; you need to go home"—but also from the visa-fraud mills that you mentioned that are a real problem.

We have something on the order of 10,000 schools that work with us through SEVIS. So the number of schools is quite large. Then there is another, about 4,000 student and exchange-visitor programs that are sponsored by the State Department.

We do screen some applications overseas, through the visa-security unit. Again, I don't want to suggest that it is 100 percent. We are not in every embassy. Again, we have to prioritize those applications that we look at. We don't look at every single visa application.

Mr. BILIRAKIS. Okay. Thank you.

Secretary Morton, again, I understand that through the Secure Communities Program, ICE has been working to deploy information-sharing technology to State and local government's law-enforcement agencies to improve their ability to identify criminal aliens using the 287(g) immigration law-enforcement authority. Will the deployment of this technology allow 287(g) jurisdictions to access information, including Federal databases, that may indicate that an apprehended alien is in visa-overstay status?

Mr. MORTON. The Secure Communities is a automated fingerprint process. You are dealing with people that are apprehended for criminal purposes.

But the focus is on the fact that you are a criminal offender, and trying to identify your criminal history record. But, as part of that, we are also trying to determine your immigration status. So, in short, the answer is: Yes, we will be able to identify your immigration status. Recognize that it is in the context of criminal offenders, in jails and State prisons throughout the country.

The immediate focus is on the fact that you have committed a crime. But we will be able to determine what your immigration status is, including whether or not you are an overstay.

Mr. BILIRAKIS. Okay.

Can you briefly explain the new memorandum of understanding that ICE has signed with law-enforcement jurisdictions participating in 287(g), and the testimony you provided last week in the Appropriations Committee, the Subcommittee on Homeland Security—that local law-enforcement officers "must receive ICE approval, and articulate a connection to our priorities, before they arrest an alien for a civil immigration offense alone?"

Is the apprehension of those who have overstayed their visas, regardless of whether they have committed a criminal offense, an enforcement priority under the 287(g) program?

Chairman THOMPSON. We will allow you to answer the question.

Mr. BILIRAKIS. Okay.

Mr. MORTON. The priorities under 287(g) are the identification of criminal offenders in jails, and for the task-force model, it is the identification of serious threats to public safety and, in particular, gang members, and criminal offenders on the streets.

Ms. RICHARDSON. Mr. Chairman.

Chairman THOMPSON. The gentlelady from California.

Ms. RICHARDSON. If there is no objection, is it possible that we could ask Members to keep their questions to about 2 minutes, since votes have been called, so we could all get this—oh, it is a recess?

Chairman THOMPSON. It is a recess.

Ms. RICHARDSON. Okay, no problem. Thank you.

Chairman THOMPSON. The gentleman from Pennsylvania, for 5 minutes.

Mr. Carney.

Mr. CARNEY. Well, thank you, Mr. Chairman.

Mr. Beers and Mr. Morton, I don't know if you can answer this—I think you probably can.

From which nations do we see the most visa overstays? Do we have a sense of that?

Mr. MORTON. You know, I don't, right off the top of my head. I think we could do some analysis, and get back to you with—with a sense of that——

Mr. CARNEY. Please.

Mr. MORTON [continuing]. If you would like that, recognizing that it is a fairly—as we have discussed—a small statistical pool. But, yes, I think we can get that for you.

Mr. CARNEY. I guess it does sort of beg the question of the follow-on—is if we can identify that, can we, then—what sorts of diplo-

matic efforts can we take to work with those nations, to make sure that this doesn't happen—you know, that there is things we—I think we really ought to be doing in terms of that. I would hope that you share this information with the State Department and the various councils around the globe, so they have this information.

Anyway, Mr. Alden, I was struck, actually, by your comments that the cost-benefit analysis doesn't come out on the biometric side in terms of exit technologies. What about—the entrance technologies—is it the same? You know, do the biometric entrance technology——

Mr. ALDEN. No. No, I think it is a very different situation. I think if we looked at the deployment of biometric technologies through US–VISIT, it has been a tremendous success. In fact, one of the successes, from my perspective, was that it was rolled out very intelligently, in a way that caused minimal disruption to lawful travelers.

So we started it, for instance, with two fingerprints, just for travelers from visa countries.

Mr. CARNEY. Right.

Mr. ALDEN. Then, as we became comfortable with that, the Department of Homeland Security moved to two fingerprints from everybody from visa-waiver countries as well. Now, we are moving to a full 10-fingerprint system, which is more accurate; has increased security benefits, because you can check it—the fingerprints against fingerprints that are picked up in Afghanistan or Iraq or elsewhere.

So there has been real steady progress on the entry side. The exit side is a lot harder for a number of reasons we can talk about. But it is a very different situation.

Mr. CARNEY. I think you did a good job of laying out those difficulties.

So, from a cost-benefit analysis, in your judgment, the entrance technology is the way we should be focusing resources?

Mr. ALDEN. Well, no question—particularly if your priority is keeping out potential terrorists and criminals.

I mean, if it is a question of immigration accounting—of trying to know whether people have stayed here illegally for work purposes—then that is a different set of metrics——

Mr. CARNEY. Sure.

Mr. ALDEN [continuing]. That you would use.

But—but for the purposes of National security, I think there is absolute no question.

Mr. CARNEY. Okay. Thanks.

Mr. Beers, in your comments, you said that you are "adequately budgeted"—you have what you need, roughly?

Mr. BEERS. That is correct.

Mr. CARNEY. Okay.

Mr. BEERS. For the current activities that US–VISIT undertakes.

Mr. CARNEY. All right. Now, not all the compliance-enforcement units are fully staffed. Is that right—are adequately staffed?

Mr. BEERS. You will have to ask Mr. Morton that.

Mr. CARNEY. Mr. Morton? Yes.

Mr. BEERS. He is the one who runs the compliance units.

Mr. MORTON. Actually, we use our full appropriation from Congress—that is not to say that, you know, we have—as I said before, the ability to address every lead that is generated. But we do spend the full appropriation that we receive, which is about $67 million.

Mr. CARNEY. Okay.

You could use more?

Mr. MORTON. We do the best we can with the appropriation we get every year, and——

Mr. CARNEY. I understand. Listen, I will take that as a, "Yes." Thank you.

Mr. MORTON. You know, the point that you highlight is it really needs to be taken in the context of the general immigration enforcement. Why I think many of us feel that immigration reform is necessary has been pointed out here—this is a very large number of people who are not complying with the law. They fall within the even larger number of people who, for a variety of reasons, have not complied with the law over time. ICE has a limited ability to deal with those individuals. We have to have rational priorities in a world of limited resources. Visa overstays are no different.

Mr. CARNEY. Understood. If, somehow, we could enhance your resources, we would like that.

Actually, Mr. Broun's comments resonated with me, too, because we have heard similar reports in my district, in Northeast Pennsylvania—that some of the ICE folks that—you know, "There is nothing we can do. We are not going to—you know, you can report them. You can do whatever. But we are not going to do much."

Mr. Skinner, has E-Verify worked, from your estimation, in terms of workplace compliance and things like that?

Mr. SKINNER. Congressman, we have not completed a study to see if—to determine whether it is or it is not working. That is something, again, that is on our radar screen. It is something that we anticipate doing in the—in the months ahead.

Mr. CARNEY. Sure.

You know, as we look at comprehensive immigration reform coming up, that would be awfully handy information to have. So, you know, as soon as that could be done, I would appreciate it myself.

Mr. SKINNER. You can be sure that that is something that we will be doing in the near future.

Mr. CARNEY. Thank you. I will yield back.

Chairman THOMPSON. Thank you.

The gentleman's time expired.

Mr. Morton, for the committee's information, to what extent have you utilized contractors rather than full-time employees in your course of work?

Mr. MORTON. The CEU work we do is almost exclusively performed by Government employees, because it is a straight law-enforcement function. We do use a limited number of contractors—42—to help us with some of the scrubbing of the leads that we receive from the various programs. We do that, in large part, because that piece of the work if funded by fees.

The fee structure is much more uneven than a straight appropriation. Using the contractors, we are able to deal with the year-to-year fluctuations that we have in the fee-based structure.

But, as a general rule, we want to do this with Government employees.

Chairman THOMPSON. Thank you. If you would, please provide the committee with the name of those contractors, and what have you.

Mr. MORTON. Happy to do so.

Chairman THOMPSON. I now recognize the gentleman from Texas, for 5 minutes—Mr. McCaul.

Mr. MCCAUL. Thank you, Mr. Chairman.

Mr. Beers, I have a chart here, and I believe it comes from your testimony, primarily. But about 11 percent of the overstays are actually reviewed? When you look at overstay leads investigated, it is about 3 percent of the potential universe of overstays? That leaves about 89 percent outside of ICE parameters.

First of all, is that accurate? If it is, that—to me, that is very disturbing, particularly given the fact when you had somebody like Mr. Smadi, who attempted a terrorist attack in my home State of Texas, who, as I understand it, would not be one of the leads investigated because of the criteria used under the current situation.

Mr. BEERS. Sir, the reviews we do are based on the National security criteria that ICE provides us with. Those numbers reflect the individuals who fall within the parameters of the National security criteria which ICE provides us with.

Mr. MCCAUL. Yes, and I understand that. I know you have your parameters. But does that mean that about 89 percent of overstays are outside of the ICE parameters?

Mr. BEERS. That is what the figures say.

Mr. MCCAUL. Again, I find that very troubling.

I don't know what the answer is going to be here. I know that the 2011 budget request completely eliminates funding for the comprehensive biometric exit program, a $22 million decrease.

Mr. Morton, what are the chances of that—what are your thoughts about that?

Mr. MORTON. With regard to the funding for US–VISIT, I would address that to Mr. Beers. To your earlier points, it is—the basic challenge is the challenge that we face every day, and that I have referred to earlier—as an enforcement agency, we have more leads than we can address. That is just the day-to-day reality that I face in running the agency.

We are a big agency, but we have to prioritize. In that, I focus first and foremost on National security; next, we go to criminal offenders; then, to maintaining basic support along the border and for fugitives. And——

Mr. MCCAUL. I understand you have to prioritize within the resources you have. I don't think you have enough. Have the parameters changed since the Smadi case?

Mr. MORTON. There have been some changes. A short answer to your question is, "Yes." I would prefer to talk to you about that——

Mr. MCCAUL. Sure.

Mr. MORTON [continuing]. Not in a public setting.

Mr. MCCAUL. Mr. Skinner, you and I talked briefly before the hearing about this resource issue. I think you—I don't want to paraphrase you, but you basically said, "To really address this, we are

going to need a lot more resources thrown at it." Would you care to comment on that?

Mr. SKINNER. When we performed our review about 4 or 5 years ago, one of the things that we observed was a tremendous backlog. In fact, about 53 percent of the total referrals to ICE were backlogged for over a year.

It is my understanding, based on information we received as we monitor implementation and the improvements that ICE is making as they go forward—is that its backlog still exists today. Our concern, and my concern would be, as we do our follow-up work, is, "How are we going to dig into that backlog?"

If you continue to make a backlog of tens of thousands of referrals of potential—of violators or potential violators—who, among that group, is someone that we need to target right away? We don't have time on our side, so that is something that we will be focusing on as we move forward.

Mr. MCCAUL. Well, thank you.

I think this is a—for this administration to propose a cut in resources to address this, I think it is not the right action.

Mr. Alden.

Mr. ALDEN. Mr. McCaul, thank you. Would you still allow me to respond quickly on the Smadi case? Obviously, the Government officials know many things that I am not privy to.

But my understanding of that case is when the sheriff in Texas contacted officials in Washington, when he pulled over Mr. Smadi for the broken taillight, he was told that he was under FBI investigation—that Smadi was under FBI investigation. He was held in prison for a night and released the next morning. In fact, the operation that finally resulted in his arrest was set up by the FBI.

If he had been identified and targeted as a visa overstayer, and deported, it would have interfered with a critical law enforcement investigation. So I hate to see this case used as an argument for overstay-tracking as a counterterrorism—so I think it is a misunderstanding of what occurred in that case. I think that was a law-enforcement success, not a visa-tracking failure.

Mr. MCCAUL. I agree with that. I think the FBI did an outstanding job. You are right. They were working this case to get to where they finally did. It was a successful law enforcement story. But if there are other Smadis out there that the FBI is not working an investigation like this—yes, I just think the criteria—the parameters should be addressed so that it would include individuals of his age, you know, in a different case.

Mr. ALDEN. I mean, again, just to make the record clear, he was from a country that is tracked under the NSEERS program. There is an effective entry-exit system for people from those countries. So we would have known he was a visa overstay.

Mr. MCCAUL. That is good news.

I yield.

Chairman THOMPSON. Thank you very much.

Mr. Beers, did you want to make a comment on something?

Mr. BEERS. I did, on the issue, Congressman—with respect to the funding issue.

Mr. McCaul, there is no money in the budget for biometric air exit in fiscal year 2011. That is correct. The reason is that I

couldn't tell you how much that program ought to cost. We believed that it was more important not to put a number in there that we couldn't justify, since we hadn't made a decision yet.

When we make a decision and we are prepared to go forward, then we will be prepared to ask you for the money that we need. The time process, as you are well aware of, for developing budgets is such that we got caught in a jam between finishing this study and preparing the budget.

Chairman THOMPSON. Thank you very much.

The gentlelady from California is recognized for 5 minutes.

Ms. SANCHEZ. Thank you, Mr. Chairman.

Thank you, gentlemen, for being before our committee today. I just have a couple of quick questions.

The first one, since I have you all in front, especially our ICE director, here—there is a lot of comments going out in California, including my own district, that somehow ICE agents are going out and making raids all over the place. Can you state, for the record, here, at this hearing, what, if any raids have been taking place in rounding people up off the streets?

Mr. MORTON. I would tell you that one of the things that I have to deal with every day, as the leader of Immigration and Customs Enforcement is rumors about widespread raids that are going on in one place or the other. We dealt with one just a few weeks ago, where rampant rumors that we were teamed up with Walmart, and that we were going into individual Walmarts around the country and arresting people.

It is just simply not the case. We do conduct worksite enforcement operations. They are targeted on specific employers after an investigation that we conduct. Where those investigations reveal that there are people who are working in the country unlawfully—and as we go through our criminal investigation, we will address the civil immigration violations.

But the idea that ICE is conducting, you know, raid upon raid and State upon State across the Nation, willy-nilly, is just simply not true.

Ms. SANCHEZ. So I am looking at some information I have in front of me, where it talks about the past administration—the Bush administration versus the Obama administration, and some of the myths out there. It does, in fact, say here that you are doing worksite enforcement, that you are much more targeted, and that you are doing it more analytically.

Quite frankly, getting a lot of the problem people and identifying them, and either putting them into a prosecution cycle, as they are criminals, or following the law of our land, and making sure that they are sent to their home countries. Is that not true?

Mr. MORTON. That is right.

Ms. SANCHEZ. So you are not going out and doing raids on the street randomly, but you are very analytically and surgically analyzing businesses that are abusing the law.

Mr. MORTON. That is right. We don't do street sweeps at all.

Ms. SANCHEZ. Thank you for that.

I would like to—Mr. Alden, when Mr. Carney was asking you about US–VISIT—and, particular, knowing who is coming into our country, and who is leaving our country, because, as the Chair-

woman of that subcommittee, up until a couple weeks ago, US–VISIT, of course, was a headache.

But I think you said something very interesting. I would also like to make sure that I understood what you said—"If we are looking for terrorists, then the most important thing is to find them when they are coming—attempting to come into our country." Is that what you said?

Mr. ALDEN. Absolutely.

Ms. SANCHEZ. While it would be nice to know who is leaving our country—that that would be more important from a visa-overstay perspective with respect to who may be working under the table, or without the right documents in our country.

Mr. ALDEN. It is important for the integrity of immigration laws—its primary value.

Ms. SANCHEZ. But finding a terrorist on the way out is probably not the place we want to be looking for them. It is probably finding the terrorist coming in—is where we should be putting our resources?

Mr. ALDEN. In fact, as I understand the technologies that are currently being tested, we wouldn't find the terrorist on the way out, even with a fingerprinting system, because the data is not available in real time. You take the fingerprints. They are uploaded at the end of the day. We would be able to say, "Well, yes, there was someone on the Terrorist Watch List in the country. We know he has left. He went on a flight back to Amsterdam." Possibly, we would be able to alert law-enforcement officials in those countries. But we wouldn't find him as he was exiting, even if that scenario should occur.

Ms. SANCHEZ. Thank you, Mr. Alden.

Thank you, Mr. Chairman. I just wanted to make sure I understood what he had said.

Chairman THOMPSON. Thank you very much.

The Chair now recognizes the gentlelady from California, Ms. Richardson, for 5 minutes.

Ms. RICHARDSON. Thank you, Mr. Chairman.

Mr. Beers, can you explain to me—how is it that the US–VISIT program has $50 million from prior-year funds that you haven't used?

Can you explain to me—how is it that the US–VISIT program has $50 million in prior-years' funds that have not been utilized?

Mr. BEERS. If you are referring to the $50 million for biometric air exit, the money is appropriated as no-year money. It is available for the implementation of the biometric-air-exit decision process that is currently underway.

Ms. RICHARDSON. So, typically, if you don't spend money, like last year of whatever it just kind of sits in a pot until you decide——

Mr. BEERS. We generally spend our money. But this particular box of money is specifically devoted to biometric air exit. Since we haven't made a decision on that—there have been some prior years when we haven't expended all of our funds. I can say that we are doing a much better job on that. The money is put to good use. It is not that it just sits around. It just wasn't expended in prior years.

Ms. RICHARDSON. I realize, Mr. Chairman, it is not the subject of this particular committee hearing. But, when I read that, I thought, from an oversight perspective, it was kind of interesting, because if money is not being spent really technically—what should be done, and what happens to us—you would have to return the money. Then, once you did your study and you decided what program you wanted to implement, then you would come and you would ask for the money.

So, to me, it just seems a little—not quite accurate information that is being shared, because, actually, if you—the question the gentleman asked—if you already got $50 million in your pocket, you didn't have to initially ask for something this year. So I would like to explore that more in the future.

Mr. Beers, I have got to tell you I was a little surprised when Mr. Morton said that he couldn't answer a basic quantitative question. Mr. Carney asked, "Do you have the statistical information of, you know, the results by country?" He said, "No," you know, "I don't have it."

I got to tell you—I come from the private sector. I cannot imagine a staff meeting that you would have that he would come to, and you wouldn't ask, of the 1,100 names, "Tell me what countries these come from. Is there a particular time period that they come?" I mean, I am not going to tell you how to do your business, but I have found that to be particularly shocking—that that information was not——

Mr. BEERS. We have that information. We could not answer Mr. Carney's question as to which country had the largest number of overstays——

Ms. RICHARDSON. Well, if you have it, why wouldn't——

Mr. BEERS. We have the information about that. Neither John nor I had that at the tip of our fingertips. We would be happy to provide that rapidly, as a question from the committee. But the information is available. It is communicated on a regular basis to the State Department. They, themselves, want to know what their overstay rate is, because that helps them in looking at the visas that they have to issue.

So all of that information is available, we just didn't have it at our fingertips.

Ms. RICHARDSON. That wasn't my clear understanding of his response. I think it would be helpful for the committee to know that.

Mr. Morton, you answered that you have more leads than what you can address. Yet, when you were asked the question, "Do you need additional funding," you did the good old party response—programmed response, "Well, you know, we are doing the best that we can." Actually, Mr. Beers laughed. I thought that that was particularly interesting, because given that we are an oversight body, we are talking about American lives that are in danger here.

If you have more leads than what you can address, it sounds like to me you need more people. The place to say it is here. If you are not given the freedom by Mr. Beers to say that, then we have a bigger problem, because that is what we are here for.

So if you need more resources, we need for you to tell us.

My last question, Mr. Morton—we talked about—I think it is the I–94 form. I have looked at the same form for my international

travel now, for the last 20 years. I am curious—when have we last updated it? It would seem to me that it would make sense, instead of saying where you are saying—because, you know, I go through customs. I don't think anyone is checking, "Do you stay at the Marriot?" or wherever you are staying. I think it would be more helpful to know, "Is there a point of contact where you are staying?" and that that information should be provided prior to the person landing.

So, maybe, at the point of purchase of the ticket—so that that way, someone—I mean, we went to the National targeting center. Someone could be typing in these names, see the same names popping up, and see that there is a problem. So I would just hope—and I believe my—probably down to 30 seconds. But I would like to see you come back to the committee with some ideas of how we might change that form. Because, as far as I have seen it, it is the same form I have seen for 20 years.

Last, whoever was working on the US–VISIT program—the pilot—that looked at the two seaports—if you could provide this committee that information?

Could one of them take a stab?

Chairman THOMPSON. We will allow the witnesses to answer the question.

Ms. RICHARDSON. Thank you, Mr. Chairman.

Mr. MORTON. I am happy to give you our thoughts on the I–94.

I think the most recent time the form was updated was in 2004. But you have hit on exactly a key point for us in terms of enforcement, and the promise of things like US–VISIT and technological improvements—in order for ICE to be effective on the back end, for those people who knowingly violate the law, after having received a privilege to come here, the more information that we can get upfront that is detailed and accurate, that is beyond just, "I am staying at the Marriot for 3 days in Orlando"—just imagine, from our perspective, how difficult it is to start with that as your basis.

Things like ESTA, which is the program of requiring people coming here for the visa-waiver pilot program, where you don't need a visa at all—a computer-based, Internet-based program that requires you to put in a lot more information—give the United States a lot more information before you even come here, I think, is the promise of the future.

I think we would be more than happy to give you our thoughts on that.

Mr. BEERS. We will get you that information on the full study that we did on the pilot program.

Chairman THOMPSON. Thank you very much.

The Chair now recognizes the gentlelady from Brooklyn, New York, Ms. Clarke, for 5 minutes.

Ms. CLARKE. Thank you very much, Mr. Chairman.

I want to thank our panelists for being so forthcoming with the information being requested around this issue.

I can appreciate the challenges that we face in trying to address this issue of exiting—some of the technologies being somewhat cost-prohibitive. I also appreciate, you know, the diligence with which this committee has raised questions about those who may

have come to our country, overstayed their visas intentionally to do us harm.

It is estimated that the number of non-immigrant overstays widely varies. That is part of the challenge. But I do have to take some exception with "These people are criminals" classification. I mean, I want to challenge that notion, because employers actually play a role here as well. When you have such a varied visa system, where oftentimes employers have a role to play about whether a person falls out of status or not, it makes your job even harder.

We have been approaching this sort of as a monolithic issue. Different people come to the United States under different types of visas, and they come at varying ages. So if you are a child that comes on a visitor's visa, and your parents, for whatever reason, are unable to receive you back home, you may stay with a relative that is able to take care of you, thereby overstaying a visa. How do we adjudicate something like that?

Perhaps you are a worker that was brought on a special type of visa because of your expertise, and your employer becomes recalcitrant, but still needs your work there. They don't fill out the paperwork in time. Is that the terrorist that we are looking for, and the needle in the haystack?

I have to say that I think the way that we really get to the core of this is by addressing a comprehensive immigration reform, where we look at the types of visas that we have and, then, maybe do a special application of remedy per class. Then, we being to take a look at who it is that is truly doing us harm, and we are able to focus on that.

So let me just ask a couple of questions here. The office in DHS—excuse me—which office in DHS has lead responsibility for estimating non-visa immigrant overstays, and then analyzing the trends?

Mr. Beers, could you give me a sense of that?

Mr. BEERS. We put together the initial information that would be available to look at those issues using the US–VISIT database system.

So we can see how that is happening. Much of our work is done in conjunction with ICE, with respect to——

Ms. CLARKE. So there is not one particular unit in—that specifically focuses on this? It is a joint——

Mr. BEERS. Within US–VISIT, that is correct—the Data Integrity Group.

Ms. CLARKE. Okay. So, the Data Integrity Group.

Are there other DHS offices involved in collecting and analyzing data on visa overstays?

Mr. BEERS. We have the information. Other people use our information for their own analyses.

Ms. CLARKE. Okay.

Is this analysis done categorically based on—upon the type of visa that was issued?

Mr. BEERS. We have that data as well. Yes, it can be done on that as well.

Ms. CLARKE. Then, we can break it down to, perhaps, the age of the individual, what circumstances they came to the United States under?

Mr. BEERS. Yes.

Ms. CLARKE. Does DHS share non-immigrant visa-overstay data with the Department of State Bureau of Consular Affairs, the agency responsible for issuing the visas?

Mr. BEERS. Yes.

Ms. CLARKE. Okay. Does DHS data on non-immigrant visa overstays—is that all currently available?

Mr. BEERS. Currently available to the public, or currently available to the Department of State?

Ms. CLARKE. To the Department of State?

Mr. BEERS. Yes.

Ms. CLARKE. Okay.

Has the Department analyzed this data to explore whether foreign nationals on certain types of visas, from certain parts of the world, or other demographic traits, are more or less likely to stay after their visa expires?

Mr. BEERS. I will have to get back to you specifically on whether that particular analysis has been done. I don't know the answer to that.

Ms. CLARKE. Yes. I just think that that may help us to sort of boil down—drill down, if you will—to where the actual threat levels exist within the system that we have. Perhaps, that is where we can begin to reform it.

I want to thank you all, once again, for being here—sharing what you have with us. But I just think that we have to stop looking at this from a monolith. Oftentimes, that is the way things are portrayed.

People come under different circumstances, different ages. We need to address it in those nuanced ways.

I yield back, Mr. Chairman.

Mr. BEERS. Congresswoman Clarke, just let me answer the last question that you asked.

Ms. CLARKE. Yes.

Mr. BEERS. The National security criteria that ICE gives us in terms of identifying those overstays that are of most concern is a result of that. It is not just from the analysis of overstays. It is also from intelligence information that ICE has as part of the intelligence community.

Mr. MORTON. Yes, if I might, Mr. Chairman——

Chairman THOMPSON. Please——

Mr. MORTON. Just so you are not under any misimpression—that is exactly what we do every day, when we go out and enforce. We exercise prosecutorial discretion. So I can assure you that we are not spending our limited resources on identifying juveniles who may have stayed here longer with a relative. The cuts we are making are at a much higher level; generally, as I said earlier, focused around questions of National security or public safety.

You know, your basic point is well taken. That is not how we operate.

Ms. CLARKE. Mr. Chairman, if I might——

Chairman THOMPSON. Please.

Ms. CLARKE. I understand that. I wanted to put it in context for the record, and for our colleagues because we speak about this in such a monolithic fashion. It is though everyone who comes on a

visa is a potential threat to us. But when we begin to boil it down—as you said, you begin to eliminate juveniles and other categories of people, based on the type of visas they have—then we can really focus our resources—our limited resources—on those who may be here to do us harm.

I yield back.

Thank you, Mr. Chairman.

Chairman THOMPSON. Good point.

I don't think there is any disagreement between any of the witnesses at this hearing. The facts about it, I think, people have suggested that, just based on what the facts are—we have to prioritize who we go after first. Obviously, it is the terrorists and other people that would be top of the list.

Gentlelady from Las Vegas, Nevada, Ms. Titus, for 5 minutes.

Ms. TITUS [continuing]. I would just ask you, then, if you would explain the discrepancy in the calls or—and how you involve the stakeholders in that rulemaking process.

Mr. BEERS. That notice of a potential rule did create those numbers and that reaction on the part of the airline industry. In part, as a result of those concerns expressed by the airline industry, the pilot study that we conducted and completed in July focused on that collection being done by U.S. Government officials, rather than the airline industry, which was also not interested in having responsibility for conducting the biometric air exit.

We have looked at a number of choices. I would say that, without being in a position to tell you precisely what those numbers are at this particular point in time, we are talking about a 10-year program that is over $1 billion by any of the options that we have looked at. Those numbers are estimates. They have been under review since that study was completed. We are continuing to scrub them. We will be in a position to talk about them once a decision has been made by the administration.

The assumption that the American airline industry and the American traveler will necessarily have to pay those fees is also not a determined issue. That was the airline industry making the assumption that they would have to pay, or eat the cost. We haven't made a decision on that at this particular point in time. That is an issue, though.

Ms. TITUS. Can you keep me updated on that as you move forward in this process?

Mr. BEERS. Yes, ma'am.

Ms. TITUS. Thank you.

Also, I think that part of the comprehensive solution is not just checking people when they come in and when they come out, but having the facilities be able to deal with the flow of people who have been cleared. So I wondered if, in your pilot program, you looked at the impact of the two systems that you were testing on the flow at the airports? Did you detect any significant delays with one of the other, or——

Mr. BEERS. To the best of my knowledge, the efforts—and, again, they were pilot programs—did not. That is still something that would be of extreme interest to us. Obviously, we want security and travel facilitation to be an integrated process, and not have one affect the other. So it is an issue.

Ms. TITUS. It is. I appreciate you recognizing that and keeping me posted on that as well. I would just ask you finally, then, do we have your assurance that, as you move forward with this, you will keep the stakeholders involved and seek the input of the different airports?

Mr. BEERS. We will have to do that. Yes, ma'am.

Ms. TITUS. Thank you very much.

Chairman THOMPSON. Thank you very much.

The Chair now recognizes the gentlelady from Texas, for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

Let me compliment the Chairman and the committee for focusing on truth, rather than myth. The contrasts between administrations are unhelpful. Contrasts attempted to be made between the Bush and Obama administration is extremely unhelpful. What we should be focusing on is: How we can go forward?

I am interested, Mr. Alden, in your perspective. I think it is important because you bring a perspective that comes not only from your own intellect and research, but you have a political perspective as well. I think these are the kinds of input that we need to have to be constructive going forward.

So did I read correctly, in your testimony, that a complete shutdown of the border does impact commerce, and the ingress and egress of necessary principals that may come in. When I say that—diplomatic and otherwise—that may come in—is that your testimony?

Mr. ALDEN. Well, I want to be clear, Congresswoman. I don't think anything we are talking about here involves a complete shutdown of the border. The closest we have seen to that was in the immediate aftermath of 9/11.

Ms. JACKSON LEE. No, but answer my question, which is: If that was to occur, would that impede commerce? That is what am putting a hypothetical——

Mr. ALDEN. Well, just to give you a figure on it, we—at the Canadian border after 9/11——

Ms. JACKSON LEE. Right.

Mr. ALDEN [continuing]. The decision was made to do detailed inspections of every incoming traveler—commercial and ordinary citizen. The lineups into Windsor, Ontario ran to 12, 15 hours and longer within 2 days.

Ms. JACKSON LEE. You can be——

Mr. ALDEN. So doing that kind of detailed inspection alone was enough to effectively shut down that border.

Ms. JACKSON LEE. You can be assured that we heard from the Northern border on that.

Mr. ALDEN. Yes.

Ms. JACKSON LEE. Thank you. I just wanted to clarify your point.

Mr. Morton, I have heard your passion on this whole concept of immigration, and the need for comprehensive immigration. I would like to insert into the record, by my words, the calm and very appropriate expression of that by multiple groups on last Sunday. It was an amazing array of groups of faith. I hope you had a chance to at least see this combination of individuals who came in peace, who were articulate, to the higher ranks of various churches, such

as cardinals and bishops, and other leading faith participants, along with the community—business persons, a various array of folk who were talking about comprehensive immigration reform.

My question to you: What is the time frame? You are part of the structure of what the administration will have to look to in comprehensive immigration reform. Are you working on this inside the Department of Homeland Security? As I understand it, this is something that is on the administration's agenda. Is there pre-work being done that will be helpful to Members of Congress as we move forward?

Mr. MORTON. Absolutely. Not only are working on it and have been working on it for quite some time. The President asked the Secretary to lead the effort. We have met with over 1,000 interested groups, whether they are advocates, churches, individuals at meetings throughout the country. I participated in quite a number of them personally, and—and led them.

We have been working very closely with Senators Schumer and Graham on their thoughts on how to reform the system. We support the basic principles that they have outlined. We are at the ready, and have been doing a great deal of homework. It is a strong commitment of this particular Secretary. I have made no secret that I think it is necessary, and the President has obviously said repeatedly, including most recently at the march itself—that this is a commitment, and that is at the top of his radar screen.

Ms. JACKSON LEE. So if I can pursue my line of questioning, it is a given that the administration believes that a regulatory scheme structure—a scheme does not attract you—will help you clarify, for example, your duties?

Secretary Morton.

Mr. MORTON. Absolutely.

Ms. JACKSON LEE. As I say that, let me make—let me put this number in the record—that ICE is reporting a 40 percent increase in removal of aliens convicted of crimes in 2010, compared to the same period last year, which covered the previous administration. I think that record should be clear, because if there is any deportation that I would advocate, it is distinctively a convicted criminal under these present laws versus a mother who is trying to stay here to raise her children.

Would you go ahead and continue your answer, and have any comment on this idea of the criminal aliens versus those who have simply come here for work, even though they may be un-status.

Mr. MORTON. Obviously, National security cases and criminals are our highest priority. As I think everyone will shortly see, there is going to be a profound change in the results from an enforcement perspective at ICE. As you have just noted, we are on track to see something on the order of a 40 percent increase in the number of criminal aliens removed from the United States in a single year.

So I have brought a very strong focus to that. I think everyone on either side of the aisle, when they look at the challenges that we face in terms of immigration—most people agree. They disagree on a lot of things. But they agree that, yes, we ought to be starting with criminal offenders. That is exactly what we are doing.

Ms. JACKSON LEE. In closing, Mr. Chairman, I just want to say, for the record, I think it is very clear that the Obama administration has an agenda, a positive agenda, which is to fix what has been broken, now, for, I would say, the 1986 bill, and, then, the amendments thereafter, in terms of immigration, and needs a fix so that these officials can decipher between known criminals and others who would do harm to this country as it relates to our National security, and to work on a structure that decent individuals who come to this country, as they did in the early 1900s—as many parents and grandparents of those of us who have immigrant histories would be able to do—that we need to move quickly on comprehensive immigration reform; and citing numbers about how many employer sanctions, which is part of the structure, does not move me.

The overstays will continue as long as we don't have a visa structure for work. They will continue as long as we want to divide families—mothers and fathers being sent back, and children who are born here. They will continue as long as we don't address the question swiftly, quickly and expeditiously, and so it can be understood.

With that, Mr. Chairman, I yield back.

Chairman THOMPSON. Thank you very much.

I would like to thank the witnesses for their very valuable testimony, and the Members for their questions.

Before concluding, I would remind our witnesses that the Members of the committee may have additional questions for you. We will ask you to respond expeditiously, in writing, to those questions. In addition to that, there are—already been some commitments to get information back to us. I would encourage you to get it back to us as soon as possible.

Hearing no further business, the committee stands adjourned.

[Whereupon, at 12:11 p.m., the committee was adjourned.]

APPENDIX

QUESTIONS SUBMITTED BY CHAIRMAN BENNIE G. THOMPSON OF MISSISSIPPI FOR RAND BEERS, UNDER SECRETARY, NATIONAL PROTECTION AND PROGRAMS DIRECTORATE, DEPARTMENT OF HOMELAND SECURITY

Question 1. What DHS data on nonimmigrant visa overstays is currently available? Has the Department analyzed these data to explore whether foreign nationals on certain types of visas, from certain parts of the world, or with other demographic traits are more or less likely to stay after their visas expire?

Answer. The overstay rate data currently under review include variables for country, class of admission, port of admission, and airline. The focus of the review has been on the accuracy of the overstay rate estimates. Our systems, and particularly our collection and verification of biographic departure records for air travelers, have now improved to the point where we are increasingly confident in the reliability of the data. We expect to be in a position soon to release overstay rates for each Visa Waiver Program country.

Question 2. Provide a listing, by country of origin, of the estimated number of foreign nationals currently in the United States who have overstayed their visas.

Answer. Over the past several years, DHS has made significant strides in its ability to identify foreign nationals who have overstayed their authorized periods of admission. However, the number of nonimmigrants who overstay their visas or periods of admission in any given year and remain in the United States has historically been difficult to estimate, primarily due to the lack of collection of departure information at land ports of entry. DHS currently has programs in place that use airline manifest information; border crossing records; document reads enabled by the Western Hemisphere Travel Initiative (WHTI); and information collected under the US–VISIT program that allow us to record, for most individuals, who has entered and exited the country. US–VISIT uses a multilayered system that includes automated data searches, manual data searches, and manual verification by human analysts to identify aliens who remain in the United States beyond their authorized periods of admission. These aliens are commonly called visa overstays.

DHS has refrained from disclosing and using estimated overstay rates to help determine policy, such as Visa Waiver Program eligibility, because precise numbers and rates could not be accurately calculated. However, the current system, and particularly DHS collection and verification of biographic departure records for air travelers, have now improved and created confidence in the reliability of the data. DHS is conducting further manual reviews for other countries to reach a point where it is confident that the evaluation is valid. DHS expects to be in a position soon to release overstay rates for each Visa Waiver Program country and to begin using these data to inform VWP decisions, as required by the VWP statute.

Question 3. How can the Department improve the I–94 form to obtain better information from travelers to help DHS locate travelers who overstay, and enforce visa deadlines?

Answer. DHS has made significant strides in its ability to identify foreign nationals who have overstayed their authorized periods of admission.

The Department recognizes that using the paper version of Arrival/Departure Report (I–94) Form I–94 to collect entry and exit data, which support the identification and location of possible overstays, is not optimal. DHS is planning to phase out the paper version of the form and rely on other means for data collection. In particular, DHS has worked closely with airlines to ensure that complete airline manifest information is provided—ensuring DHS receives detailed information on departures and arrivals. DHS also uses border crossing records; document reads at the land border enabled by the Western Hemisphere Travel Initiative (WHTI); and other information collected under the US–VISIT program to record arrivals, departures, and changes to status that allow individuals to extend their authorized periods of stay. DHS then analyzes this information to determine whether individuals have over-

stayed the terms of their admission. Upon determination, DHS takes action. For individuals who overstayed and have left the United States, DHS creates "lookouts" in both our biographic and biometric systems so that any State or DHS officer who later encounters the individual is aware of the prior failure to comply. For those who are believed to have overstayed, but not departed, ICE opens field investigations (based on prioritize and resources) to locate and remove the individual.

Question 4. It is my understanding that Secretary Napolitano has been briefed on the outcome of the US–VISIT exit pilots and is considering how to proceed. What recommendations did you make to the Secretary and when can we expect a final decision from the Secretary on implementation of the program? Will you commit to briefing to the committee in advance of an announcement on the Department's plans?

Answer. The Department of Homeland Security (DHS) conducted the Air Exit pilots from May 2009 to July 2009, pursuant to the 2009 DHS Appropriations Act. The Air Exit pilots tested scenarios for biometric exit capabilities at two airports. The Air Exit pilots were: (1) U.S. Customs and Border Protection (CBP) officers at the departure gate of Detroit Wayne Country Metropolitan Airport and (2) Transportation Security Administration (TSA) screeners at the main security checkpoint of Hartsfield-Jackson Atlanta International Airport. In cooperation with CBP and TSA, U.S. Visitor and Immigrant Status Indicator Technology Program (US–VISIT) prepared an Air Exit pilot evaluation report that DHS submitted to the House and Senate Subcommittees on Homeland Security on October 26, 2009.

Any decision regarding the implementation of biometric exit procedures must consider economic, technological, and operational impacts, as well as possible modifications to port facilities and the surrounding environment. DHS continues to examine options for biometric exit procedures and, once a decision is made, DHS will brief this committee.

Question 5a. It is my understanding that US–VISIT will hire additional data integrity analysts to reduce the backlog of previously unreviewed overstay records.

What is the current backlog level? What has contributed to this backlog?

Question 5b. When and how will the Department eliminate this backlog?

Question 5c. How will US–VISIT mitigate potential vulnerabilities resulting from not reviewing these records?

Answer. The U.S. Visitor and Immigrant Status Indicator Technology Program (US–VISIT) is directed by Congress in the 2009 US–VISIT reprogramming request with eliminating 50 percent of the current backlog by the end of fiscal year 2010. There are currently 753,000 unreviewed records, not including possible future overstay records identified in fiscal year 2010.

In the past, US–VISIT did not validate the records of individuals who did not meet U.S. Immigration and Customs Enforcement (ICE) parameters for overstay records of interest based on National security and intelligence criteria (nonpriority records). This significantly increased the size of the backlog.

To reduce the backlog, US–VISIT hired additional analysts for manual vetting and will perform additional automated validation to review all overstay records, including those of people from nonpriority countries of interest. As of April 9, 2010:

- US–VISIT has vetted approximately 247,000 of the previously unreviewed records (48 percent of the stated goal of 500,000 records for fiscal year 2010), including regular automated, manual, and batch closures of records.
- US–VISIT has hired an additional 69 contractor analysts, currently in various stages of the clearance process, to review overstay records.
- US–VISIT will continue with automated, manual, and batch closures of records throughout fiscal year 2010.
- US–VISIT remains current (no backlog) in reviewing priority potential overstay violators, including those with visas and Visa Waiver Program nationals.

Question 6a. The Inspector General testified that DHS does not have a master schedule for tracking the work that needs to be accomplished to deliver an exit solution.

Has the Department made progress toward creation of a master schedule?

Question 6b. Who is responsible for this effort and when will a master schedule be finished?

Question 6c. Will you commit to providing this schedule to the committee once it is finalized?

Answer. Once decisions for National deployment are made, U.S. Visitor and Immigrant Status Indicator Technology Program (US–VISIT) will develop and maintain an integrated master schedule aligned with the U.S. Government Accountability Office's delineated best practices that will capture the sequencing and timing of the activities and events necessary to meet the requirement of this project in a timely and cost-effective manner.

The Department will provide approved final schedules to the appropriate Congressional committees.

QUESTION SUBMITTED BY HONORABLE GUS M. BILIRAKIS OF FLORIDA FOR RAND BEERS, UNDER SECRETARY, NATIONAL PROTECTION AND PROGRAMS DIRECTORATE, DEPARTMENT OF HOMELAND SECURITY

Question 1a. In your testimony on terrorist travel before the Senate Committee on Homeland Security and Governmental Affairs last December you highlighted the success of the Coast Guard's Biometrics at Sea program used off the coasts of Florida and Puerto Rico, of which I have been a strong proponent.

Are there plans to expand the use of this very effective program beyond the Coast Guard's current use to additional areas or for use by other DHS components?

Question 1b. Can this technology be leveraged to enhance our biometric exit screening capabilities?

Answer. The Coast Guard has recently expanded its biometric capability to include the biometric verification of crew members on vessels carrying Liquefied Natural Gas into the ports of Boston, MA, and Sabine, TX.

The Coast Guard is also studying the use of biometrics to support Counterterrorism, Counterdrug, and Maritime Border Security missions.

The Coast Guard Biometric at Sea System (BASS) cannot be used for biometric exit screening because it is currently limited to the collection of two fingerprints and a non-searchable photo. The Coast Guard is working with CBP, US–VISIT, and other DHS components on a single DHS capability solution to provide 10-print collection and potential multi-modal capabilities.

QUESTION SUBMITTED BY HONORABLE PAUL C. BROUN OF GEORGIA FOR RAND BEERS, UNDER SECRETARY, NATIONAL PROTECTION AND PROGRAMS DIRECTORATE, DEPARTMENT OF HOMELAND SECURITY

Question. Would you each share your opinion of the impact that discussions in this country about providing amnesty for those here illegally, many of whom are visa overstays, and enabling unauthorized aliens to work legally in the United States, has had and will have on visa overstays?

Answer. The experience of immigration enforcement officials in the field has shown that many nonimmigrant aliens who overstay their authorized period of admission to the United States do so because they hope to eventually adjust their status to that of a lawful admitted permanent resident. For example, current law allows nonimmigrant aliens, even those who overstay their visas, to adjust their status through marriage to a United States citizen. Similarly, the prospect of being able to adjust status through legalization cannot be discounted as an influencing factor for an alien considering overstaying a visa, or of entering the United States with the intention of remaining unlawful.

Legalization would not provide a pathway to employment authorization or legal status for future visa overstays who go "out of status" after a hypothetical legislation was introduced and enacted. Therefore, in the future, those who overstay may fraudulently attempt to adopt the identity of an alien who was "out of status" and therefore eligible for legalization. Fortunately, such identity fraud will be made more difficult by DHS systems that capture the biometrics of nonimmigrant visitors. Furthermore, visa overstays lack the required documents to work legally in the United States. Legalization of those who are currently in the United States illegally would not affect future visa overstays, who would still lack valid work authorization.

QUESTIONS SUBMITTED BY CHAIRMAN BENNIE G. THOMPSON OF MISSISSIPPI FOR JOHN T. MORTON, ASSISTANT SECRETARY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY

Question 1. Provide the names of all contractors providing services to the ICE Compliance Enforcement Unit. Specify the total value of the contract, the term of the contract, the scope of work, and the approximate number of Full Time Equivalents associated with each contract.

Answer. The analysis and consultation contracts are listed below.

STATUS VIOLATOR ANALYSIS AND LEAD GENERATION TEAM CONTRACT

Company Name.—SRA, International, Inc.
Contract Number.—HSCENV–08–C–00002.
Term on Contract.—January 1, 2008–December 31, 2010.
Cost.—$17,514,386.
Number of Analysts.—42.

Full Time Equivalents Associated.—58.

This contract is for the analysis of initial leads received by the Compliance Enforcement Unit (CEU). This contract includes the capability to act in a surge capacity as National security concerns arise.

PROGRAM MANAGEMENT AND ANALYTICAL SUPPORT

Company Name.—Booz Allen Hamilton.
Contract Number.—HSCENV–08–F–00207.
Term of Contract.—September 30, 2008–September 29, 2013.
Cost.—$3,264,003.38.
Number of Consultants.—3.
Full Time Equivalents Associated.—4.

This contract is for consulting services. This contract supports the CEU's school fraud program/major criminal cases as well as data and analytical support for field agents, subject matter expertise in support of Student and Exchange Visitor Information System (SEVIS) related activities, program assessments, process analysis, planning and strategy, and assistance to agency initiatives.

Question 2. How does the Department prioritize investigation and enforcement of visa overstays?

Answer. U.S. Immigration and Customs Enforcement (ICE) prioritizes visa overstay cases for investigation and enforcement by giving priority to violators who pose the greatest threat to National security. ICE uses intelligence-based criteria developed in close consultation with the intelligence and law enforcement communities. ICE assembles the Compliance Enforcement Advisory Panel (CEAP) three times a year to ensure that ICE uses the latest threat intelligence to target nonimmigrant overstays and status violators who pose the highest risks to National security.

Question 3a. The Department does not request funding for the ICE Compliance Enforcement Unit in the fiscal year 2010 or fiscal year 2011 budget.

Why does the budget fail to seek funding for this unit in the fiscal year 2010 and fiscal year 2011 request?

Question 3b. Does ICE need additional funding or personnel to support this unit's activities?

Answer. ICE investigations conducted through the Compliance Enforcement Unit (CEU) related to Student and Exchange Visitor Information System (SEVIS) are funded by the Student and Exchange Visitor Information Program (SEVP) fee collections. The anticipated expansion in fiscal year 2010 and fiscal year 2011 will be funded through the SEVP fee collections as it relates to increased monitoring of SEVIS. Twenty-one agents have been funded through SEVP in fiscal year 2010, and we expect to fund 78 additional agents in fiscal year 2011.

At this time, ICE CEU does not anticipate requiring additional funding or personnel to support compliance enforcement activities.

Question 4. In 2005, the Inspector General issued a report finding that: (1) ICE received inaccurate leads; (2) was unable to keep pace with the large volume of lead referrals; and (3) did not complete leads in a timely manner.

What actions has ICE taken since 2005 to address the IG's findings?

Answer. The actions ICE has taken to address the IG's findings have led the IG to close all four of its original recommendations for the Compliance Enforcement Unit (CEU). To address inaccurate leads, CEU established new business processes with all of its partners to focus investigative resources on a smaller set of high-quality records, thereby reducing the number of non-actionable leads. These processes include access to Department of State data systems, which allow visa revocations to be rapidly referred to ICE field offices for investigation. This access also enables CEU to correct data errors in the Student and Exchange Visitor Information System (SEVIS), enabling CEU to identify individuals who are no longer residing in the country. Additionally, the US–VISIT Program office is retrieving additional departure records not found in the Arrival and Departure Information System (the entry-exit component of US–VISIT) to ensure that all US–VISIT overstay records forwarded to CEU are thoroughly researched through all available entry-exit databases.

To address CEU's ability to keep pace with lead referrals and complete leads in a timely manner, CEU has established prioritization levels for leads and has adjusted staffing levels to combat both pace and quantity of leads. The CEU continuously refines how it prioritizes leads to ensure that it investigates those that pose the greatest potential threat to National security and public safety. Additionally, CEU routinely makes staffing adjustments to address increased workloads by adding additional research analysts.

Question 5a. You testify that we should expand the Nation's enforcement efforts concerning overstays and other status violations.

How can DHS enhance its enforcement efforts?

Question 5b. What additional authorities or resources does DHS need to facilitate this expansion?

Answer. U.S. Immigration and Customs Enforcement (ICE) is exploring how to better focus its programs that enforce nonimmigrant overstays and status violators and other interior immigration violations. As ICE identifies ways to improve its enforcement strategies concerning overstays and status violators, we look forward to working with the committee if it is determined that additional authorities or resources are needed.

Question 6a. According to the IG's 2005 report, investigations were often delayed because ICE agents had competing demands on their time, such as assignments to help other law enforcement agencies or other investigative priorities.

How common are these delays today?

Question 6b. What management controls are in place to ensure that visa overstay investigations are not delayed due to other investigations or assignments that compete for agents' time?

Answer. The IG has closed all four of its original recommendations for the Compliance Enforcement Unit (CEU).

ICE ensures compliance enforcement investigations are completed in a timely fashion through a variety of oversight techniques. Primarily, ICE routinely analyzes the total number of hours investigators spend fact-finding in connection to visa overstays. If the totals are deficient, corrective measures are implemented to remind field offices of the importance of these cases. More specifically, ICE reviews compliance enforcement investigations that have been in the field and active for more than 90 days. These cases are identified and discussed with the field investigators to determine the status of the cases and to reinforce the urgency of completing them.

QUESTION SUBMITTED BY HONORABLE PAUL C. BROUN OF GEORGIA FOR JOHN T. MORTON, ASSISTANT SECRETARY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY

Question. Would you each share your opinion of the impact that discussions in this country about providing amnesty for those here illegally, many of whom are visa overstays, and enabling unauthorized aliens to work legally in the United States, has had and will have on visa overstays?

Answer. The experience of immigration enforcement officials in the field has shown that many nonimmigrant aliens who overstay their authorized period of admission to the United States do so because they hope to eventually adjust their status to that of a lawful admitted permanent resident. For example, current law allows nonimmigrant aliens, even those who overstay their visas, to adjust their status through marriage to a United States citizen. Similarly, the prospect of being able to adjust status through legalization cannot be discounted as an influencing factor for an alien considering overstaying a visa, or of entering the United States with the intention of remaining unlawful.

Legalization would not provide a pathway to employment authorization or legal status for future visa overstays who go "out of status" after a hypothetical legislation was introduced and enacted. Therefore, in the future, those who overstay may fraudulently attempt to adopt the identity of an alien who was "out of status" and therefore eligible for legalization. Fortunately, such identity fraud will be made more difficult by DHS systems that capture the biometrics of nonimmigrant visitors. Furthermore, visa overstays lack the required documents to work legally in the United States. Legalization of those who are currently in the United States illegally would not affect future visa overstays, who would still lack valid work authorization.

QUESTIONS SUBMITTED BY CHAIRMAN BENNIE G. THOMPSON OF MISSISSIPPI FOR RICHARD L. SKINNER, INSPECTOR GENERAL, DEPARTMENT OF HOMELAND SECURITY

Question 1. Your 2005 report on ICE overstay enforcement found that until the exit portion of US–VISIT is fully implemented, ICE will continue to waste resources investigating people who have already left the country. ICE spent $68 million in fiscal year 2009 on compliance enforcement. In the absence of a full implementation of the entry and exit portions of US–VISIT, how can the Department limit the resource drain caused by pursuing these false leads?

Answer. Since we published our report in 2005, U.S. Immigrations and Customs Enforcement and the National Planning and Prepared Directorate have reported enhancements to NSEERS, US–VISIT, and the SEVIS data systems. Therefore, DHS can now do a better job of targeting overstays and spend less time on pursuing false leads. The problem now, however, is ICE does not have sufficient resources to pursue these new, and more reliable leads.

Question 2a. ICE relies on several data systems to develop investigative leads on overstays (NSEERS, US–VISIT, and SEVIS).

How useful is the information contained in these databases?

Question 2b. What steps should DHS take to improve these data systems or identify other sources of viable leads?

Answer. We reaffirm ICE's belief that the information in these systems is very useful. To improve the utility of this information, DHS must develop additional techniques or processes to integrate and match this data with other databases such as the Treasury Enforcement Communications Systems (TECS), Terrorists Identities Datamart Environment (TIDE), airline manifests, and the Terrorist Screening Database, to get a better picture of those who may be overstays and among them, identify those who might pose the greatest threats to our National security. It is our understanding that this is something that DHS is working on doing, but, since we have not reviewed these efforts, we cannot comment on their success.

QUESTION SUBMITTED BY HONORABLE PAUL C. BROUN OF GEORGIA FOR RICHARD L. SKINNER, INSPECTOR GENERAL, DEPARTMENT OF HOMELAND SECURITY

Question. Would you each share your opinion of the impact that discussions in this country about providing amnesty for those here illegally, many of whom are visa overstays, and enabling unauthorized aliens to work legally in the United States, has had and will have on visa overstays?

Answer. The focus of our most recent Immigration and Customs Enforcement (ICE) audit was to determine whether its information technology (IT) modernization approach adequately addressed strategic planning, implementation, and management of technology. As such, the audit did not examine the utility of specific IT systems or the data maintained within these systems. However, we found that ICE had improved its IT strategic planning, oversight of IT spending, and processes for IT life cycle management. However, ICE is still challenged to prepare necessary documentation and to review IT projects mainly due to staffing shortages. We recommended that ICE finalize its IT Strategic Plan; develop an Office of the Chief Information Officer staffing plan; establish an agency-wide IT budget process; and establish a formal process for IT policy development, approval, and dissemination. Once these recommendations have been properly addressed, ICE will be in a better position to manage its IT modernization effort and to improve understanding of how its existing systems and data contained within them will be able to support effectively its immigration and customs enforcement goals.

QUESTION SUBMITTED BY HONORABLE PAUL C. BROUN OF GEORGIA FOR EDWARD ALDEN, SENIOR FELLOW, COUNCIL ON FOREIGN RELATIONS

Question. Would you each share your opinion of the impact that discussions in this country about providing amnesty for those here illegally, many of whom are visa overstays, and enabling unauthorized aliens to work legally in the United States, has had and will have on visa overstays?

Answer. This question raises the important issue of whether, as a result of the preliminary discussions that have taken place on an immigration bill that would include some form of legalization for unauthorized aliens, the United States may:

(1) Inadvertently be encouraging more people to come here illegally in hopes of benefiting from legalization, or;

(2) Inadvertently encouraging people to remain here illegally rather than returning home, again in the hopes of benefiting from legalization.

Let's take each of those issues in turn. On the first issue, there has been some good research done into illegal migration flows prior to the 1986 Immigration Reform and Control Act (IRCA) legislation which included legalization for nearly 3 million people. The only way this can be measured is through apprehension data (i.e. the number of arrests of illegal crossers at or near the border). This has never been a perfect measure, because it does not directly account for those missed by the Border Patrol, may count some individuals multiple times, and does not take into account the impacts of increased Border Patrol presence. It also leaves out the issue of visa overstayers that was the subject of the hearing. But it remains the best proxy we have. The underlying assumption is that higher apprehension rates mean that more individuals are attempting to enter the United States illegally.

The legislation that became IRCA was first introduced in 1981. Over the 5 years until its enactment, there was a huge increase in border apprehensions, from 736,000 in fiscal year 1982 to a peak of 1.6 million in fiscal year 1986, before dropping again to less than 1 million in 1987 and 1988. This indicates that IRCA may well have become an incentive for illegal migration. The picture is complicated because Mexico underwent a deep financial and economic crisis in 1982, and there is

strong, persistent evidence that the economic situation in Mexico is directly correlated to rising illegal migration to the United States. The legislation also specified that no one who entered the United States after January 1, 1982 would be eligible for legalization, with the exception of so-called Special Agricultural Workers. But there is considerable evidence of document fraud that allowed many who entered after 1982 to be included in the legalization.

This time around, the pattern has been different. President Bush introduced the idea of pursuing comprehensive immigration reform in January 2004, and Congress took up bills subsequently, but there has been no evidence since then of a surge in illegal migrants hoping to benefit from a forthcoming legalization. Indeed the opposite has been true. The number of apprehensions along the border with Mexico in fiscal year 2009 was at the lowest levels since the early 1970s. There were 556,000 apprehensions between the ports of entry, about one-third of the record 1.7 million apprehensions in 2000. During the first 6 months of 2010, there were 245,000 apprehensions, which indicates a further decline. This is obviously largely a result of the weaker economy and more effective border enforcement (about which I'm happy to provide further evidence). So if the potential for legalization is providing an incentive for illegal migrants—and there is some evidence from the 1980s that it does—it has not been sufficient to offset the current disincentives.

The question of whether some visa overstayers or other illegal migrants may be staying in the United States in the hope of benefiting from an eventual legalization is still harder to address with any precision. It is certainly reasonable to assume that, given the increase in interior enforcement, most illegal immigrants are aware of the heightened danger of detection and removal, or of the possibility that they will be identified as unauthorized by an employer and lose their job (again, I would be happy to provide further evidence on the increase in interior enforcement). Under the circumstances, each would make a calculation about the costs of returning home and the risks of remaining.

Again, the overall statistical evidence is that more unauthorized immigrants are returning home than ever before. The latest estimate from DHS is that the unauthorized immigrant population as of January 2009 was 10.8 million, down from 11.6 million in January 2008. This was the second straight year of decline in the size of the unauthorized population after two decades of more or less uninterrupted growth. Again, the explanation is some combination of the weaker economy and tougher enforcement. Deportations last year totaled 310,000, which is roughly double the level of a decade prior. So if the possibility of a legalization program may well be an incentive for some visa overstayers to remain, on aggregate the evidence is that nonetheless more are leaving than at any time in recent years.

One conclusion that can be drawn here is that it will matter very much how any legalization scheme is designed. Most previous legislative proposals have been designed so that the only individuals eligible for legalization would be those who had already been in the country for some specified period prior to the introduction of the legislation. That is supposed to eliminate the incentive for people to enter the country illegally, or to overstay visas and remain illegally, in the hopes of benefiting from legalization. This leaves aside, of course, the question of fraud. As in 1986, there will certainly be many people who try to claim a presence in the United States prior to whatever cutoff date is set by Congress. It is my understanding that DHS is currently working to establish a system for verification that will do everything possible to minimize such fraud, but this needs to be a topic of careful discussion between Congress and the administration should such legislation move forward.

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