S. HRG. 109–71

STRENGTHENING ENFORCEMENT AND BORDER SECURITY: THE 9/11 COMMISSION STAFF REPORT ON TERRORIST TRAVEL

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP

AND

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

MARCH 14, 2005

Serial No. J–109–6

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
22–470 PDF WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

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STRENGTHENING ENFORCEMENT AND BORDER SECURITY: THE 9/11 COMMISSION STAFF REPORT ON TERRORIST TRAVEL

MONDAY, MARCH 14, 2005

UNITED STATES SENATE,
SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CITIZENSHIP, SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY, OF THE COMMITTEE ON THE JUDICIARY
Washington, DC.

The Subcommittees met, pursuant to notice, at 2:30 p.m., in room SD–226, Dirksen Senate Office Building, Hon. John Cornyn, [Chairman of the Subcommittee on Immigration, Border Security and Citizenship] presiding.

Present: Senators Cornyn, Kyl, Kennedy and Feinstein.

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

Chairman CORNYN. Good afternoon. This Joint Hearing of the Senate Subcommittee on Immigration, Border Security and Citizenship, and Senator Kyl's Subcommittee on Terrorism, Technology and Homeland Security shall come to order.

First I want to thank Chairman Specter for scheduling this hearing, but I also want to particularly thank Senator Kyl, who chairs the Terrorism and Homeland Security Subcommittee, for allowing us to meet jointly. The Subcommittee that I chair is the Immigration and Border Security Subcommittee, and there seem to be so many common themes and intersections that we thought it would just be more efficient to have these two Subcommittees meet together. I look forward to continuing to work with Senator Kyl on these issues as we debate immigration reform and security enforcement in the months ahead.

I also want to express my appreciation to Senator Kennedy, the Ranking Member of my Subcommittee on Immigration and Border Security, and Senator Feinstein, the ranking Subcommittee member on the Terrorism Subcommittee, and obviously also all the staff that have worked so hard to make this hearing possible today.

Last year I was honored to serve as the Chair of the Constitution, Civil Rights and Property Rights Subcommittee and work closely with Senator Feingold, the ranking member. Although we parted company on some issues, I found that Senator Feingold was always a principled, courteous and devoted Ranking Member of the

Subcommittee and I will certainly miss working with him and his staff in that capacity.

But, I am particularly looking forward to this new responsibility on the Immigration and Border Security Subcommittee and working with Senator Kennedy, whose devotion and commitment to immigration issues is longstanding and well known. I think it is especially gratifying to serve on this Immigration Subcommittee at this time in our Nation's history.

President Bush has articulated to the Nation a vision for comprehensive reform of our immigration laws, in the interest of our Nation, in the interest of our security, in the interest of our economy, and in the interest of the rule of law. I am sympathetic to the President's vision and I look forward to the critical role that this Subcommittee will play in the coming Congressional debate.

But before we debate the need for reforming immigration law, we should ask ourselves why it is that we have so miserably failed to enforce current law. Is it due to lack of resources? Is it due to a lack of will? Is it because our current laws are out of sync with economic reality? Or is it for other reasons entirely? No doubt, whatever the reasons, our current immigration system is badly broken. It breeds disrespect for the law and imposes serious risks to our National security.

As an American, I am deeply troubled by our chronic inability, even our unwillingness at times to do what is necessary to enforce our immigration laws. And, although I am proud that we are sometimes called a Nation of immigrants, but I am concerned because we are also first and fundamentally a Nation of laws.

As an American I believe our immigration laws can be designed to be both compassionate and humane. At the same time I believe our immigration laws must be designed to protect U.S. sovereignty and further U.S. interests.

As an American I understand that our immigration policy can be reformed to better serve our National security and our National economy. At the same time I understand that unless we can ensure enforcement of the law, it is futile to discuss reforming it.

Toward that end, today's hearing is just the first in a series of hearings on strengthening enforcement, the first in a series of hearings to focus attention on the challenges that we face when enforcing our immigration laws. I hope that the series will serve at least two purposes. First, the hearings should help us identify those challenges to enforcing immigration laws that we can address, such as additional resources and legal tools. Second, the hearings may help us consider whether comprehensive immigration reform would be helpful to the cause of stronger enforcement of our laws.

Future hearings will look at interior enforcement and the need to strengthen our deportation system, because we need to review our immigration system from top to bottom. Today's hearing will examine the challenges to enforcement we face at the border.

It will examine the analysis and recommendations from the border security staff report of the 9/11 Commission, entitled "9/11 and Terrorist Travel." The 9/11 Commission and their staff performed a tremendous public service by providing a comprehensive review of the facts and circumstances surrounding the attacks of Sep-

tember the 11th. I hope that those of us in Congress will never tire of reviewing the lessons learned from the failures that led to that terrible day. As that report makes clear, defects in our ability to enforce our laws and to secure the border pose a threat not only to the rule of law, but to the security of our Nation as well.

Specifically, the border security staff identified several deficiencies in the training of border personnel and several defects with regard to our visa policy. The report noted that our immigration inspectors, now called CBP officers, received little counterterrorism and behavioral science training, no cultural training, and rarely received follow-up training. They also wrote that "critical continuing education on document fraud was rare."

The report also recognized that our visa process allowed terrorists to exploit our system and gained extended stays within our country. Recognizing this defect, terrorists concentrated on ways to exploit legal entry into our country, whether by lying on entry forms or using manipulated or fraudulent documents. All but two of the nonpilots involved in the 9/11 attacks were admitted as tourists and were granted automatic six-month stays. This allowed them to maintain a legal immigration status through the end of the 9/11 attacks. We should examine the process by which length of stay is determined to ensure that inspectors grant an appropriate time period to those seeking to enter our country.

And we should make no mistake, this type of exploitation continues. Just last week FBI Director Mueller testified that he was aware of people going to Brazil, assuming false identities and making their way through Mexico to cross the U.S. border with their new identities and documents. And recent news reports, as recently as today, cite intelligence officials who believe that Al Zarqawi has considered plans to enter the United States in this very fashion.

The border security report makes clear all of the 9/11 attackers entered our country through a legitimate port of entry, passing through border security 68 times prior to carrying out their deadly attacks. These border encounters are the time to detect and arrest those who use document fraud and manipulation to enter. Immigration inspectors must receive periodic updated training about document manipulation, fraud and other illicit methods used to enter our country because these inspectors are in the best position to stop those who come here to do us harm.

But we also know that al Qaeda and other terrorists plot their attacks and modify their plans over long periods of time. Undoubtedly they will attempt to gain entry to the United States undetected between ports of entry.

I recently flew with the border patrol over the Texas-Mexico border around Laredo, Texas, and I must tell you, from what I saw there and reported back to my colleagues, I am concerned that our expansive and porous border leaves our country vulnerable still today.

This vulnerability was highlighted by Deputy Homeland Security Secretary Admiral James Loy in recent testimony before the Intelligence Committee. He said: "Recent information from ongoing investigations, detentions and emerging threat streams, strongly suggest that al Qaeda had considered using the Southwest border to infiltrate the United States. Several al Qaeda leaders believe

operatives can pay their way into the country through Mexico and also believe that illegal entry is more advantageous than legal entry for operational security reasons."

It is imperative that we find a solution to this exposure. Clearly, a part of the ultimate resolution is well-equipped, trained and funded border patrol agents and inspectors.

Our front line border personnel are highly dedicated and loyal public servants. They process visitors in a timely fashion to avoid legitimate travel and commerce backlogs, while simultaneously identifying those who should not be allowed to enter into our country. This is a high stress job, particularly in the post 9/11 environment.

Yet we will never have effective enforcement at our borders unless we adequately train the people we task with carrying out this job, and the thought that inspectors may unwillingly facilitate the introduction of terrorists, weapons of mass destruction or illegal drugs into this country because they have not received the information or training they need is simply unacceptable.

That is why we have to do everything in our power to ensure that these front line defenders have all that they need in order to get the job done.

I hope to hear today how the Department of Homeland Security has enhanced their training programs to reflect the increased importance of our front line inspectors' role in the defense of our country, and how the Department of Homeland Security considers and grants visas to ensure the system is not exploited.

[The prepared statement of Senator Cornyn appears as a submission for the record.]

With that, let me turn the floor over to Senator Kyl, and then to Senator Kennedy and Senator Feinstein for any remarks they may have.

OPENING STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Chairman KYL. Thank you very much, Senator Cornyn.

I too want to welcome all of you to this hearing in which we will examine the work of the Department of Homeland Security and its efforts to ensure that terrorists are not permitted to travel to this country posing as legitimate visitors.

I too recently visited our border in Arizona, and it is very clear that our border control continues to face enormous challenges in keeping out the people who cross illegally.

Our hearing today is going to try to focus more on how people get documents to come into the country legally, and the reasons that we know this was a problem is because of the 9/11 hijackers, which I will get into in just a moment. But we are very interested in the work that the Department of Homeland Security is performing in our consulates abroad because this is often the first place that our United States representatives have to encounter foreign nationals who seek to enter our country, and it is there that we begin the process of ensuring the integrity of the visa application and issuance process.

We count on professionals staffing our consular offices to extend our welcome to the world, but also to keep a watchful eye on trav-

elers who seek to exploit the system in order to do us harm or violation to our immigration laws.

The Enhanced Border Security and Visa Entry Reform Act of 2002 added safeguards to ensure that visa applicants were better screened, first by mandating specialized training for the consular officers to recognize terrorists or terrorist threats; second, requiring the State Department to electronically share information on visa applicants with the Department of Homeland Security; and third, by mandating that travel documents and passports contain biometric identifiers and features whereby we can authenticate the person applying for the particular kind of visa, and that these identifiers by machine readable and tamper resistant.

We have expressed grave concern with the way that the consular officers in the past screened or even sometimes failed to screen would-be travelers to the United States, and with the guidance that they receive from the State Department.

I authored an amendment for inclusion in last year's intelligence reform legislation that was prompted by a finding of the 9/11 Commission and its recommendation that most foreign nationals should be personally interviewed by consular officers before they are issued visas. The personal interview is an important part of the process of determining whether a foreign national may pose a security risk. The amendment that I authored last year also required that visa applications be completely and accurately filled out by the applicants in order to be considered for approval.

Chairman Cornyn, I am going to insert in the record at this point a copy of each of the forms that the 9/11 hijackers submitted, which reveal clearly the failure to provide information that should have been provided to our consular officers, and that should have alerted them to the necessity of conducting oral interviews with these applicants.

Chairman CORNYN. Without objection.

Chairman KYL. All 15 of the visa applications filed by the 9/11 hijackers contained significant inaccuracies or omissions that should have prevented them from obtaining visas, and only two of the hijackers were personally interviewed by the State Department on their applications. The remainder were simply approved sight unseen.

Now, the Department of Homeland Security has been given the responsibility for visa policy and oversight of the visa issuance process, so we are interested in learning what progress has been made in the security of visa operations, and in particular, look forward to Acting Secretary Dezenski's testimony on this matter.

A second line of defense against terrorists trying to enter our country is located at the ports of entry. The 9/11 Commission noted that no Government agency has systematically analyzed terrorist travel strategies, even though our security would have been greatly enhanced by such analysis, and that as many as 15 of the 19 hijackers were potentially vulnerable to interception by border authorities, but were not picked up because of the lack of analysis of characteristic travel documents and travel patterns.

The Commission staff report added that Immigration and Naturalization Service inspectors were inadequately trained in the essentials of identifying terrorists, that they had received no

counterterrorism training, were remarkably undertrained in conducting primary inspections and in recognizing fraudulent documents, and that they were not taught the content and value of the numerous databases at their disposal, which might have helped them identify members of the 9/11 terrorist group.

We know that DHS has made effort to improve the awareness and efficiency of the officers who oversee our borders, and I expect that Chief Walters will give us details on the training of those officers.

Finally, Chairman Cornyn, I am looking forward to the testimony of Janice Kephart, who actually worked on my staff for this Subcommittee before she became a member of the 9/11 Commission staff. So we have a good hearing today, and let me just say in advance that because a leadership meeting was scheduled over the top of this hearing, I will have to leave at just a little bit before 3:30, but will look forward to the testimony of all of the people who provide that testimony after I m gone.

Thank you, Mr. Chairman.

Chairman CORNYN. Thank you, Senator Kyl.

Senator Feinstein, would you care to make any opening remarks?

STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. I would. Thank you very much, Mr. Chairman. I very much appreciate this opportunity and I certainly thank the witnesses for being here.

I want to address my remarks to the catch and release program, the Visa Waiver Program and stolen immigration related documents, specifically with respect to the Southwest border.

In 2003 there were 30,147 other than Mexican intrusions. In the next year, 2004, which is the latest year for which we have figures, there were 44,617. That is a 48 percent increase, which indicates that other than Mexicans are seeing the Southwest border as a point of vulnerability, going to Mexico and stealing into our country through that border.

In February of 2004, during a Judiciary Immigration Subcommittee hearing, Under Secretary for Border and Transportation Security, Asa Hutchinson, responded to questions by Senator Grassley regarding the catch and release policy for other than Mexicans, or as we will say, OTMs, as follows. His response, and I quote, "At present DHS has no specific policy regarding OTMs apprehended at the Southern border. Well, OTMs, as well as Mexicans, are permitted to withdraw their applications for admission and can be returned voluntarily to their country of nationality. As a practical matter, this option is not readily available to them as it is for Mexicans, whose government will accept them back into the Mexican territory. Thus, when apprehended, OTMs are routinely placed in removal proceedings under Immigration and Nationality Act 240. It is not practical to detain all noncriminal OTMs during immigration proceedings, and thus most are released." End of quote.

Now it is my understanding that a majority of OTMs later fail to appear for their immigration proceedings and simply disappear into the United States. So you can look back and say that the like-

lihood is, in 2004, some 44,000 people other than Mexicans came across the border and just disappeared.

I have looked at the statistics for each country, and the so-called countries of concern, Syria, Iran and Iraq, the numbers are up of penetrations through our Southwest border. Clearly we are deficient in a mechanism to deal with these. Thus, it seems to me if I were a terrorist and I wanted to come into the United States, this is the way I would do it.

The next issue, lost and stolen passports and the Visa Waiver Program. I cannot go into great detail, but in the Intelligence Committee I have learned a lot about international drivers license, Geneva Convention travel documents, stolen passports, how they are changed, et cetera. I have sent those information bulletins to Mr. Chernoff, and so I have brought that to the attention of the Homeland Security Department. I did this last year as well.

I happen to believe that this is a real problem and the only true opportunity we have to screen visa waiver travelers also is through the US-VISIT program. In many cases, particularly if the terrorists would use airplanes as weapons against us, this would clearly be too late.

I want to give you a quote from Former Inspector General Clark Kent Irvin. He stated best in his testimony before the House Committee on International Relations in June of last year when he said, and I quote, "The fundamental premise of the Visa Waiver Program is that millions of persons about whom we know little can be exempted from Department of State's ever more rigorous visa procedures and permitted to board United States bound planes. As we said in our report, the visa is more than a mere stamp in a passport. It's the end result of rigorous screening the bearer must undergo before travel." End quote.

I could not agree more. The Visa Waiver Program involves 28 countries and 13 million who have come into this country every year. The 9/11 report documents the use of the Visa Waiver Program by terrorists, and we have a real problem in that program. Let me quote from the April—and I have the December report—of the OIG on Visa Waiver Program management. Quote: "All of the officials we spoke to told us that the Visa Waiver Program is not properly organized or managed. When INS disbanded it was reassigned to other responsibilities and several officials filled in on an interim basis or shared responsibility for Visa Waiver Program requirements. Since the establishment of DHS responsibility is unclear. One CBP official described the Visa Waiver Program as being on autopilot in an orphaned status with no designated manager or overseer."

And then I go on. "Department of State officials told us, Department of Health, DHS needs to identify who will be responsible for the programs. Lines of communication since the reorganization are unclear." And this report on pages 13, 14 and 15, is a serious indictment of this program which is really the soft underbelly of our Nation's immigration system because this would allow a terrorist to come into this country from any Visa Waiver Program, I think with alacrity.

In my questions, I will ask questions which I think will demonstrate this, but I am most interested to see since these reports

what actions have been taken to tighten up this program. I understand for the biometric passports that the Department is going to be coming in for another extension. I put a hold on it for last year. I held it up till the very last minute of the Senate, and I was assured that it would be done for this year. I will do the same thing in this session if it does not get done, because I truly believe this is a dominant weakness with respect to terror in this country, and year after year after year the Department has been requested to get the computer programs in shape, and hopefully you have been able to achieve that now. In any event, I will find out.

Thank you very much, Mr. Chairman.

Chairman CORNYN. Thank you, Senator Feinstein.

We have been joined now by the Ranking Member of the Immigration and Border Security Subcommittee, Senator Kennedy, and we would be happy to hear any opening remarks you might have, Senator.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thank you very much, Mr. Chairman, and let me congratulate you on chairing these hearings, and say that all of us on this side look forward to working with you on a lot of very important issues that are of first importance to families, to our National security and to the kind of country that we are.

I thank you for calling the hearing and also for having the 9/11 Commission staff report on terrorist travel, and I commend the Commission and staff for their thoughtful analysis of the events leading up to 9/11 and for their recommendations for reducing our vulnerability to attacks in the future.

We have made a number of significant improvements since 9/11, but no one would argue we have adequately repaired the broken system of intelligence, border security and immigration. Better information sharing and training are essential to enable our front line officers and inspectors to detect and intercept potential terrorists before they do us harm.

The Intelligence Reform Act Congress passed last December calls for a strategy to combine travel intelligence, operations and law enforcement in a joint effort to intercept terrorists and identify those who facilitate their travel. It also requires improvements in technology and training to assist border, consular and immigration officers in this mission, and I look forward to hearing from our witnesses about the progress being made.

A survey by the American Federation of Government Employees last summer found that a majority of the 500 custom and border protection officers say they do not have the tools, training or support to stop potential terrorists from entering the country. According to the 9/11 Commission staff report, al Qaeda altered passports in four ways: by substituting photos, by adding false entry/exit stamps, by removing visas and bleaching stamps, and counterfeiting passports and substituting pages.

I am also interested in hearing about ways to improve training and expedite access to specialists to obtain useful real-time intelligence about the terrorist organizations and operations. We also need to respect the civil rights and civil liberties. As the 9/11 Com-

mission stated, we advocate a system for screening, not categorical profiling. A screening system looks for particular identifiable suspects or indicators of risk. It does not involve guesswork about who might be dangerous.

Our goal is also to strengthen the security of our borders without unduly impeding the legitimate flow of people and commerce. More than 30 million foreign nationals enter the United States legally each year as tourists, students or temporary workers. And over 400 million visitors a year cross legally from Canada or Mexico to conduct daily business or visit family members. The goal of our border security is to keep out those who pose risks to our security in a way that does not seriously undermine the efficient flow of legitimate border traffic that is an essential part of our National economy.

Persons who obtain tourist visas to enter the U.S. can stay here for 6 months even if they only plan to stay for two weeks. Most of the 9/11 hijackers entered with tourist visas, and some have argued that routine six-month stays is related to security concerns. But limiting the amount of stay in the U.S. could lead to longer inspection lines and discouraging tourism without substantially deterring terrorism.

So I look forward to learning more from our witnesses about the many aspects of the critical issues of border security, and how Congress can be helpful in accumulating the best possible improvements.

I thank you very much, Mr. Chairman, for conducting the hearings.

Chairman CORNYN. Thank you, Senator Kennedy.

We have two distinguished panels this afternoon. The first is composed of Elaine Dezenski and Tom Walters. Elaine Dezenski is the Acting Assistant Secretary for Policy at the Bureau of Transportation Security for the Department of Homeland Security. She was appointed to this position in October of 2004 and works closely with the various Department of Homeland Security components and other Federal, State and local agencies, as well as foreign governments and industry stakeholders to make the Nation's border and transportation network secure while protecting free movement of legitimate goods and people across our borders.

Joining Assistant Secretary Dezenski on our first panel is Chief Tom Walters, the Acting Assistant Commissioner of the Office of Training and Development for Customs and Border Protection. Chief Walters is a long-time border patrol official with almost 30 years of border patrol experience. He began his career as a border patrol agent in 1975 in El Paso, and I know he got a lot of experience there. He is also a graduate of the first border patrol tactical unit class in 1984. BORTAC, as this unit is known, is a highly successful tactical team within CBP that is frequently summoned for high risk and difficult missions. BORTAC is tasked with anything from suppressing riots and tracking terrorists to intercepting human smugglers and drug traffickers. Chief Walters remains associated with that unit today.

I want to welcome again both of you here in our first panel, and why do we not begin with Deputy Dezenski, and then turn to Chief Walters. If I could get you to limit your opening statement to about

5 minutes, and then we will proceed with questions from the panel and explore both what you have talked about and maybe some things you did not have time to talk about during your opening statements during the Q&A.

Ms. Dezenski?

STATEMENT OF ELAINE DEZENSKI, ACTING ASSISTANT SECRETARY FOR BORDER AND TRANSPORTATION SECURITY POLICY AND PLANNING, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Ms. DEZENSKI. Thank you very much, Chairman Cornyn, Chairman Kyl, Ranking Member Kennedy, Ranking Member Feinstein.

On behalf of Secretary Chertoff thank you for the opportunity to be here today. As you noted, I am fairly new to my position and I look forward to working with both you and your staff, moving forward on border and transportation issues. I am joined by my colleague, Chief Walters, who, as you know, will be talking to you today about training of our officers.

Our goal today is to provide additional visibility into the Department's efforts to stop the movement of terrorists across our borders.

I would like to request that my written testimony be submitted for the record.

Chairman CORNYN. Certainly, without objection.

Ms. DEZENSKI. Thank you.

As a Nation we are proud of our history of immigration and of being a destination for visitors across the globe. DHS embraces the belief of open doors and secure borders. It captures this common sense notion that we should keep criminals and terrorists out of the country while we quickly and easily process those who are known or low risk.

Building a system that supports this goal requires the optimal use of policy, technology, biometrics, intelligence and operational experience, all of which contribute to a layered system that will stop terrorists.

I would like to outline three major elements of this multi-layered strategy that we are building. The first is using information more effectively. The second is leveraging Government resources, and the third is increasing our operational efforts or what we call boots on the ground.

It is no secret that pre-9/11 pertinent intelligence and information was not being shared in a way that would deter the terrorist threat. As a result, a multi-layered system to prevent terrorist travel into the U.S. that is supported by the collection, storing and application of intelligence and information sources throughout the Government is a top priority, it must be. Improvements include the integration of databases that include terror watchlists, visa issuance information and immigration status information, as well as the ability for our border patrol to more readily access certain types of databases.

DHS has taken the lead in using biometrics at home and abroad. It is part of this information roadmap that we are trying to build. The VISIT program is the largest daily use biometric program in the world with 100,000 people processed every day, and it is work-

ing. Since January of 2004 the U.S. has denied admission at ports of entry to more than 450 individuals based on biometric information alone.

Leveraging Government resources is another important component of our strategy and one that supports the idea of open doors and secure borders. The implementation of visa policy in the U.S. has been delegated to the Secretary of DHS, but our work at DHS is a close partnership with our colleagues at the State Department. Together we are working to secure the system while at the same time combating the perception that post 9/11 security measures have made it too difficult for legitimate travelers to come to the U.S.

One important example of our efforts to improve the way we make decisions about visa applicants is related to what we call the Visa Mantis program. These are visas that are issued to scientific, business and research travelers. The average processing time for a Visa Mantis decision has been reduced from 67 days to 15 days, and the percentage of Mantis cases pending more than 60 days has been reduced by 8 percent. These are the types of improvements that we need to continue to make in our processing of visas.

We have also made improvements in the area of visa reciprocity. The U.S. and China recently agreed to a 12-month visa validity period for business and tourism visas.

Another element to the multi-layered strategy's operations or boots on the ground, we have focused our available resources and high priority initiatives in high threat areas of the world. DHS visa security officers in Saudi Arabia reviewed over 20,000 visa applications last fiscal year. This year we are on track within the next 60 days to deploy our permanent delegation to two locations in that country, half of whom are trained in the local language. We are also moving in 2005 with the deployment of visa security officers to five additional locations, consistent with our threat-based approach.

Boots on the ground also applies to our border patrol and various border initiatives that we are employing such as expedited removal at parts of the Southern border, deployment of additional border patrol agents, and the implementation of the Arizona Border Control Initiative or the ABC Initiative.

Under the umbrella of a multi-layered system we are working to use information more effectively, leverage Government roles and resources, and focus our operational activities on high priority initiatives. We know that this will require resources allocated appropriately so that we do in fact get it right every time.

Thank you, and now I would like to turn it over to Chief Walters.

Chairman CORNYN. Thanks very much.

Chief Walters, if you care to make an opening statement?

STATEMENT OF THOMAS J. WALTERS, ASSISTANT COMMISSIONER FOR THE OFFICE OF TRAINING AND DEVELOPMENT, CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Mr. WALTERS. Chairman Cornyn, Ranking Member Kennedy, I am happy to be here today to testify about how we train our border

officers to do their jobs on the border, both at the ports of entry and between the ports of entry.

As part of the Department of Homeland Security and BTS, Customs and Border Protection combine the personnel and functions of four different agencies, most of Customs, all Immigration inspectors, Agriculture border inspectors and the entire United States Border Patrol under one Agency, an Agency to manage, control and secure our Nation's borders.

As CBP celebrates our second birthday, CBP is no longer an amalgam of parts, but a single Agency united to a common mission and a common top priority, to prevent entry into this country of terrorists and terrorist weapons. CBP is new, our mission is new, our priority is new. We have designed training to fit our new organization.

CBP now recruits, hires and trains its enforcement officers at the ports of entry as CBP Officers. Our new officers begin their careers with a 20-day training and orientation program at a new duty post, followed by 73 days of training at the CBP Academy. After graduation the new officers return to their duty posts and begin a formal program that includes 37 distinct modules of specific training and supervised application in the workplace of the training and the skills that they have acquired.

Our existing workforce, with its Customs, Immigration and Agriculture heritage and knowledge played a key role in developing CBP's operational concepts, and the training programs that support those concepts. We train our workforce to become complete CBP officers. Our veteran CBP officers participate in training that addresses the Immigration, Customs and Agriculture functions that were not part of their former Agency. In addition, every CBP officer, new or old, participates in training that addresses areas where previous training programs were weak or nonexistent, such as antiterrorism training, fraudulent documents training, and training how to identify weapons of mass destruction.

CBP is very active in preparing its front-line officers to do their jobs properly. In a recent article a private research group reported that the top 10 learning organizations in private industry provide employees with an average of 77 hours of training per year. CBP Office of Field Operations—this is where our people at the ports come from, the Office of Field Operations—by way of comparison recorded 3.3 million hours of training for its 23,400 employees in fiscal year 2004, for an average of just over 140 hours per employee. Top ten 77 hours per employee per year, CBP OFO, Office of Field Operations, 140 hours of training per employee.

CBP continues to research and develop new and more sophisticated antiterrorism training for our front line officers. Informed by our front line officers, our supervisors, managers, leadership in the organization and the work of the 9/11 Commission, CBP develops and distributes new courses and improves existing courses in detecting chemical, biological, radiological and nuclear weapons. CBP, for example, has trained 100 of its front line officers to conduct exercises built around terrorist and critical incident response scenarios through FEMA's Master Exercise Practitioner Program, and these fine officers are now distributed around the country to do just that.

CBP has developed a counterterrorism response protocol that tells front line officers—it takes them through the various steps in identifying possible terrorists and what steps to follow when they are encountered. Included in this newly developed training are the cultural backgrounds of likely source countries, and how to detect deception, and how to detect and elicit responses from possible terrorist operatives. Experienced subject matter experts and experienced role players play an important part in this new training.

I thank the Subcommittees for the opportunity to present this testimony today. I would be happy and pleased to take any questions you may have.

Chairman CORNYN. Chief, I am advised you have a one- or two-minute video you wanted to show us. This is in conjunction with your opening statement or does this relate to some other subject?

Mr. WALTERS. I believe that has been scrubbed, sir.

Chairman CORNYN. That has been scrubbed, okay.

With that, Senator Kyl, I know has to leave, and so to make sure he has an opportunity to ask questions of the witnesses, we will go to him first.

Chairman KYL. Thank you very much, Chairman Cornyn.

I was just down, as I said, on the Arizona border, visited with the new border patrol chief there, Chief Nicely, who was very positive about the CBP program there and said that everybody was working well together, and he was very optimistic that it would continue to work very well. So that is just one little field report, in any event.

I think probably most of these questions, Ms. Dezenski, are for you, but either one of you who would like respond, feel free. The questions that I raised earlier about the visas that were issued in Saudi Arabia; we had a Visa Express Program there. That is different now. Perhaps you could discuss how that is different, how the oral interview process is different, and the screening, and then perhaps the training as well.

In addition, I know she is going to ask, and you might as well anticipate the question on the biometric identification program, because I am with her, it is time to move on with that.

Ms. DEZENSKI. We have made substantial progress in terms of implementing some of the requirements under section 428 of the Homeland Security Act, specifically the provisions to enhance a visa security program, and let me just give you a couple statistics that I think will give you a sense for what we have done.

After the legislation was passed, we immediately started working on developing a training program and developing a system, if you will, to start moving visa security officers out to the field, and of course the legislation was very specific about sending people to Saudi Arabia, and that was our first activity.

We have obtained program funding in 2005 in the amount of $10 million. We have selected permanent visa security officers for Saudi Arabia, and they will be deploying, as I mentioned in my testimony, within the next 60 days. Half of that delegation does have language training, which we think will facilitate their activities there. We have already been working with the consular staff in both locations in Saudi Arabia. And we reviewed over 20,000 visa applications last year.

We are now able to delve into databases. We have biometric information available at all of our consular locations, so our officers are able to access that along with the state's consular officers to be able to make a better determination on whether to issue a visa.

So we have made some progress and we do expect that we will continue to expand that program. We have five additional locations identified in 2005. There are also areas that we would consider to be high threat, so we are moving out our folks just as quickly as we can.

Chairman KYL. Do you want to respond to the other questions regarding the Visa Waiver Program? And by the way, the processing did involve oral interviews; is that correct?

Ms. DEZENSKI. In some cases, yes. I can get back to you on whether that was all. I do not know.

Chairman KYL. You do need to get back to us on the oral interview because that was a key part of our finding, a key problem before and something we wanted to ensure would be resolved.

Ms. DEZENSKI. Absolutely.

Chairman KYL. Can you give us the status of the Visa Waiver Program right now, particularly with respect to any countries of particular interest from a terrorism standpoint?

Ms. DEZENSKI. Absolutely. We have been undergoing a very comprehensive review of our Visa Waiver Program countries. In fact, within the Border and Transportation Security Directorate we set up a special office, specifically to deal with Visa Waiver Program reviews. We are actually finalizing that report. It will be sent to Congress very shortly, and we did have several countries—although we cannot go into specifics about them—we did have several countries where we were concerned about the number of lost and stolen passports. We were concerned about some of the other factors that we look at when we review countries and determine whether they should stay in the program, so we will be making some recommendations in that final report as to the status. But we are heartened that Visa Waiver Program countries are now providing to us lost and stolen passport data, which is entered into our database systems and available to both consular officers and to our border patrol. So we have been able to implement some additional activities that we think are very important and are making a difference.

Chairman KYL. I might note that at the hearing that we held in June of 2004, I asked the Department of Homeland Security and the State Department to provide us with periodic updates on the progress of the 27 Visa Waiver Program countries were making to come into compliance with out October 26, 2005 deadline. We have received no updates that I am aware of, and I think if you would please check on that and get back to us as soon as possible, that would be appreciated.

Ms. DEZENSKI. I actually could give you a couple updates right now, sir. We have been working very diligently, both within DHS and with foreign governments to move towards meeting the deadlines. As you know, last year we did ask for an extension. At this point we think that of the Visa Wavier countries, about two will be actually ready to meet that October 2005 deadline. So we think there is more work to do. We do not think this is because countries

are not trying to meet the requirements. We think there has been a significant amount of progress, but we are running into technical issues and operational issues that are taking some time to work through.

So we continue to work diligently. The Visa Waiver Program countries continue to work diligently. We are moving forward as fast as we can to meet those requirements.

Chairman KYL. You need to get us an update in writing, please.

Ms. DEZENSKI. Okay, be happy to.

Chairman KYL. Thank you.

Chairman CORNYN. Thank you, Senator Kyl.

Chief Walters, let me ask you just a general question to start out with about morale and conditions for our border patrol agents generally. The USA Today reported that border patrol agents felt overwhelmed by their job in at least some instances. I do not know if we have a percentage reported. But another article, this one in the Washington Post, reported on a poll that found a high percentage of border patrol agents were not satisfied with the tools and the training and the support they received.

I would just, by way of anecdote, give you the benefit of my observation in a small portion of the border that we ask our border patrol agents to patrol, and what they tell me is they feel outmanned and under-equipped. While they do have technology like ground sensors, cameras and the like, that in the event an intrusion is identified that there is a very good chance, in other words, and no doubt in most if not all cases, they are not able to assure that they apprehend every single person that tries to come across the border. Is that as a result of a lack of technology, a lack of training, that they do not have the equipment they need, or that they are simply overwhelmed by the numbers that are trying to come across our borders?

Mr. WALTERS. We are trying to give them all the tools that they need and train them up, and we do spend a great deal of time and energy preparing them for that. This is a classic example. I cannot think of any year since 1975, when I came in, where there were fewer aliens to apprehend than there were border patrol agents to apprehend them, and that is still the case. But I like to think, and I think we could probably give you a more involved answer or more succinct answer on paper, but my instincts tell me that we have never paid more attention to our borders than we are paying to those borders right now, that if we are not quite there yet, we are on the way. We have increased the number of border patrol agents. We have increased the technology on the ground. We have increased the amount of training and the kinds of training we are giving. We have changed the entire organization, including the border patrol, to focus on preventing the entry of terrorist weapons and terrorists first, as the first priority of all their traditional missions.

So, yes, I can understand. I am a member of the club that understands why border patrol agents feel like they are overwhelmed, and we have not given them everything they need, but we are working it, and I think we are energetically pursing it.

Chairman CORNYN. Chief, just by way of follow up, let me ask you what is it that you think that our border patrol agents need

that they do not have that will allow them to successfully detect and prevent incursions across our border?

Mr. WALTERS. Well, they need a good mix. They need a good mix of the technology. They need a good mix of training. They need a good mix of border patrol agents and all the things that go with it, the support, the buildings, and they need the work of this body to help them with the laws and regulations that inform what they do, enable what they do on a border if it take place.

Chairman CORNYN. My understanding is that once detained, there are criminal background checks and other checks performed on these people that are coming across, and if they are not wanted on criminal charges or have a criminal record, that they are eligible for what Senator Feinstein has called the catch and release program, in other words, to report back for a later hearing. Is that generally accurate, what I have just stated?

Mr. WALTERS. It is true that we do a record check on every individual on the border patrol side; every individual that the border patrol catches has gone through some sort of a two-print or a ten-print, and we get some sort of a feedback record on that unless they are a new entrant of course, this is the first time.

I forget the rest of your question. Is that responsive?

Chairman CORNYN. The problem is, what I was getting at, while you do screen for people with criminal records or criminal histories and perhaps those who have tried to make repeated trips across and been caught, the vast majority of people that you do catch, the border patrol catches, are eligible for a release program to return for a later hearing; is that not correct, sir?

Mr. WALTERS. It is true that of all the people we catch we do take a lot and give them a voluntary return back to contiguous territory like Mexico. But on the other hand, their record has been taken and then the next time they get caught we will know if they came in once or twice. This helps us discern whether this is a routine traveler coming across to work the fields or someone who is going to try and enter the United States to do us harm. There is a difference between those and we are trying to discern that difference, because we can expect to apprehend and have apprehended close to a million or slightly over a million aliens every year.

Chairman CORNYN. My understanding—and this is my last question for this first round—is that while the border patrol does apprehend on the order of a million people a year, that there may be as many as another half million that are able to come across undetected. Do you agree with that figure or do you dispute it? Do you have another figure that you believe is more accurate?

Mr. WALTERS. I do not have a substitute figure for that. I think everyone is entitled to their own view on it. Statistics indicate that it is a fairly large number, but we just do not really know, and I do not personally have any better information than what you have seen, sir.

Chairman CORNYN. Thank you, Chief.

Senator Kennedy.

Senator KENNEDY. Thank you.

Ms. Dezenski, let me ask you, on these visas, for example, in Saudi Arabia part of the problem, going back to 9/11 is that the

Central Intelligence Agency was not working with the Immigration Service. They were not sharing the list. They thought if they shared the list that they would lose their sources on this.

Now in the development of the watchlist, it is working now. CIA is talking, FBI is talking, the watchlist is updated every single day. Tell me what is happening out there just quickly if you could.

Ms. DEZENSKI. Absolutely. Senator, it has gotten much better. A lot of those databases that you mentioned have been integrated primarily through the US-VISIT process as we have begun the collection of biometrics. That is also combined with terror watchlist information, immigration information, sources from all over the Government, and that is absolutely the right way to do things.

Senator KENNEDY. When is your watchlist upgraded? Is it sort of daily now?

Ms. DEZENSKI. It is, it is.

Senator KENNEDY. It used to be a couple of weeks or three weeks.

Ms. DEZENSKI. It is updated on a very regular basis. It is daily. And the information comes from different sources within the Government. We get some information from agencies within the Department. We get other information from the FBI. So all of this is compiled and utilized.

Senator KENNEDY. And there is harmony with all the agencies, the FBI, the CIA and others? How would you characterize?

Ms. DEZENSKI. I think it has gotten better.

Senator KENNEDY. Better, well that is——

Ms. DEZENSKI. I do not know if I would go as far as saying that everyone is in perfect harmony, but we have made some progress and we will continue to.

Senator KENNEDY. Secretary Chertoff is going to make sure that they are.

Ms. DEZENSKI. absolutely.

Senator KENNEDY. Let me ask you, just on the timing—again I want to move along—on the visa waiver. The two countries I understand is Japan and Australia are the two countries. There may be others. But how are we doing? I mean if we are going to have these other countries, if we set the deadline, Japan and Australia evidently have indicated they can meet October of 2005. Where are we, just quickly on that, being able—if they do develop it, are we going to have the sense and the ability to be able to read these and to be responsive?

Ms. DEZENSKI. That is certainly our intention. We are well aware of the October 2005 deadline, and we have——

Senator KENNEDY. What is your estimate now? This has been a continuing process, and we know that you—what is your own kind of sense about it? Do you think you are going to make it within a couple of months or what is the——

Ms. DEZENSKI. I think it is going to be difficult to make October 2005. We are probably looking at some point in 2006. I hate to be more specific than that, but we could certainly follow up with something in writing.

Senator KENNEDY. Fine, okay. I might come back to you just sort of as a general—it would be useful, if the Japanese and the Australians are able to do this, whether they are sharing it with these

other countries, their information, or how they are able to try and do this.

Mr. Walters, just on the training programs, I was trying to write down as you were reading the number of hours. I heard 140 hours a couple of times, and I was looking at 40-hour weeks, 3-1/2 weeks. What is the situation? You train these people. This is an anti-terrorism passenger processing, agricultural fundamentals. You know, we have problems in terms, as we heard from the former Secretary of HHS, of the dangers. You have immigration documentation examination, customs cargo processing, let alone the weapons of mass destruction. How in the world are we going to be able to get all of that done? I went to 16 weeks basic training in the infantry just to learn how to fire some weapons, but we did not have that kind of a complexity I do not think that these agents have. Can that really be done in that short a period of time?

Mr. WALTERS. We give ourselves that in basic training of course. What we are trying to do, and the goal that I train to, is to build a complete CBP officer. And so our new recruits, the first batches have slightly less than 18 months service, and we are building them towards becoming a complete CBP officer. That will take time. It takes years and experience. From my own experience, I was not really a very good border patrol agent until I had about 7 years under my belt.

Senator KENNEDY. In terms of the freshmen customs or border agents, what is their basic training before they are out?

Mr. WALTERS. Their basic training is 73 training days at the border patrol—I am sorry—at the CBP Officer Academy.

Senator KENNEDY. This is a raw recruit, get into there and then out on the job. So that is how many—just give it to me quickly because my time is almost up.

Mr. WALTERS. What is it that you——

Senator KENNEDY. The question is—I have my wife's nephew over in Mosul. He is a tail gunner on a striker. he had 12 weeks at Fort Benning, 4 days at Fort Lewis to get his equipment and is in Mosul as a tail gunner. I am asking you how many weeks for just a raw recruit to be on the border patrol down on the border?

Mr. WALTERS. For a CBP officer, they have 20 days in their port before they go to the academy, and then 73 days, which usually works out to be about 14 weeks or training at the CBP Officer Academy. Then they go out to the CBP duty post and they get modules of training one after the other, sir.

Senator KENNEDY. I will come back because I just want to ask you a final question. My time is up. I would like to get a little more, go into that a little bit more.

Senator KENNEDY. I have heard some disturbing reports of vigilantes planning to converge in Arizona in April to start making arrests of suspected immigrants. This is obviously a potential dangerous situation. Are you familiar with this at all?

Mr. WALTERS. Yes, I am, sir.

Senator KENNEDY. And you are monitoring this? Is there anything we ought to know? Is there anything you ought to tell us about?

Mr. WALTERS. I do not have anything special to offer. I just want to remind the Committee that——

Senator KENNEDY. I mean if it is classified or whatever, you can do whatever way, you can tell the Chair.

Mr. WALTERS. I will be glad to come back to you with that information.

Senator KENNEDY. Could you give us a report on that?

Mr. WALTERS. I can certainly do that.

Senator KENNEDY. Please? I would like to share that with the members of the Committee. My time is up.

Thank you, Chair.

Chairman CORNYN. Thank you.

Senator FEINSTEIN. Yes or no answer, please. Are we still catching and releasing OTMs, other than Mexicans?

Mr. WALTERS. Yes.

Senator FEINSTEIN. Thank you. I think that points out something very clear, and that is that coming over the Southwest border is clearly the way somebody is going to penetrate the country because they are caught and they are released, and there are 48,000 this past year. So I would just leave the record with that.

Is it still the policy that a fraudulent or stolen passport is returned to the individual?

Ms. DEZENSKI. No, it is not.

Senator FEINSTEIN. What is the policy?

Ms. DEZENSKI. The policy is to take those documents at the point of entry, which we have been doing since January.

Senator FEINSTEIN. And that is 100 percent of the time?

Ms. DEZENSKI. That is my understanding.

Senator FEINSTEIN. What happens to the individual?

Ms. DEZENSKI. Well, I think it depends on what might be associated with that individual. If they are coming up as a hit, they may go into secondary. If they are not coming up as having anything of interest to us, then they may be able to leave. It just depends on whether there is reasonable suspicion to keep that person.

Senator FEINSTEIN. I appreciate that. But it seems to me in this day and age that use of a fraudulent or stolen passport should be a "go to jail card." And I am introducing legislation to make it an aggravated felony simply to get people to pay attention to it. I think we have really got to put a stop to the use of fraudulent and stolen passports. What I have learned is these passports are very cleverly manipulated. They are stolen by large numbers, which only means they are going to be used for illegal entry into the country one way or another, as are international driver's licenses, again, stolen in large numbers, Geneva Convention travel documents, again, stolen in large numbers.

I think it is a very serious problem. I would call your attention to pages 25, 26 and 27 of the April 2004 OIG report on the security implications of the Visa Waiver Program.

May I ask if you have both read these reports?

Ms. DEZENSKI. I have read them, yes.

Mr. WALTERS. I have not.

Senator FEINSTEIN. It might be a good thing to read. They are very informative reports, and it almost seems to me that this report or this process of investigation should be carried out every year because it is really the OIG that goes through on the other-than-Mexicans permeating the border, and lists the countries and

the numbers. If it were done on an annual basis I think it would give you a very good indication of the countries where this is really a problem. In any event, I intend to ask that it be done.

Now, let me ask you about the biometric passport deadline. Last year, as I mentioned, the administration came and asked us to extend by 1 year the biometric passport deadline for the Visa Waiver Program. Since you could not meet the deadline of—not you, but the Departments could not meet the deadlines of October 26, 2004 for complying with the 2002 Enhanced Border Security and Visa Entry Reform Act, are you going to ask for another extension?

Ms. DEZENSKI. We have not made a formal determination on that at this time. But as I stated earlier, we are working through a lot of technical and operational issues right now. We are working through them as quickly as we can, and our intention is to come as close to that deadline as we can.

Senator FEINSTEIN. You mean to get the system up and running before that deadline? Is that your goal?

Ms. DEZENSKI. Absolutely, yes. Whether we will make that is dependent on how quickly we can get through these challenges, these remaining challenges, procurement challenges, operational, technical. We are still testing readers.

Senator FEINSTEIN. Could you tell me what the problem is or tell us what the problem is?

Ms. DEZENSKI. Absolutely. It is really on a number of fronts. We are dealing with new territory here in terms of requirements to put readers at all points of entry. We need readers that will be able to recognize documents from many different countries.

Senator FEINSTEIN. Let me stop you there. How many points of entry? The OIG found that there were many points of entry where this program was not in place.

Ms. DEZENSKI. I cannot give you the exact number, but I would be happy to follow up with that.

Senator FEINSTEIN. I would appreciate that very much.

Ms. DEZENSKI. Sure.

Senator FEINSTEIN. And what else? So it is readers at the points of entry. So the bottom line is that the points of entry are not covered. Therefore, there is no way of knowing about the passport or whether it is biometrically——

Ms. DEZENSKI. Senator, there are other issues with countries not being able to manufacture and distribute the machine-readable biometric passports within the time frame, the current time frame as well. So along with the concerns that we have internally, and again, we are moving as quickly as we can to get those deployed, there are also concerns coming forward from the waiver countries with meeting the deadline for actually putting the passport out.

Senator FEINSTEIN. I know this is a difficult area because I know countries do not want to comply, but if you would send us a list of those countries that are not in compliance or have refused to comply, I think the question comes then whether they should continue under the Visa Waiver Program. I know they say tit for tat, that they want to do the same thing to the United States. I mean my view in this world today is that we ought to know who is coming into our country with reasonable certainty, and I do not think

that is too much to ask of a Visa Waiver country. And we also want to know when they leave.

So let me ask this question. Do we know when visa waiver individuals leave the country?

Ms. DEZENSKI. No, we do not, because we have not completed the US-VISIT exit portion of the system.

Senator FEINSTEIN. We have 13 million people coming in. We do not know whether they ever leave or no. And although they are from friendly and very often closely allied countries, it is not hard, and we saw where Richard Reid, Padilla, others, used the Visa Waiver Program to come into this country, and there is no way of knowing if the individual ever leaves yet.

Thank you very much, Mr. Chairman.

Chairman CORNYN. Thank you, Senator Feinstein.

I have just a couple more questions for Secretary Dezenski, and I am afraid, Senator Feinstein, the more questions you ask, the story just does not get much better. It seems to reveal the depth and the breadth of the challenges that we have.

My question, Assistant Secretary Dezenski, has to do with the different ways we treat different visitors. For example, the Border Security Staff Report identified the visa length of stays as a potential security issue. They compared the length of stays granted to business travelers, visa waiver participants and tourists. Can you explain why business travelers receive stays tailored to their purpose, visa waiver participants receive 90 days, and tourists automatically receive a six-month extension even if their trip is for only a few weeks?

Ms. DEZENSKI. With respect to the first category of Visa Waiver Program country participants, we have a reciprocal agreement that is actually in statute. It is a 90-day reciprocal agreement on the stay, so that explains how we have that category and why it is different. For the B-1 business visa it is tailored to the amount of time that is reasonably allowed for that person to complete their business in the U.S. With regard to the B-2, it is valid maximum admission actually for 12 months, but it is generally admitted for 6 months. It is up to the admitting officer to make the final determination in those categories. We do afford that to our border patrols, to be able to make that decision based on other information that they might have.

Chairman CORNYN. Would it make sense to you that we ought to have a uniform policy tailoring the length of a visa to the stated purpose for which someone enters the country, as opposed to arbitrary deadlines extending months and even a year or more into the future?

Ms. DEZENSKI. I do think it is something that we need to look at as part of a broader visa policy review within the Department. The question has come up many times and I do think it is something we need to take a look at.

Chairman CORNYN. My understanding is that roughly 40 percent of the illegal immigration in the United States now comes from people who have entered the country legally, but have just merely overstayed their visa. I believe you answered Senator Feinstein that we have no means, that is zero means of identifying where

those people are or actually making sure that they leave the country when their visa expires. Is that correct?

Ms. DEZENSKI. It is, but that is the other part of the US-VISIT program. It is an entry program and an exit program, and now our focus is on building the exit piece of the system because we recognize that in fact that has been a vulnerability and it needs to get fixed. So that really is a focus over the next 12 months, to get the exit system up and running at all ports of entry.

Chairman CORNYN. Well, if I can press you just a little bit on that point. US-VISIT, the exit feature of US-VISIT, when it is implemented—it is not yet implemented—will allow us to know when somebody leaves, right?

Ms. DEZENSKI. That is correct.

Chairman CORNYN. But for somebody who does not leave, it is not going to tell us where they are or how to find them, will it?

Ms. DEZENSKI. No, that is a very difficult problem. I mean we have tried some things at the Southern border with our border crossing cards, where we actually have an RFID technology in the travel card, which is one way of being able to validate ID and use a little bit of technology to try to do a better job at it. Once visitors are in the country if they are not exiting at any given time, it seems like we would have a big problem on our hands to try to locate millions—potentially thousands of people I would think. So we need to do a better job on the up-front piece of the process to make sure that when we are issuing visas, for example, that we are doing so for people who have legitimate business and intend to leave during their stated time.

Chairman CORNYN. I agree with you. We need to do a better job of making sure people leave when their visa expires. But the problem is the same for people who come into the country legally and overstay their visa, thus making their presence here illegal, and those who come in illegally in the first place, right? Estimates of somewhere around 10 million people are illegally in the United States and the fact is we do not know where they are, and we do not know how to enforce the law, and deport them back to their country of origin even if we wanted to. Is that a correct statement?

Ms. DEZENSKI. I think you have accurately characterized the problem. I think it is a balance for us though as the Government, to be able to secure the borders and have an open-door policy. Sometimes people overstay their visas for reasons that are completely legitimate, they are in the hospital, they missed their flight. There are lots of real-world reasons. Now, that is not to say that people should be overstaying their visas. We want people to adhere to those requirements, but I think we need to make sure that we have a balanced process.

Chairman CORNYN. I am sure you are absolutely right that there are some people who cannot help but overstay their visas, but I would suggest that it does not approach 10 million in number. But we will get to that, perhaps, at our second hearing we have scheduled on April the 6th, where we are going to talk more about interior enforcement and those issues.

Senator Kennedy.

Senator KENNEDY. Just quickly on the exit. That is true for the visa waiver, but it is also true on granting the visas in any event,

is it not? Do we not have this problem if it is a visa waiver country or it is non-waiver country. I mean it is a general kind of problem, is it not?

Ms. DEZENSKI. Yes.

Senator KENNEDY. I thought that at least in some areas when you get the visa you had to demonstrate, you know, either that you had a return ticket or that you had the resources to be able to return. I mean these people and the places where they are granting the visas, they just do not do it out of the goodness of their heart, do they?

Ms. DEZENSKI. You are right. There are some requirements when people go through the visa issuance process. A return ticket sometimes can be a good indicator, sometimes it is not. So there are some limitations there.

Senator KENNEDY. Thank you.

Chairman CORNYN. Senator Feinstein?

Senator FEINSTEIN. Just a comment. The problem with all of this is there is enormous pressure from commercial sources, you know, to allow in a sense a lax system, that people can come in and go out at will, and yet that becomes the soft underbelly because it becomes easy to use a fraudulent passport or a stolen passport, and the other countries in the Visa Waiver Program, if we do it to them, they will do it to us. I mean my view of that is everybody should do it in this day and age. But that is just me.

I would like to ask this question. You mentioned that since January the passports in all cases are removed from the individual. I assume the individual is let go, or is allowed to go home. No?

Ms. DEZENSKI. No. It depends. I mean normally if you have—and Chief Walters may be able to add to this, but if our border agents are detecting a fraudulent document, that is usually enough to get you into secondary. And then when you go into secondary, there is a lot more work done in terms of understanding what the potential threats might be, checking additional databases, et cetera. So the idea that people are presenting fraudulent documents and then simply walking away, I think is probably not the right characterization.

Now, once we proceed with secondary, there may be grounds for additional action, there may not be.

Chief Walters, do you have anything to add?

Senator FEINSTEIN. Well, certainly they would not walk away. I would think they would be deported. I mean you are not going to let somebody come in with a fraudulent passport, remove the passport and let them go into the country, right?

Mr. WALTERS. In fact, you are correct, if I may.

Senator FEINSTEIN. Please.

Mr. WALTERS. There are codes in the immigration laws that allow for us to prosecute for fraudulent document entry using a fraudulent document or using fraud to enter the country. At the very least the person that perpetrates the fraud loses potential immigration access to the United States for years at a time, and I would have to get back to you on what the exact code is, but it is not without penalty.

Senator FEINSTEIN. It is not without?

Mr. WALTERS. It is not without penalty completely. There are some certain parts of the code that will allow us to prosecute, and we do find that grounds. We do take it in front of the assistant attorney ask for a prosecution on it when we can.

Senator FEINSTEIN. We have draft legislation of a bill which I would like to ask my staff to show both of you and get your input on, if you would, please. But I assume you do not let anyone come into the country with a fraudulent or stolen passport; is that correct?

Mr. WALTERS. That is correct.

Senator FEINSTEIN. Then most would then be deported or would go back to where they came from. What do you give them to go back with if you take the passport?

Mr. WALTERS. We have a letter. We actually take a Xerox copy of the passport, retain the passport for ourselves and do a letter. There is a technical term for that letter that escapes me at the moment. But this letter goes with the individual back to his home country whether it is for an expedited removal case or after a prosecution. Eventually they go back and we use this letter to transfer them back to their country of origin.

Senator FEINSTEIN. Would it be possible for you to give us some statistical analysis of that program, say in the first 6 months since you have been doing it since January and it is now March, say by July, that we might have some analysis of how many passports you have taken; how many people have been tried or had charges brought against them; how many go to jail; how many are let loose, because I bet there are some; and how many go back?

Mr. WALTERS. As I understand the question you would like a statistical report from January when this new policy went into effect and show the effects of that policy and how many were prosecuted, how many went back, and what we did with——

Senator FEINSTEIN. Right. In other words, take a look at the first 6 months, so give you a lot of advance notice so it will not be a problem to set it up and do it.

Mr. WALTERS. Yes, ma'am.

Senator FEINSTEIN. I appreciate that very much.

Mr. WALTERS. Yes, Senator, we can do that.

Senator FEINSTEIN. Thank you.

Thank you very much, Mr. Chairman.

Chairman CORNYN. Thank you, Senator Feinstein.

Secretary Dezenski and Chief Walters, thank you very much for appearing here before us today. We know you were asked some tough questions, and I think it reveals the scope and nature of the challenge that lies before all of us. We certainly appreciate your service. Thank you very much.

Ms. DEZENSKI. Thank you.

Mr. WALTERS. Thank you, Mr. Chairman.

[The prepared statement of Ms. Dezenski and Mr. Walters appears as a submission for the record.]

Chairman CORNYN. If we could have our second panel of witnesses step up here momentarily. If you will forgive me, I am going to start introducing you while we are clearing a place for you to sit.

We are pleased to have a distinguished second panel today, and I want to thank them as well for their appearance.

Doris Meissner currently serves as a Senior Fellow with the Migration Policy Institute. Notably she served as the Immigration and Naturalization Commissioner from October 1993 to November of 2000 during the Clinton administration, and has extensive immigration experience, including reforming the Nation's asylum system, creating new strategies to manage U.S. borders in the context of open trade, and improving services for immigrants.

Also with us this afternoon is Janice Kephart, a Senior Consultant for the Investigative Project. She has recently served on the National Commission on Terrorist Attacks Upon America, otherwise known as the 9/11 Commission, where she served as counsel on the immigration, nonimmigrant visas and border security team. She is a key author of the 9/11 Commission Staff Report, "9/11 and Terrorist Travel," released in August of 2004. This is only one of two staff reports published by the Commission and the only one to be published in print, and serves as the basis for our hearing today.

Welcome to both of you, and we are pleased to have you here with us. Again, if you would do what sometimes we forget to do, and that is turn your microphone on when you speak so we can all hear you, and we would like to give you a chance to make any opening statement you would like.

Ms. Meissner, we would be happy to start with you. thank you for being with us.

STATEMENT OF HON. DORIS MEISSNER, FORMER IMMIGRATION AND NATURALIZATION COMMISSIONER, AND SENIOR FELLOW, MIGRATION POLICY INSTITUTE, WASHINGTON, D.C.

Ms. MEISSNER. Thank you, Mr. Chairman and members. Thank you for inviting me to participate.

You have designated two issues for this hearing, training and length of admission on visitor visas. I will focus on the second question, the length of admission on visitor visas.

The background for what I call the six-month policy dates from the early 1980's. The policy was established at that time as part of a broad effort to better manage the adjudications workload of the Immigration and Naturalization Service. It is, as you probably know, a change that is in regulation, it is not statutory, and it arose from a survey that was done at that time of the workload in the district offices around the country.

We learned that in looking at the adjudications workload in those district offices, the largest share of the work in those offices was extensions of stay, applications that people who were here on visitor visas were making to stay here longer than the time that had been designated by the inspector at the port of entry.

So in looking at that workload and trying to understand why there were so many extension of stay applications being made, we found out several things. First of all, that the inspectors were basically making decisions that were arbitrary and inconsistent around the country with regard to people's stay. Secondly, that almost all of the extensions that were being requested were being granted by the district offices. And finally, that typically the norm fell at the

six-month period, that people were given 6 months to stay and that largely met the needs that they were articulating to the examiners in the district offices. So we set up 6 months as the norm.

The result of doing that was that it eliminated this situation of one part of the Agency, the inspectors at the ports of entry creating a workload for the examiners in the district offices. It freed up very high-skilled or expert resources of examiners in district offices to focus on the most sensitive of the adjudications, which are the adjustments to permanent residents and the naturalization applications, which really go to the heart of the integrity of the immigration system, and of course it does not or did not preclude inspectors from designating less than the six-month period. It was to be a guideline.

I think in the years since, it has been viewed as a successful policy, but it was developed 20 years ago, and that is or course a long time ago, not only in years but in experience, and I am unaware that there has been any serious review of the policy in the time in between. And even if we had attempted to do a serious review of the policy, we would not have had the data available to reach any sound conclusions.

So given the fact that it is old, and given the fact that a lot has changed since most particularly 9/11, I think it is absolutely appropriate to review the policy. Moreover, we have now the tools to begin to understand a little bit more how these things are working, most particularly the US-VISIT program. When the exit portion of the US-VISIT program actually is put into place, we will be able to understand how a policy like this works, what its implications are.

At the same time, I think it would be a serious mistake to rush to judgment and to simply make a linkage between the 6-month policy and vulnerability to terrorism. We do not have any information really that tells us that one leads to the other. The critical thing is that we start to understand this and recognize that it needs to be analyzed.

Now, in analyzing it, there are a couple of things that are very important. First of all, there are enormous workload implications to changing a policy like this. If you look at the numbers, we granted 28 million visas in 2003, non-immigrant visas. I have given you the math in the statement, but the bottom line is that almost a third of those visas of that 28 million are subject to this 6-month policy or guideline.

In addition to that, of course, given those numbers and the uses of the B-2 visa, there are a huge range of stakeholders and very compelling public policy interests that are encompassed in that B-2 visa grant where the 6-month policy applies. I think a very good illustration of that is regulations that were put out in the spring of 2002 to try to reduce the 6 months to a 30-day policy. There was an enormous storm of opposition to those proposed regulations, and they have been set aside.

So changing it really requires doing some homework, and in doing that homework, the critical question, of course, is: Is there any relationship between 6 months or 3 months or 30 days and a vulnerability to terrorism? We do not know the answer to that. I think that the systems are in place that can begin to answer that,

but in addition to that, a whole range of other very important changes have been made that do move us in the right direction, that have been proven to be effective in thwarting terrorism. They are not complete. They need to be more—they need to be finished. But there is an agenda that is moving us in the right direction, and that should serve us as the tools to learn and understand whether something like the 6-month policy in addition would need to be shifted.

Thank you.

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

Senator CORNYN. Thank you very much.

Ms. Kephart, we would be glad to hear from you.

STATEMENT OF JANICE L. KEPHART, FORMER STAFF COUNSEL FOR THE 9/11 COMMISSION, AND SENIOR CONSULTANT, THE INVESTIGATIVE PROJECT ON TERRORISM, MOUNT VERNON, VIRGINIA

Ms. KEPHART. Yes, thank you. Thank you for holding this hearing and giving me the opportunity to discuss terrorist travel with you today. On a personal note, it is an honor for me to be back before the Committee that gave me my start in terrorism and border security. It is also an honor to share a panel with Commissioner Meissner, who held one of the most difficult jobs in this city for over 7 years and did so with dignity and dedication.

I would like to submit my written testimony into the record, if I may.

Chairman CORNYN. Certainly. Both your written statements will be made part of the record, without objection.

Ms. KEPHART. Thank you.

We are all here today because September 11 taught us an invaluable lesson: that border security is national security. Effective border security is perhaps our best hope of preventing another terrorist attack on American soil.

From the outset, let me make it clear that I share the conviction that immigration is a potent asset to our strength as a Nation. Achieving full integrity of our border strengthens us, facilitating legal immigration of the most talented and motivated people in the world, while lowering the risk of entry by those who seek to do us harm.

Foreign terrorists carefully plan their attempts to enter the U.S. based on a relatively sophisticated understanding of our border system. A CIA analysis described in our staff report stated that, "A body of intelligence indicates that al Qaeda and other extremist groups covet the ability to elude lookout systems using documents with false identities and devoid of travel patterns that will arouse suspicion."

The 9/11 Commission border security investigation found numerous examples of such planning, several of which I provide in my written testimony, and many more of which are provided in this book, in our staff report.

As the Commission staff monograph on terrorist travel points out over and over again, the 9/11 terrorists exploited vulnerabilities from visa issuance to admission standards at our ports of entry, to

our immigration benefits adjudication system. Let me give you two examples which I believe are still relevant today.

As far as I am aware, critical intelligence on terrorist travel indicators is still not being declassified and distributed to front-line officers three and a half years after 9/11. One specific indicator which was present on five passports used by three of the 9/11 hijackers would, without a doubt, keep al Qaeda terrorists out of our country if distributed to consular officers and immigration inspectors. It remains classified today.

Second, tourist visas automatically confer a 6-month length of stay which likely exceeds the needs of most tourists and is something we certainly need to discuss and vet. By comparison, tourists from visa waiver countries receive only 3 months.

A question I was constantly asked while on the Commission was whether my team had come across any evidence of terrorists' illegally entering the U.S. While the hijackers chose to acquire visas and enter legally, other foreign terrorists have entered the U.S. illegally. For example, Abdul Al-Marabh, a likely al Qaeda member who told authorities he had often crossed back and forth over the Northern border illegally, was finally caught in the back of a tractor-trailer crossing the Northern border around February 2001. During his time in the U.S., he had received five U.S. driver's licenses in 13 months, including a commercial driver's license and a permit to haul hazardous materials.

Mahmoud Kourani, a known Hizballah operative now in Federal custody on terrorism charges, crossed the Southwest border in a car trunk in June 2001. He goes to trial in Detroit in April.

Political asylum and naturalization are the two immigration benefits most rampantly abused by terrorists in my studies. I have found 22 separate incidents of indicted or convicted terrorists who abused our political asylum system. Nine of these terrorists did so after the 1996 revision of our immigration laws. Members of Hamas, al Qaeda, and Egyptian and Pakistani terror groups have all used claims of political asylum to stay longer in the U.S.

As the Committee knows well, the 9/11 hijackers' use of American identification documents has been widely discussed in recent months. The hijackers acquired a total of 34 U.S. IDs, 13 driver's licenses, two of which were duplicates, and 21 USA- or State-issued ID cards. The ease with which the 9/11 hijackers acquired Government-issued IDs highlights the importance of verifying identities and immigration status when issuing those documents. It is also valuable to emphasize the deterrent effect on criminals and terrorists alike if we tighten the vetting procedures and security features associated with these cards.

We know that terrorists are creative and adaptable. Yet we have the ability to counter them. Our front-line officers are talented, and they are eager to do everything they can to protect this country. They are our border system's biggest asset and our best weapon against terrorist travel. But they need better tools—information, resources, and the ability to enforce the law better within a departmental structure wholly supportive of their mission.

My written testimony lays out a series of recommendations purely for your consideration that address these issues, which I believe

can make our borders more secure and more efficient than ever before.

Thank you.

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

Chairman CORNYN. Thank you, Ms. Kephart. We will have 5-minute rounds, and as long as you and members of the Committee want to stay here and ask questions, but hopefully we will not detain you long.

Ms. Kephart, in your testimony you talk about the fact that terrorist indicators on a passport are sometimes classified and in many instances, whether classified or not, are not communicated to the people most in need of that information when determining whether to issue a visa or not.

Did you find a valid reason to keep that kind of information classified? Or is there a better way that that could be handled that gives the required personnel access to what they need to make a good decision but at the same time maintain the secrecy of the document so that the bad guys cannot necessarily know what it is we are looking for?

Ms. KEPHART. Well, I can tell you that we tried very hard for our staff report to get the, quote-unquote, terrorist indicators and the fraudulent manipulation declassified for the staff report so that the public could know. It was very odd to me, while I was working on the Commission, that I actually had access to more information about terrorists' travel and terrorist indicators than our front-line officers did.

The indicator that I referred to in my testimony, both oral and written, is one that is extremely obvious. If you told a front-line officer what it is, he could check for it. And I think that is probably all I can say about it in open testimony here. But in terms of getting that to front-line officers, we believed, me and my colleagues, my other four colleagues who helped produce the staff report, that it was something that could be declassified.

So I guess I do not really have terms to say what we need to do to get it declassified because I think it probably should be.

Chairman CORNYN. Well, of course, we have been talking today about people who at least try or at least appear to try to come into the country legally but, nevertheless, manipulate the process to enter into the country and to do us harm. But I think as several others have noted, terrorists could try to come in the way that the 9/11 terrorists did using fake documents and through ostensibly a legal process, or they can try to come in across one of our unprotected borders without any pretense at trying to come in legally or the like.

I continue to be concerned about the fragmentation of responsibilities when it comes to both border protection and immigration, and I have noted, Ms. Kephart, with interest your recommendation that the U.S. Government create a Department of Immigration and Border Protection separate from the Department of Homeland Security. Could you explain your justification for that recommendation, given the fact that we just moved it from DOJ to DHS in 2002?

Ms. KEPHART. I understand that is a big one to swallow under the current circumstances when we just created a new Department of Homeland Security. But the fact of the matter is, as Commissioner Meissner—and I would love to hear what she has to say about this as well.

Chairman CORNYN. I am going to give her a chance.

Ms. KEPHART. Our country was based on immigration. We now have a situation where border security is considered a national priority. What we have had in the past is Commissioners dedicated, like Commissioner Meissner, who didn't have direct access to the President and did not, even more importantly, perhaps, have direct access to the intelligence they needed to make good decisions.

By creating a separate department where you focus wholly on immigration and border security, we can have policies created by a Secretary who focuses completely on an incredibly complex, politically and legally complex set of laws and policies. We have right now over 40,000, I believe, employees in immigration. That far exceeds at least five departments that exist in the Federal Government already. There is enough there—it is a big distraction for the Secretary of DHS to deal with the very intricate and delicate process of immigration. And I think if it was pulled out separately, it would be perhaps helpful to our policies and our rules on immigration, help us enforce our laws better.

Chairman CORNYN. Ms. Meissner, I did ask Secretary Chertoff, after he was confirmed, what his plans were to appoint someone to succeed Asa Hutchinson in the Department of Homeland Security, and he advised me that they are looking at organizational issues before moving on to that. But do you have any reaction or any advice you would like to give either us or Secretary Chertoff or reaction to perhaps Ms. Kephart's suggestion of the creation of a new Department of Immigration and Border Protection?

Ms. MEISSNER. I cannot resist saying this is deja vu all over again. These issues, you know, have been debated and debated.

If you were making the Government over, you would not have it be this way where immigration is concerned. But we are not making the Government over. And we have, as you said, gone through this enormous shift now just within the last 2 years. I think that it would be—I think it is just impractical and unwise to think about further upheaval where this kind of a massive structural change is concerned.

That being said, I also believe that there are a set of what I think of as second-generation changes that need to be made within DHS in the immigration arena in order for things to work more effectively. You know, the original idea obviously was to separate enforcement and service, and I see now that there is discussion about CBP and ICE being reconnected. And I think that is probably worth considering because I think one of the major problems right now is fragmentation. But I think that it is much more important in DHS at this point that there be more capability at the department-wide level to deal with immigration where policy is concerned. And I think that the best—I have made a suggestion in my testimony that the best solution I have heard is to establish an Under Secretary for Policy office in DHS.

The Secretary and the Deputy Secretary in DHS just do not have department-wide staff capability to do their work. And if you take the model at HHS, for instance, that is not such a dissimilar agency, of a major Under Secretary for Policy position that can advise the Secretary on all of these different things, immigration would be one of the key issues in that portfolio. There would have to be analysis done, and you could deal with issues like this. This B-2 visa issue, for instance, is the kind of an issue that is very unlikely to come up from the constituent bureaus because they only all have just a piece of it. There needs to be overview.

Chairman CORNYN. Thank you very much.

Senator Kennedy?

Senator KENNEDY. Thank you very much, and I welcome you to our committee, and I thank Doris Meissner for changing her schedule to be with us. I appreciate very much all of your continued ideas on these issues.

Let me ask you, on the basic issue on the immigration, we have dramatically expanded the resources on the border, yet illegal immigration has soared. And we have pushed people, I think, further underground since 9/11, and we have wound up keeping more migrants here because they fear if they leave, they will not be able to get in here. And we are now increasing the number of people that are dying out in the deserts, and we are in danger of getting these vigilante groups that are beginning to say that they are going to come down to our border.

What do you think we need to be doing differently in order to get a better handle on the undocumented immigration? Is enforcement by itself a viable option? What else should we be thinking about?

Ms. MEISSNER. Well, I was pleased to hear the Chairman in his opening statement use the terminology that is becoming, I think, very well accepted, and that is that the immigration system is broken. I mean, you are pointing to one set of examples, but there are many, many examples. And so I am very, very pleased that you have held this hearing and that you are seeing this hearing as the beginning of a set of discussions, because we have to have a really focused public debate, and it has to happen in the Congress on how to fix it. How to fix it has to do, obviously, with recognizing what the reality is in the country today, and that is that we are a country that is aging. We are not from our own population creating a number of workers that our job market needs. We are dealing with a border enforcement structure that has cost us billions of dollars.

I feel very close to that border enforcement activity. I believe strongly in doing border enforcement. But you cannot deal with the immigration system and controls on the immigration system just at the Southwest border or, actually, just at our borders all around. I mean, I agree with Janice that border enforcement is extraordinarily important, but if there is always the pressure and the availability of a job in this country for people who are able to get past the border, no matter what you do at the border, it is not going to be sufficient.

I will be interested in your interior enforcement hearings. Interior enforcement is very important, but I would submit at this point that it is not possible to do it effectively with our current laws.

So coming up with an enforcement regime that is strong, effective border enforcement but backed up by accountability within the country, where work is concerned, where documents are concerned, and then, of course, dealing with the issue of a large population of people here who do not have legal status, whom we need as demonstrated by the market, but who are right now absolutely, arguably, a security weakness because it is a large number and we do not know who they are. And then, finally, the question of the labor market for the future. How do we regulate the flows of people coming to the country for a variety of reasons that are in our National interest? It is a very, very big portfolio, but it has to be addressed.

Senator KENNEDY. Well, I want to thank you for your very thoughtful response, and we will be continuing to draw on your experience as we go along with these hearings.

Thank you, Mr. Chairman.

Chairman CORNYN. Senator Feinstein?

Senator FEINSTEIN. Thanks very much.

Doris, it is great to see you again.

Ms. MEISSNER. Same here.

Senator FEINSTEIN. You look wonderful. A little grayer than I remember you, but I think that happens to all of us.

Ms. MEISSNER. So it goes.

Senator FEINSTEIN. And, Janice, it is great to see you, too, but particularly Doris because I have served on the Immigration Subcommittee now for 13 years, and you are a big part of it. So it is wonderful to see you again.

Ms. MEISSNER. Thank you. Very nice to see you, too.

Senator FEINSTEIN. I have been perusing the staff report here, and I wanted to ask you about a part of it because I think there is a tendency for us to throw up our hands and say we really cannot do anything and that, oh, you know, this is America and we all believe in the freedom and all of this.

And yet when you read this report and you see how sophisticated al Qaeda was—and I want to give you one example, and that is their use of document travel facilitators, Abu Zubaida, Riyadh, the African facilitator, how they came together, how they are able to take each terrorist and work out a suitable way of entry for that individual.

I went over each of the terrorists. Some of them married to come in. They used all kinds of different visa entries. But it was so smart and so studied.

And I want to just read a part of this to you and ask you to comment. "al Qaeda relied heavily on a small cadre of operatives and their assistance to facilitate travel for their network. Chief among them were Abu Zubadyah, a facilitator we will call the African facilitator in Riyadh. Broadly speaking, a terrorist travel facilitator assisted operatives in obtaining fraudulent documents, of which the world abounds; arranging visas, real or fake; making airline reservations, purchasing airline tickets, arranging lodging and ground transportation, and taking care of any other aspect of travel in which his expertise or contacts were needed." And then they profile each one of these men and how they got together and how they worked and the amount of money. You know, one facilitated the flow of funds to al Qaeda, allegedly passing half a million dollars

in late 2001 from Saudi donors to extremists and their families in Pakistan.

Then they relied on outsiders. "Document vendors provided al Qaeda with a wide range of bogus and genuine documents and were valued for their forgery skills. Through these vendors, al Qaeda operatives had access to an impressive range of fraudulent travel, identification, and other documents, including passports from countries in almost every region of the world—travel caches, blank visas, foils, stamps, seals, laminates, and other materials." And it goes on and on and on.

And so, often people say, you know, we are trying to do things and there is no real need to do them. I wish I believed that. I believe there is every need to do them and every need to look at our programs, and maybe even cancel some and go into a strict program. And, Doris, I wish I agreed with you that the border cannot be enforced. I actually believe it can. You were here when we—when you put forward, I think, Operation Gatekeeper, and it has worked. The problem is it has moved people from the San Diego, California, border into the Arizona-Texas border. But where it existed, it worked—works still.

My question is this: When you see the sophistication of the terrorist movement of today, the facilitators, the outside travel vendors, how they really look at all of the various aspects, wouldn't you say that the visa waiver program offers them an enormous opportunity, when you look at the numbers of stolen fraud-proof passports from visa waiver countries in the thousands, that this is the way they can easily come in, get lost, and remain here?

Ms. MEISSNER. Well, first, let me be absolutely clear about border enforcement. I believe in border enforcement. I think that we must do border enforcement, and we do know how to do border enforcement. I just don't think it can be the only thing, and that is essentially what we have done, is we have—and until 9/11, we were not serious even about ports of entry. We were serious only about the land border between the United States and Mexico.

So what I am saying where border enforcement is concerned is don't rely solely on border enforcement in order to combat terrorism, or illegal immigration, for that matter. There need to be a series of things in place because, as the 9/11 Commission work clearly showed, wherever the weaknesses are, it is the weaknesses that will be exploited. So the issue is to put a whole set of things into place, and even to have some redundancies.

You know, I want to return the compliment to Janice. She worked brilliantly on the staff of the 9/11 Commission. We worked together for many hours of deposition and debriefing, et cetera, in order to try to figure out really, you know, what would be the proper approaches, and I think the 9/11 Commission report is very, very, thoughtful. And what——

Senator FEINSTEIN. If you could change one thing, both of you, what would it be?

Ms. MEISSNER. You mean where the border is concerned? If I could change one thing where the border is concerned, what it would be is accountability on the part of our interior enforcement and primarily accountability with employers, a way to verify who is working and a way to follow up to be sure that that employment

relationship is according to law, because that is what—the weakness there and the need for those people in our labor market without being able to regulate it effectively is what is putting undue pressure on all of these other things, where we are actually doing quite well.

Senator FEINSTEIN. Janice, if you could change one thing, what would it be?

Ms. KEPHART. Senator, I have four pages of recommendations. Let me pick something.

Senator FEINSTEIN. No, pick the key thing that you think would make a difference.

Ms. KEPHART. I think that although we are talking a very good talk right now about border security being national security, we have it very buried in DHS right now.

My second choice would be what Commissioner Meissner stated, which would be the Under Secretary of Policy position at DHS. It is something we talked about amongst our staff while I was at the Commission, and it is something that Secretary Ridge was considering when we interviewed him. I don't know if Secretary Chertoff is considering the same. But we need homogeny in the policy process. We need homogeny as we create better rules, standard operating procedures, electronic libraries of fraudulent documents at our ports of entry, so our programs are consistent.

We have, for example, right now—and Interpol has created at the cost of millions of dollars a huge database of lost and stolen passports, Senator. That is available to us, but only in secondary inspections right now. It is not available——

Senator FEINSTEIN. What does that mean?

Ms. KEPHART. Well, what that means is that when you have your immigration inspector come in and that passport gets swiped, the number on that passport is not being automatically queried into Interpol's lost and stolen passport database. They have dozens of countries in it now, millions of documents in it, and if we had it swiped, then it would not be up to the immigration inspector trying to figure out if that document has a problem. He would automatically know something once that document was swiped.

What you have, as my understanding is, at DHS in Science and Technology—and maybe this has changed in recent months—is that they were going and creating their own bilateral agreements with visa waiver countries to get their lost and stolen passport database. On the database created here in the U.S., while we are also cooperating with Interpol, I think that is a duplication of resources perhaps. We have so many other needs. We have interior enforcement still at 2,000. We have Border Patrol needs that are very strong. So, you know, there are discrete things that we can do at our ports of entry, programmatic, cost-effective. Some of them could just be rule changes that I think we can do sort of across the board. But I think the overall problem is that we have got a situation where people are talking about deck chairs at ICE and CBP. We are not talking about the ship it is in.

Senator FEINSTEIN. Okay. Let me ask this question: When we have got—I guess it is US-VISIT set up on entry and exit——

Ms. KEPHART. Not on exit, ma'am.

Senator FEINSTEIN. No, no. When we get it set up.

Ms. KEPHART. Oh, when we do. I am sorry.

Senator FEINSTEIN. Now, as I understand it, it is not set up on exit and it is partially set up on entry. But assuming they can get it, what kind of security do you think that will provide?

Ms. KEPHART. Do you want to start?

Ms. MEISSNER. It will provide information. It will provide very important information, which will allow us to do what in the 9/11 Commission is talked about as analysis of trends and patterns.

Senator FEINSTEIN. Should that be our goal to see that get done?

Ms. MEISSNER. That is critical. Absolutely. In order to know what is happening, you have to have that. But that is not enough. What nobody has figured out—and it was alluded to by the earlier witnesses—is what do you do when you know that certain people have not left, because having the information is one thing, being able to act on the information is another thing. Having the information for analytic purposes is extremely important. That is feedback that we need. It is also a basis for then, you know, the people that have not left, you run them first. The most important thing you would do is run them against your terrorist watchlist and so on.

Senator FEINSTEIN. But, Doris, if we cut down the entry period—Senator Kennedy asked the question, I think Senator Cornyn dealt with it, I had it. I did not do it because they did it, that if you want to come in for 2 weeks you get a 6-month visa.

Ms. MEISSNER. Unclear. Until we look at that data and find out how long most of those people actually stay, it is entirely possible that most of them are only staying 2 or 3 weeks. We do not even know.

But as I said, if you start to——

Senator FEINSTEIN. Wouldn't it be common sense—wouldn't it be common sense to have a 30-day visa or 3-week visa?

Ms. MEISSNER. It is easy to say that it is common sense, but when you see all of the circumstances of the almost 10 million people that have that visa and have to deal with each one of them person by person at a port of entry in order to decide should it be 2 weeks, should it be 1 month, should it be 6 weeks, I am not sure that is a very good use of resources. The length of time in the country may not be nearly as important as other characteristics about the people.

Senator FEINSTEIN. Well, it is like if you go to China. You get a visa, and it is for a specific period of time. There are very few—they give some multiple-entry visas.

Ms. MEISSNER. Right.

Senator FEINSTEIN. But you get a 30-day visa. You know, I have visas, 5 days. I do not feel insulted——

Ms. MEISSNER. There is no question we—there is no question we could do it. Whether it would make any difference at all, we don't know.

Senator FEINSTEIN. But it is not done at the port of entry.

Ms. MEISSNER. Yes, it is.

Senator FEINSTEIN. It is done by the—no, when I get a Chinese or another visa from another country, the visa comes to me from them like that.

Ms. MEISSNER. That is the way they originally issued it, but our system is one where, as you know, whatever is originally issued by

the consulate is also then independently validated by the port of entry inspector.

Senator FEINSTEIN. Oh, I see. I see.

Ms. MEISSNER. You have a slightly different statutory set-up.

Senator FEINSTEIN. Maybe we need to change that process. Why does it have to go to the port of entry?

Ms. MEISSNER. Because that is where the people enter, and there can be——

Senator FEINSTEIN. But don't you have—you have your visa when you come in.

Ms. MEISSNER. Right.

Senator FEINSTEIN. And it says the length of time on it. Can't it just come from our offices abroad?

Ms. MEISSNER. It could. It could, but, you know, you would have to change the statutes for that.

Senator FEINSTEIN. I think that is something to think about.

Ms. MEISSNER. Well, actually, that is an area of redundancy that is probably in our favor.

Senator FEINSTEIN. Why? We don't——

Ms. MEISSNER. As a country. Well, because people apply for the visa now, they might come a month from now. In the meanwhile, you can get information, something may have happened. You want them checked at the port of entry. You don't want to just be a rubber stamp.

Senator FEINSTEIN. Well, we need to talk about this because I think I have got a misunderstanding or something. But, anyway, thank you very much.

Ms. MEISSNER. Anyway, I am not against changing it. I am simply saying we should know whether there is a connection, and we don't know whether there is a connection between length of stay and terrorism or illegal stay. We just don't.

Senator FEINSTEIN. Well, you can look at the terrorists, and you can make some——

Ms. MEISSNER. No, you can't, because they were, by and—they were within the bounds.

Senator FEINSTEIN. Yes, but they had visas for extended periods of time, too.

Ms. MEISSNER. That was not necessarily what was connected to their terrorism.

Senator FEINSTEIN. Well, the question comes——

Ms. MEISSNER. They could be independent——

Senator FEINSTEIN. Why not—well, all right. You know, if you are going to give somebody a visa and let them come in for 6 months and you know very little about them, you might as well give it to them practically forever, because they can come in, they can have time, they open the bank accounts, they get the fraudulent driver's license, the fraudulent Social Security number, all of which takes time. They open their bank accounts. They get their banking scheduled. They become respectable in the neighborhood. And then, bing, you turn your back and you are hit.

I am one that believes that some of that planning is probably going on today. And I think the longer the visa, it gives you the time to do all these things. That is my only point.

Ms. MEISSNER. That could very well be possible. As I say, we really don't know.

Chairman CORNYN. Ms. Kephart, would you like to comment on this?

Ms. KEPHART. I sure would.

Chairman CORNYN. Do you have any different views?

Ms. KEPHART. Yes, please. First, the value of US-VISIT, Senator Feinstein, is, I believe, as I have looked at it closely, it is to integrate the databases and provide biometric information at the border so that our front-line officers can make better decisions when they are seeking to admit folks.

It also does something else which the other staff and I on the 9/11 Commission thought was extremely important, and that was creating terrorist—the beginning of creating of terrorist travel histories. You can begin, as we begin to integrate our databases, and something we strongly recommended to the Commissioners, was that we need to have an integrated knowledge of our travelers. We need to create histories for them. It starts at the consular office if they are asking for a visa. If they are visa-waiver, it starts at the ports of entry. Therefore, if they come and they ask for more favors from the U.S. Government in terms of immigration, we have that in the US-VISIT and we can return to it as they seek immigration benefits. We can cut out a lot of the issues with fraud from that vantage point, and I think US-VISIT is probably the best and strongest thing we have done as a Government.

The second thing in terms of the issues brought up, that you brought up, Senator, was the length of stay. One thing that we can do that would perhaps be helpful for consideration would be simply initially, as we are vetting the process and figuring out exactly what the best solution would be for the length of stay in the U.S., would be to simply match those who are getting visas from visa countries to the visa waiver length of stay. The visa waiver length of stay when you get here is 3 months, period. You have got to go at the end. There is no discretion there. There is also really—even though I heard DHS folks say differently, there is really no discretion on the 6-month length of stay for tourists from visa countries either.

When I interviewed 26 of 38——

Senator FEINSTEIN. What do you mean when you say there is no discretion? What does that mean?

Ms. KEPHART. The admitting officer, your inspector who looks at your passport and admits you, really does not have the ability to say you get any less time than 6 months. He has to actually go to his supervisor, which he is not going to do when he has got, you know, 45 second to a minute to adjudicate somebody, go to his supervisor and get approval to give less. It is not encouraged. It was a customer-oriented system before, on the front lines. It is becoming, from what I understand, a customer-oriented system again. And so, therefore, we could keep that discretion away and just simply match it to visa waiver. Visa waiver folks are supposed to be our better friends, anyway. You know, people from visa-issuing countries, we perhaps need to match that. That could be a simple first solution, perhaps.

The other thing is that we do know that terrorists abuse the length of stay. It is something that was established in the staff report. They do abuse it. Mohammed Atta, after coming in twice in the spring of 2000 and then again in January 2001, knew very well that he would get 6 months if he claimed he had visitor/tourist needs here. It became clear. And believe me, it only came clear to us as staff after I actually had put together the chronology in here, we put together the consular officer activity and the immigration inspector activity, the actual applications for visa and the entries. And we realized that, yes, indeed, these people had a travel operation. The terrorists had a terrorist travel operation. That is where our title comes from. But it took us 14 months to get there.

And so Atta knew what he was doing when he brought those folks in the spring and summer of 2001. He knew he had 6 months for them, and he used it. And so I think we do have evidence, and it is not guesswork at this point.

Chairman CORNYN. Ms. Kephart, the staff report notes that inspectors receive no behavioral science training and no cultural training and no regularly updated training. You also noted that the 9/11 hijackers encountered U.S. border security 68 times.

Ms. KEPHART. Yes.

Chairman CORNYN. What role do you think these deficiencies played in failing to deter the hijackers from entering the country?

Ms. KEPHART. Well, I cannot say what it deterred, but I can say where it helped. And where it helped was the situation of the 20th hijacker. The 20th hijacker was Mohammed Al Kahtani. On August 4, 2001, he sought entry into the U.S. He was the only hijacker to try to enter without a buddy. That might have made his situation particularly worse. But he was referred to secondary. He didn't speak any English, and he appeared arrogant to the inspector. Fortunately, the primary inspector had experience and so she noted these small anomalies.

He went into secondary and, perhaps, we shall say, by the grace of God, encountered somebody who had been trained in behavioral science in the Army. And so this individual knew what he was doing, and he spent about an hour and a half with Kahtani, found grounds of intending immigrant to deny him entry, would have sought expedited removal, was supported by his superiors because he was a well-respected inspector.

But his knowledge and understanding of behavior allowed us to keep out the 20th hijacker—one of the 20th hijackers. There were others who were trying to get in as well. But there is a positive spin, perhaps, on what we can do and the value of behavior.

The others, there was a whole range of immigration inspector experience amongst the others I interviewed. Some had been immigration inspectors for 15 years. Others had been immigration inspectors for a year. You had immigration inspectors who were 15 years in the making being actually more lenient, not paying attention to the behavioral cues as much as the younger ones who were newer and fresh.

So behavioral cues I think are important. They are definitely hard to teach, but I think it is something that we need to pay attention to.

Chairman CORNYN. In your opening statement, you mentioned Director Mueller's statements and Admiral Loy's in your written testimony. Based on your experience while working for the 9/11 Commission, how has the training for those most likely to initially encounter special interest aliens improved since 9/11?

Ms. KEPHART. You know, sir, I don't have the answer to that because I am no longer privy to what is going on inside DHS. I had lovely access while on the Commission. I have no access now. So I have to deflect that question because I simply cannot answer it.

Chairman CORNYN. We will follow up with someone else who still has access to that information.

Ms. Meissner and Ms. Kephart, thank you very much for participating in this. I think we have all—we have certainly benefited from this exchange, and on behalf of both Subcommittees, I would like to thank all of the witnesses for their time and their testimony.

We will leave the record open until 5:00 p.m. next Monday, March 21, for members to submit any additional documents into the record and ask questions in writing of any of the panelists. Right now I have a statement from Senator Leahy and from the Mexican American Legal Defense and Education Fund, which will be made part of the record, without objection. But if there are others between now and then, the deadline is March 21st at 5:00 p.m. next Monday.

With that, the hearing is adjourned. Thank you so much.

[Whereupon, at 4:43 p.m., the Subcommittee was adjourned.]

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

[Additional material is being retained in the Committee files.]

QUESTIONS AND ANSWERS

Senate Judiciary Committee
Subcommittees on Immigration, Border Security, and Citizenship and
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Questions from Senator Jon Kyl

• Who manages the Visa Security Program? What are the criteria for expanding Visa Security Units (VSUs) to additional overseas posts beyond Saudi Arabia? Which agency, the Department of Homeland Security (DHS) or the Department of State (DOS) makes the determination as to where new VSUs should be located, and the timeframe for adding new VSUs? Is DOS fully cooperating with DHS? Do DHS and DOS have adequate human and material resources to expand the VSUs to places where they are needed?

Answer: The Visa Security Program (VSP) is managed by U.S. Immigration and Customs Enforcement, Office of International Affairs (ICE/OIA). The VSP's mission is to execute the operational responsibilities of Section 428 of the Homeland Security Act. The BTS Office of International Enforcement (OIE) initially developed the VSP and continues to provide oversight of both VSP program development and policy decisions. BTS/OIE also assists the VSP in coordinating with other departments. The DHS policy oversight role under Section 428, which includes the development of visa policy and regulations, rests with the BTS Assistant Secretary of Policy and Planning. Regarding the criteria for expanding to additional posts overseas, VSP has established threat-based criteria to evaluate overseas posts for deployment of visa security operations. These criteria take into account factors pertaining to the risk of terrorism, the nature of visa activity at the post, and regional and host country circumstances. Under Section 428 of the Homeland Security Act of 2002, the Secretary of Homeland Security "is authorized to assign employees of the Department to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security." DHS's selections, as a result, reflect the Secretary's determination that the assignment of DHS officers addresses a homeland security risk. However, the Department of State becomes involved in the approval of DHS-designated VSP sites through the formal National Security Decision Directive 38 (NSDD-38) process, a Presidential directive issued in 1982 that requires Chief of Mission approval regarding the "size, composition, or mandate" of all Executive Agency staff operating overseas. The process of expanding the VSP should be a cooperative endeavor, with DHS making risk-based determinations of where DHS law enforcement officers are needed, which is consistent with the Secretary's Section 428 authority, and State ensuring that the size, composition, and mandate of each request is generally appropriate. In practice, DHS must submit a formal request to the Ambassador of each of these posts, which is coordinated by the Department of State's Office of Management/Rightsizing. The Office of Management/Rightsizing provides guidance to Chiefs of Mission and involves various other components within State headquarters. Action on the initial NSDD 38 requests the VSP offices abroad has been slow due to the need to address a number of operational issues. With the resolution of these issues it is anticipated response time for future requests will be much quicker. Of the four NSDD-38 requests (for five locations) submitted in June 2004: one was approved in July 2004 ; one was approved in January 2005; one request for two locations in the same country was approved in June 2005; and one was disapproved in February 2005. With

respect to the disapproval, DHS and DOS have identified an alternative country, and recently submitted a NSDD 38 request to the Chief of Mission.

• How many Visa Security Officers (VSOs) are there? How extensive is their training? What are the qualifications for a VSO who is to be assigned to a consular office?

Answer: The number of Visa Security Officers is considered Law Enforcement Sensitive, so we cannot provide the exact figure through this response. We are glad to provide this information through appropriate channels. Section 428 (i) of the Homeland Security Act requires the assignment of DHS officers to the two visa-issuing posts in Saudi Arabia: Riyadh and Jeddah. Our VSOs are seasoned federal law enforcement officers with an average of approximately 15 years of experience. All received extensive training upon entering the law enforcement profession, as well as ongoing specialized training throughout their careers. In addition, all received refresher training and mission-specific updates immediately prior to deployment with the VSP. Consequently, our VSOs are highly skilled in their profession and extensively trained for their mission. In selecting officers, DHS applies criteria such as: the candidate's law enforcement expertise, including investigations; counterterrorism experience; immigration law knowledge; experience working overseas and/or in a diplomatic and interagency context; and language skills.

• How do personnel in the VSUs acquire new terrorist information and training from DHS? Do VSUs have a standard means of communicating lessons learned in the field back to DHS?

Answer: VSOs in the field are supported by an ICE desk officer and intelligence research specialist. In addition, the senior VSO at post participates in the post lookout committee and liaises with the law enforcement and intelligence communities at post. This facilitates the sharing and timely dissemination of relevant intelligence. As part of its staffing model, ICE intends to deploy an intelligence research specialist to select posts to facilitate the research and dissemination of tactical information to support visa security operations.

The Visa Security Officers routinely communicate their observations and lessons learned through regular operations reports to ICE HQ, through TECS, and through regular communications with ICE staff at HQ and elsewhere in the field. VSP headquarters has also collected valuable feedback from a number of officers stationed in Saudi Arabia through formal debriefings in Washington at the conclusion of their assignments. These observations are used extensively to refine processes, training, and other program priorities.

• Is the informal, on-the-job training of DOS consular officers by DHS' VSOs considered adequate? How soon will a formal training program be in place? How long do you think it will

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take to train all consular officers? Do you have enough personnel and money to do all the training you need?

Answer: The ICE Visa Security Program has an operational responsibility under Section 428 (e)(2) of the Homeland Security Act of 2002 to "provide expert advice and training to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications" through the deployment of DHS officers to visa issuing embassies and consulates. Thus, consular training is a statutory duty of Visa Security Officers (VSOs) deployed overseas and is a key component of the law enforcement value that they contribute to the security of visa issuance. Currently, DHS VSOs deployed overseas provide not only informal, on-the-job consultation to consular officers, but also structured, subject matter specific briefings and training on a variety of relevant topics to consular officers and other audiences. This training draws upon DHS' unique expertise and is targeted to address the practical and pressing needs of consular officers at post, particularly junior consular officers assigned to high-risk posts. Also, VSP personnel at ICE Headquarters brief each graduating class of consular officers at the DOS Foreign Service Institute, and have participated in DOS regional leadership conferences.

• Is the formal training program that DHS is designing for DOS officers *in addition to* the training required for consular officers under Section 305 of the Enhanced Border Security and Visa Entry Reform Act of 2002?

Answer: DHS's training efforts under the Visa Security Program complement the training provided by the Department of State at the Foreign Service Institute. The DOS basic consular course includes training modules in admissibility, screening procedures, analytic interviewing, document fraud to name just a few. When the VSP's consular training program is fully developed, it will provide law enforcement training in the field, where the lessons are most relevant and most likely to be practiced and internalized. This training will be provided from a law enforcement perspective by individuals who not only bring their years of investigative and enforcement experience to the table, but also are fully integrated into the visa issuance process and can determine where the greatest risks are.

VSP also participates in DOS' consular basic training by briefing each graduating consular class on DHS' operational role in visa issuance. Currently VSU is providing formal training at the Foreign Service Institute. For each of the class of Consular Officers that attend FSI before they are assigned overseas, the VSU provides an interactive program briefing by a VSU program official. This is a two-hour presentation which provides an overview of the VSP and a Q and A period. Finally, VSP has participated and plans to continue participating in DOS Consular Affairs' Regional Leadership Development Conferences.

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• Is DOS assisting DHS in writing performance standards for DOS consular officers? What will be the practical effect of performance standards for DOS consular officers?

Answer: Consistent with Section 428 and the DOS-DHS MOU, DHS works closely with DOS in its evaluation of consular officers. DHS also supports State's consular evaluation efforts by participating in their Consular Management Assistance Teams (CMATs), which are evaluative site visits designed to review consular operations and overall management, and offer guidance, solutions, and recommendations to problems posts have identified. DHS's participation in these teams gives DHS a chance to provide a DHS perspective on consular processes and best practices, the opportunity to observe consular operations in a variety of contexts provides useful insight into DHS' continual assessment of systemic threats and risks in visa issuance.

• What authority does a DHS VSO have to countermand the grant of a visa by a DOS consular officer? If a VSO has such authority, what is the protocol for doing so?

Answer: Under Section 428 of the Homeland Security Act, the Secretary of Homeland Security has final authority to refuse a visa. If the consular officer plans to issue the visa and the VSO disagrees, the VSO informs the consular officer and, if necessary, the visa chief of the recommendation and explains the circumstances that have led to the VSO's recommendation. To date, this informal communication has resolved the issue, and the consular officer has subsequently refused the visa. If the DOS officials at post and VSOs disagree about the issuance of the visa, the matter is referred to VSP HQ. VSP HQ would work with DOS HQ to resolve the issue. If VSP HQ and DOS HQ are unable to resolve the disagreement, then it would be elevated to the DHS Secretary for final decision.

• What is involved in the enhanced database that DHS is developing support the work of visa officers overseas? When is it expected to become operational?

Answer: The new database is a workload management tool that captures the work of the VSOs at post. It provides the VSOs greater flexibility in recording the specific findings of their visa security review activities and enables them to better track their investigative process and decisions. VSP expects to implement the new database during 3Q of FY 2005.

• In June 2004 at a full Judiciary Committee hearing, I discussed visa issuance policies with Maura Harty, Assistant Secretary for the Bureau of Consular Affairs at DOS. We talked about the fact that in FY 2003, 85 percent of the visas applied for at the Saudi Arabian Consular offices in Jeddah and Riyadh were issued (so the refusal rate in Saudi Arabia was only 15 percent in 2003). I was told that such a small percentage of visas are refused because most applicants now in Saudi Arabia are qualified and many are diplomats. Do you agree with this assessment?

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How does the visa issuance rate to third party nationals in Saudi Arabia affect the overall rejection rate?

Answer: The applicants who have received visas in Saudi Arabia are qualified because they have strong family/personal ties to Saudi Arabia, well-paying jobs, sufficient funds, and meet similar criteria. There are a significant number of Saudi diplomats as well. In general, our experience is that third country nationals in Saudi Arabia are more frequently refused (often on the grounds of INA 214(b), otherwise known as "intending immigrant") than are Saudi nationals, because third country nationals are less likely to demonstrate the same positive factors mentioned above. The greater number of refusals for third country nationals tends to increase the overall refusal rate.

• In your written testimony, you state that in FY 2004, DHS VSOs in Saudi Arabia reviewed approximately 21,000 visa applications. Were these applicants personally interviewed by DOS or DHS employees? Are any of the interviews conducted by non-DOS or DHS personnel? Can you tell me how many of 21,000 applicants were ultimately issued visas?

Answer: DOS Consular Officers interviewed all visa applicants except those waived according to current regulation. DHS was present in many of these interviews. Typically, a VSO would request to participate in an interview based on pre-screening activities, and often Consular Officers requested the presence of a VSO. In some cases, DHS requested a follow-up interview, or an interview for an applicant who was otherwise eligible for an interview [waiver (in the case of diplomats, children under 14 years of age, and adults over the age of 75)]. Regarding overall issuance and refusal rates, the Department of State maintains the official statistics on the number of visas issued in Saudi Arabia and other posts.

• Language that I authored to require in-person interviews of all visa applicants, and to affirmatively adhere to INA § 214(b), was accepted as an amendment and is now law. I understand that adherence to INA § 214(b) would primarily fall under the jurisdiction of DOS, but with DHS specifically assigned to provide direction about visa issuance in Saudi Arabia and other countries, I would like to know whether additional direction has been provided by DOS and by DHS to reject incomplete visa applications.

Answer: The Department of Homeland Security has authority under Section 428 of the Homeland Security Act over the development of policy, regulation, and guidance with respect to the granting and refusal of visas in all locations. Established visa processing statutory requirements, including those regarding completeness of visa applications and requirements for in-person interviews of visa applicants, must be strictly followed. In Saudi Arabia, DHS officers ensure that incomplete visa applications are rejected.

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• I understand that overall visa interview rates would fall under the jurisdiction of the DOS, but would appreciate your following up and providing me with an answer about whether all visa applicants (outside of the age exemptions) are currently interviewed.

Answer: DOS reports that in accordance with the law, waivers are only granted for certain classes of applicants; these include certain A, C, G, and NATO-related visas. Additionally, the Secretary of State may waive an interview in extraordinary circumstances, such as extreme medical conditions like a coma. DHS confirms that this is the case in Saudi Arabia. Recent statutory changes in Section 5301 of the Intelligence Reform and Terrorist Prevention Act (IRTPA) expanded the requirements for in-person interviews of non-immigrant visa applicants and limited the situations in which an interview waiver can be granted. This new requirement stems from the findings and recommendations of the 9/11 Commission and is an important improvement in ensuring the security of visa issuance. State has drafted new guidance regarding the implementation of this statute, which has been sent to all overseas posts.

• The Border Security and Visa Entry Reform Act of 2002 requires that countries issue Biometric travel documents (including passports) to its citizens visiting the United States, a task now extended to October 26, 2005. At a June 2004 Judiciary Committee hearing on visa and border issues, I asked DHS and DOS to provide Congress with periodic updates on what progress the Visa Waiver Program countries are making to comply with the October 26, 2005 deadline. *I have never received an update.* Can you give us an update about progress in this area?

Answer: DHS has established policy that requires VWP countries to begin producing machine-readable passports with digital photographs on the passport's data page by October 26, 2005. Digital photographs provide more security against counterfeiting than traditional photographs. Digital photos can be electronically stored and accessed, making it easier to verify whether the individual currently presenting the passport is the same person to whom the passport was issued. In addition, DHS has established policy requiring all VWP countries to produce passports with an integrated circuit chip, known as "e-passports," capable of storing biographic information from the data page of a passport, a digitized photograph, and other biometric information no later than October 26, 2006. This information will allow us to achieve a new level of identity authentication.

The effect of this policy is that VWP countries will be required to issue passports that have at a minimum a digital photo by this October and that a VWP traveler to the United States must present a machine-readable passport which includes a digital photograph to enter the United States. These requirements apply to passports issued on or after October 26, 2005. Valid passports issued before October 26, 2005, will still be valid for travel under the VWP, provided

that they are machine-readable. We believe the vast majority of the VWP nations will be in compliance with either the digital photo requirement or the e-passport requirement by October.

• How do you plan to merge together the requirements for U.S.-VISIT and the requirement that starting in December 2005 that all foreign travel documents contain a biometric identifier and be checked at all ports of entry?

Answer: The Enhanced Border Security and Visa Entry Reform Act (EBSVERA) requires DHS to provide the capability to biometrically compare and authenticate certain documents of foreign travelers seeking admission to the United States under the Visa Waiver Program (VWP), as well as requiring that VWP countries issue ICAO compliant passports, containing biometrics to travelers. The deadline established in EBSVERA, as amended, is October 26, 2005.

It is important to note that DHS has been processing VWP travelers through US-VISIT since September 30, 2004. Through this process, VWP travelers are "enrolled" in US-VISIT upon their first entry to the U.S. through the collection of certain biographic and biometric information. Through the enrollment process, DHS conducts biometric and biographic watchlist checks. Upon subsequent encounters, DHS can verify that the individual is the same one who previously appeared before DHS and has access to updated biographic and biometrics watchlist information. As DHS has deployed US-VISIT capability to land borders, VWP travelers are included in the population covered. Therefore, when DHS deploys US-VISIT at the remaining land border ports by December 31, 2005, as required by the Data Management Improvement Act of 2000 (DMIA), VWP travelers will be processed at all ports.

US-VISIT has been working closely with the U.S. Department of State as well as other countries that participate in the Visa Waiver Program on coordinating the implementation of the "ePassport." The ePassport, contains a chip, with encoded biographic and biometric information. DHS and State will host a technical conference with VWP countries in September to discuss interoperability issues. DHS will require all VWP countries to adopt ePassports no later than October 26, 2006.

In the future, we anticipate that DHS will use this e-Passport chip to confirm that the person is presenting a legitimately issued document, issued to that person the first time we encounter the individual, as part of the enrollment through US-VISIT. On subsequent encounters, we will be able to verify that it is the same individual who we previously encountered, using US-VISIT functionality.

• Please provide an update about the merging of the Automated Biometric Identification System (IDENT) and the FBI's Integrated Automated Fingerprint Identification System (IAFIS). It is my understanding that until those fingerprinting systems are merged, IDENT's (and thus US

VISIT's) access to the NCIC will never be in real time. It is also my understanding that the names in these two databases are only merged approximately every 48 hours. Can you please provide more information?

Answer: Merging IDENT and IAFIS is not related to the issue of real time access to NCIC for users in the US-VISIT environment.

Authorized officers and staff from CBP, US-VISIT, and U.S. Citizenship and Immigration Services have real-time access to NCIC's name query capability through the Treasury Enforcement Communication System (TECS). This real-time access is available at the primary inspection point for all travelers.

It is important to note that NCIC and IAFIS do not contain the exact same data sets. NCIC contains text-based criminal history records, as well as records for known or suspected terrorists. Many of these records have fingerprints associated with them; these are held in IAFIS. A number do not. Conducting a fingerprint search against IAFIS will not provide access to all text-based records held in NCIC.

Currently, the FBI provides periodic extracts of fingerprint images to the IDENT watchlist from IAFIS for certain categories of fingerprint records. If DHS hits on an FBI record, we then use the FBI number to look up the text-based criminal history in NCIC. This ensures we have access to the criminal history information held by the FBI for use in our decisions. There is no merging of names between the databases.

FBI/CJIS and US-VISIT, along with the Department of State, have begun working together to develop a technical approach to achieving real-time IDENT/IAFIS interoperability as a foundation for expanded information sharing from fingerprint based systems.

• In the Border Security and Visa Entry Reform Act of 2002, Congress required the development of an interoperable, integrated database system (Chimera) to ensure that important intelligence information is shared among DHS, DOS and other appropriate federal law enforcement officials to (primarily) determine admissibility and deportability of visa applicants and holders. Congress appropriated some seed money, but otherwise the system has not been funded. I am aware that this is an extremely complex topic, but would appreciate an update from you about where the federal government stands right now with respect to the integration of relevant, necessary intelligence information into an integrated intelligence system.

Answer: As defined in the Enhanced Border Security and Visa Reform Act (EBSVERA) of 2002, Chimera is an operational decision support system for border control and immigration management, with necessary intelligence and law enforcement/ investigations components.

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Rather than a single, monolithic database or system, Chimera, by definition, would be a conglomerate of systems.

US-VISIT is developing, or has already developed, the similar functionality. US-VISIT is an operational system-of-systems that spans DHS and Department of State (DOS) processes and organizations and relies on multiple databases and IT applications related to immigration, border enforcement, and terrorism screening. The information that US-VISIT collects is provided to members of the immigration and border management enterprise, as well as to the Intelligence Community.

US-VISIT has created an interoperable electronic data system that provides immigration and consular officers with information from law enforcement agencies and the intelligence community that is relevant to determinations on visa eligibility or the admissibility or deportability of an alien. EBSVERA required the integration of all legacy Immigration and Naturalization Service (INS) data systems: much of this has already been done through the integration of TECS/IBIS, IDENT, CLAIMS 3, Consolidated Consular Database (CCD), SEVIS and ADIS information. US-VISIT has successfully integrated this environment to ensure that decision-makers have access to information relevant to their decision – including prior immigration history and watchlist information.

US-VISIT is creating a strategic plan that will establish an overall vision for immigration and border management and identify the mechanisms necessary, including technology, to achieve the vision. Fundamental to this vision is ensuring that appropriate information is available to decision makers (e.g. consular officers, border officers, investigators, immigration adjudicators, intelligence entities) when they need it.

• Please provide an update on what DHS intends to do with the remaining Border Crossing Card readers that DHS has not yet deployed on the borders? How many have not been deployed, and why have they not been deployed?

Answer: CBP has deployed approximately 650 of the Biometric Verification System (BVS) configurations which match the biometric on the border-crossing card with the biometric contained in the optical stripe of the person arriving for admission at 97-land border POEs. This equipment was funded by US-VISIT. The BVS configurations do not do any watch list verifications. Like all machine readable documents, the BCC contains a machine readable zone. This MRZ is used to initiate the query against the lookout system. CBP does not plan on expanding the deployment of the BVS configurations. CBP maintains a supply of additional BVS readers to support maintenance needs of the deployed equipment.

The US-VISIT configurations will provide the same functionality as the BVS configurations in processing the border crossing cards. However, while the BVS configurations read ONLY the

border crossing cards, the US-VISIT configurations also process passports foreign passports, U.S. visas and travel documents issued by U.S. Citizenship and Immigration Services.

Questions from Senator Edward Kennedy

• Does DHS have a policy regarding vigilantes? Is this a written policy? Has the public been informed of this policy? If there is such a policy, have agents been trained regarding this policy?

Answer: No policy is necessary because of the existing statutes to enforce the law. Certain criminal statues may address misconduct by private citizens in the course of such actions, for example -- should any such individuals forcibly interfere in the CBP Border Patrol's performance of its official duties, then those individuals may be subject to arrest pursuant to 18 U.S.C. 111. Should any such individuals falsely impersonate a federal officer and arrest or detain or in any manner search the person or property of another in such assumed character, then those individuals may be subject to arrest pursuant to 18 U.S.C. 241. Border Patrol Agents have been trained in United States criminal laws, codes, and statutes and exercise these authorities on a daily basis.

• Does DHS have a policy regarding cooperation with vigilantes? Is this a written policy? If there is such a policy, have agents been trained regarding this cooperation policy?

Answer: As part of Border Patrol Community relations, all private citizens in the vicinity of the border who witness cross-border violations are encouraged to contact the CBP Border Patrol and other law enforcement entities as appropriate to report any and all criminal violations.

• If there is no formal policy regarding vigilantes or cooperating with vigilantes, how will DHS guard against vigilantes committing crimes against immigrants? What will DHS do, if anything, regarding the planned Minutemen activity beginning on April 1st?

Answer: No policy is necessary because of the existing statutes to enforce the law. Certain criminal statues may address misconduct by private citizens in the course of such actions, for example -- should any such individuals forcibly interfere in the CBP Border Patrol's performance of its official duties, then those individuals may be subject to arrest pursuant to 18 U.S.C. 111. Should any such individuals falsely impersonate a federal officer and arrest or detain or in any manner search the person or property of another in such assumed character, then those individuals may be subject to arrest pursuant to 18 U.S.C. 241. Border Patrol Agents have been trained in United States criminal laws, codes, and statutes and exercise these authorities on a daily basis.

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• Will or has DHS issued U and V visas for victims of vigilantism? How will DHS inform the public of your policy against vigilantism?

Answer: We do not yet have regulations enabling USCIS to grant status under the U visa classification, but are issuing interim relief to those we believe will be eligible to apply when the regulations are published. We are not aware of any requests for interim relief stemming from acts of "vigilantism". The U visa is intended for individuals who are victims of certain statutorily identified criminal activity; vigilantism is not specifically identified in the statute. However if a federal or state statute criminalizing vigilantism was applicable, its victims could potentially be eligible. USCIS would examine the specific criminal activity involved, the extent of the physical or mental harm suffered by the victim, and whether that victim is, has been, or is likely to be helpful to the investigation or prosecution of the criminal activity.

The Border Patrol component of DHS has several methods of educating the public concerning cross border violations. The Tucson Sector in Arizona, for example, utilizes a standard operating procedure for contacting the general public through various forms of mass media. Border Patrol Community Relations Officers (CRO) and Public Information Officers (PIO) address newspaper and television news stations with press releases and statements persuading the public to telephonically report cross border violations to the Border Patrol and not attempt to take action themselves in such situations. CROs also attend public forums, town hall meetings, and citizen advisory committees within the Tucson Sector to answer questions and present the Border Patrol view on immigration issues. In the Tucson Sector, the CRO recently met with the Minutemen and discussed details relating to the Minutemen's presence along the border and the Border Patrol's position on these activities. Border Patrol PIOs and CROs routinely coordinate with Customs and Border Protection Public Affairs Office on a variety of issues such as private citizen concerns, border security issues, and immigration policy.

• Please provide copies of any relevant policies or regulations regarding vigilantes. Considering the imminent April vigilante actions, please respond to these questions as soon as possible.

Answer: No policy is necessary because of the existing statutes to enforce the law. Therefore DHS has not found it necessary yet to promulgate supporting regulation.

• I'd like to know if you have a specific anti-terrorism training program and if you do, whether you consulted with the intelligence community to develop it. Can the Committee get copies of it? I'd also like to know whether and how often you provide updated training to your employees to reflect real time intelligence about terrorist organizations and their frequently changing tactics.

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Answer: CBP has incorporated anti-terrorism training into all of our training courses at all levels—basic, advanced, and in-service. Our training focuses on enabling all CBP personnel to achieve our twin goals of countering terrorism and facilitating the flow of legitimate persons and cargo.

CBP works with subject matter experts in the intelligence community, other government agencies, the trade, and academia to develop training that will provide our personnel with the skills and knowledge to counter the threats they are likely to encounter both at the ports of entry and between them. CBP revises our training materials as new information is received. This new information is provided to front-line officers in multiple ways: as CD-ROMs for review by the officers, as written job aids providing pictures and other quick-reference information, and at briefings conducted at the start of their tours of duty.

• Frontline inspectors, including border officials and border patrol need to be users and collectors of terrorist travel intelligence. Are frontline personnel not only receiving the intelligence, but collecting what they are seeing in the field and relaying that information and their observations to the appropriate authorities?

Answer: Yes. Frontline personnel are receiving intelligence and are collecting what they are seeing in the field and relaying that information and their observations as appropriate. CBP has a layered reporting mechanism in place that includes reporting supported by automation, chain of command, and the National Targeting Center.

CBP frontline personnel will record their discoveries via our automated systems such as through the Automated Commercial System, Treasury Enforcement Communication System and ENFORCE. Each system has valuable information relay capabilities that once the information is in the system, all personnel with the appropriate clearances are able to immediately access and utilize the data. Additionally, specific notification capabilities exist that allow field personnel to direct the information and observations of the memorandums of information received (MOIRs) to the Intelligence Division within CBP. Also when significant activities occur within the field locations the field managers are required to report the activities to the CBP situation room located in HQ. Enhancing CBP's communication capabilities even further is the National Targeting Center. When field officers identify potential terrorists, associates of terrorists, or even suspicious shipments, the National Targeting Center is available 24 by 7 for them to call and have supporting research and coordination conducted with other government agencies. The National Targeting Center is an established field resource. The NTC began around-the-clock operations on November 10, 2001, with a priority mission of providing tactical targeting and analytical research support for Customs anti-terrorism efforts. As border inspectional assets from Customs, the Immigration and Naturalization Service, and the Department of Agriculture came together on March 1, 2003, under the umbrella of U.S. Customs and Border Protection

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(CBP), the NTC mission broadened commensurately with the CBP role in support of Homeland Security.

In addition to being a 24 x 7 anti-terrorism targeting center that supports Customs and Border Protection (CBP) field ports of entry, NTC coordinates with other U.S. government agencies for anti-terrorism.

- NTC targets passengers, cargo and conveyances possibly linked to terrorism
- NTC uses the Automated Targeting System (ATS) to mine regulatory databases and cross reference law enforcement databases to generate targets based upon actionable intelligence
- NTC conducts "sweeps" to proactively screen arriving passengers and cargo shipments using actionable intelligence to identify high-risk targets

Taken in context of this effort, the National Targeting Center represents the interoperability between border security and ports which is best described in its mission, scope, and general operations.

NTC Mission:
The NTC's mission is to provide tactical targeting & analytical research support for CBP anti-terrorism efforts.

Mission Scope:
The NTC is the single CBP Center for Anti-terrorism Activities, Centralizing research and support for the field. Also it is a link to the Investigative Agencies such as ICE and JTTF. Finally, it is a central location for coordinating with other government agencies at an operations-to-operations level.

Objectives:
The mission objectives of the National Targeting Center include:
1. Conducting Tactical Targeting
2. Identifying Actionable Targets
3. Generating Advanced Queries
4. Developing Sweeps and Automated Systems
5. Providing CSI Support
6. Performing Analytical Research
7. Developing Leads for Investigations
8. Coordinating with Other DHS Offices
9. Coordinating with Other Federal Agencies
10. Coordinating with Other Governments

General Staffing, Support and Liaison Operations:

- Primarily staffed by CBP Officers and Field Analysis Specialists
- Representatives from nearly all CBP disciplines are included in NTC operations
- Examples include the U.S. Border Patrol, Office of Intelligence, and other field personnel including CBP Officers, and import specialists
- The NTC staff develops tactical targets from raw information to detect and prevent terrorists and implements of terrorism from entering the United States
- NTC also supports CBP field elements, including foreign-based Container Security Initiative personnel
- The NTC provides targeting expertise to the Department of Homeland Security Operations Center
- Liaison staff from the law enforcement and intelligence communities
- During FY 2003, liaison was developed with the:
  - Office of Naval Intelligence
  - Transportation Security Administration
  - Department of Energy
  - December 8, 2003 – CBP Office of Information and Technology, Laboratories and Scientific Services (LSS) opened the Radiation Portal Monitor and Tele-forensics Center at the NTC
  - December 11, 2003 – Food and Drug Administration Prior Notice Center commenced around-the-clock joint targeting operations at the NTC in support of the Bio-Terrorism Act

Working together with CBP law enforcement and regulatory counterparts internal and external to the Department of Homeland Security, the NTC and its mission continue to evolve as a cornerstone in the war on terrorism. Centralized NTC targeting endeavors, combined with intra and interagency collaboration, assure CBP of a coordinated national and field response to terrorist and national security events.

Terrorist Travel Specialists

It is clear from the 9/11 Commission Report and the Terrorist Travel staff report that we need some frontline personnel who are trained as terrorist travel specialists, and who have intelligence clearance, so they can be in real time contact with the intelligence community.

• Do you have specialists trained in terrorist travel? If not, wouldn't you agree that there a need for specialists with clearances who can be in real time contact with the intelligence community?

Answer: Customs and Border Protection (CBP) certainly does agree with the need for specialists in terrorist travel who can talk with the intelligence community, to ports of entry that are admitting travelers 24/7, with government officials who need specialized data quickly, and provide other services that help to protect our country. But not all terrorists have been identified

and the government needs to cast a wider net than looking only at the individual terrorists already ferreted out.

CBP has taken steps to meet the need described. Many terrorists use fraudulent documents to travel because they do not want to reveal their identities or do not qualify for travel documents in their own names. All fraudulent documents intercepted at ports of entry are now forwarded to the newly-created Fraudulent Document Analysis Unit (FDAU). The unit works closely with DHS' Forensic Document Laboratory (FDL), which is dedicated to the detection and deterrence of travel and identity document fraud and provides forensic analysis of travel documents and information. The FDL also provides Alerts and document examination training for field personnel.

Additionally, CBP has specialists trained in terrorist travel both in the Office of Field Operations and in the Office of Intelligence (OINT). The analysts in OINT have acquired an expertise in terrorist travel through a variety of training, both formal and on-the-job. They work closely with the OFO officers and provide current intelligence to them. As an example, analysts in OINT who have an expertise in terrorist travel, are in contact on an almost daily basis with the OFO officers responsible for monitoring and amending rules used in ATS-P for automated targeting. Together decisions are made on how to translate current intelligence into rules. If it is decided that rules modifications are not applicable, OFO and intelligence analysts work together in developing special field operations to react to the intelligence that might be too broad to incorporate into rules.

With regard to real time contacts with the intelligence community, the analysts in OINT have that connectivity in a variety of ways, to include electronically and telephonically. In addition, OINT has an analyst assigned as a liaison officer.

The liaison officer, like the analysts, has gained expertise in terrorist travel through job training. The liaison officer works on-site with Office of Field Operations officers and is in daily contact with the intelligence community seeking and providing information, clarification, and recommending changes to current intelligence on terrorist travel.

<u>One Face at the Border Initiative</u>

The "One Face at the Border" initiative requires a single officer to be responsible for interacting with the traveling public and to know the agricultural laws and regulations in addition to the complex customs and immigration laws. On top of that they should also be able to spot terrorists and criminals. According to a survey last summer of 500 Customs and Border Protection personnel, however, 53% of the inspectors said the initiative has had a negative impact. One inspector commented, "They want us to be meeters and greeters instead of enforcement officers. After 9-11 they are trying to mesh three jobs into one, whereas [before], each person would specialize in their respective areas."

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• Can you give us an update on how the "One Face at the Border" initiative is working out? Prior to the initiative, inspectors had specialized in immigration, customs, or agriculture. I'm concerned that this specialized knowledge is being diluted. What do you think is the right balance between retaining specialists in certain fields and having generalists in these areas?

Answer: We are working towards creating an agency-wide law enforcement and national security culture, establishing unified primary inspections at all United States ports of entry and conducting secondary inspections focused primarily on combating terrorism and the traditional missions inherited by Customs and Border Protection. To do this efficiently and effectively, we have built a comprehensive training plan to guide our efforts.

A very stringent 20-day pre-academy and 73-day basic academy training curriculum has been developed for the new CBP Officer. This training gives them the foundation needed to work in the primary setting upon their return to the port, while also giving them a basic understanding of what occurs in the secondary environments. The ultimate goal is to train the new CBP Officer to not only be equally competent in all of the former, individual areas of responsibility, but also to be better able to meet the expanded mission priority of anti-terrorism. Their Academy training is then followed by a rigorous 2 year on the job-training program with approximately 40-45 weeks (depending on environment – air, land or sea) of structured training courses. They are given training in stages in order to absorb it and be afforded time on the job to perform the duties and become proficient.

A comprehensive 37 module cross-training program has been built for those officers who previously performed an Agriculture, Customs or Immigration function at the ports. We cannot train all officers all at once. Training has been built and delivered in stages so that training can be learned and absorbed before moving on. Furthermore, it is not our intention to roll out all training modules to all people, all at once. Nor is that possible, given the need to maintain effective port operations. Cross training will be delivered "just in time" based on operational needs of the agency to CBP Officers based on their assignments. Currently, CBP is developing a cross training course for secondary immigration inspections at the land border ports of entry.

CBP does have several courses which are considered to be advanced training and they would include those that involve analytical capabilities and the counter-terrorism response units in our secondary areas. CBP is currently exploring the possibility of having additional areas and courses designated as specialized training classes and at designating specialty positions, enhancing the skilled knowledge required in some job occupations.

SUBMISSIONS FOR THE RECORD

U.S. Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship
U.S. Senator John Cornyn (R-TX), Chairman

**"Strengthening Enforcement and Border Security:
The 9/11 Commission Staff Report on Terrorist Travel"**

Monday, March 14, 2005, 2:30 p.m., Dirksen Senate Office Building Room 226

SCRIPT

Call to Order (2:30 p.m.)

This joint hearing of the Senate Subcommittee on Immigration, Border Security and Citizenship and the Subcommittee on Terrorism, Technology and Homeland Security shall come to order.

I want to thank Chairman Specter for scheduling today's hearing.

I am especially pleased that today's hearing is a joint hearing of the Immigration and Border Security subcommittee, which I chair, and the Terrorism and Homeland Security subcommittee, chaired by Senator Kyl. Senator Kyl and I see eye to eye on a number of the problems facing our immigration system. So I am especially pleased to be here with him today, and I look forward to working especially closely with Senator Kyl in the coming months as the debate in Congress over our immigration laws unfolds.

I also want to thank the ranking member of this subcommittee, Senator Kennedy, and Senator Feinstein, the ranking member of the Terrorism subcommittee, along with their respective staffs for working with my office to make this hearing possible.

I would like to make just a few brief introductory remarks before we formally begin today's hearing. I was honored to serve in the last Congress as chairman of the Subcommittee on the Constitution, Civil Rights and Property Rights, and to work closely with Senator Feingold, the ranking member of that subcommittee. Although we parted company on some issues, Senator Feingold was always a principled, courteous, and devoted ranking member of the subcommittee, and I will miss working with him and his hard-working staff in that capacity.

I also look forward to the new role of chairing the Immigration subcommittee – and I look forward in particular to working with Senator Kennedy, whose devotion and commitment to immigration issues is long standing and well known.

It is especially gratifying to serve on the Immigration subcommittee at this critical time in our nation's history. President Bush has articulated to the nation a vision for the comprehensive reform of our nation's immigration laws – in the interests of our nation, our national security, our national economy, and the rule of law. I am sympathetic to the President's vision, and I look forward to the critical role that this subcommittee will play in the coming Congressional debate.

But before we debate the need for *reforming* immigration law, we must first begin by examining the challenges we face to *enforcing* immigration law. After all, our current immigration system is badly broken. It breeds disrespect for law, and poses serious risks to our national security.

As an American – and as a conservative – I am deeply troubled by our chronic inability – even our unwillingness at times – to do what it takes to enforce our immigration laws.

As an *American*, I am proud that the United States is a nation of immigrants. As a *conservative*, I am proud that, first and most fundamentally, we are a nation of laws.

As an *American*, I believe our immigration laws can be designed to be compassionate and humane. As a *conservative*, I believe our immigration laws must be designed to protect U.S. sovereignty and to further U.S. interests.

As an *American*, I understand that our immigration policy can be reformed to better serve our national security and our national economy. As a *conservative*, I understand that, unless we can ensure the enforcement of law, it is futile to discuss the reform of law.

INTRODUCING THE HEARING

Towards that end, today's hearing is just the first in a series of hearings on "Strengthening Enforcement" – the first in a series of hearings to focus attention on the challenges that face our ability to enforce our immigration laws. Future hearings will look at interior enforcement and the need to strengthen our deportation system, because we need to review the immigration system from top to bottom. Today's hearing will examine the challenges to enforcement that we face at the border.

I hope that these hearings will serve at least two purposes. First, these hearings should help us identify those challenges to enforcing immigration laws that we can address – such as through additional resources or legal tools. Second, these hearings may help us consider whether comprehensive immigration reform would be helpful to the cause of stronger enforcement of our laws.

Our hearing today will examine the analysis and recommendations from the border security staff report of the 9/11 commission, entitled "9/11 and Terrorist Travel." The 9/11 Commission and their staff performed a tremendous public service by providing a comprehensive review of the facts and circumstances surrounding the September 11th attacks. I hope that those of us in Congress never tire of reviewing the lessons learned from the failures that lead to that terrible day. As that report makes clear, defects in our ability to enforce our laws and to secure the border pose a threat not only to the rule of law, but to the security of our nation as well.

Specifically, the border security staff identified several deficiencies in the training of border personnel and several defects regarding our visa policy. The report noted that our immigration inspectors, now called officers, received little counter-terrorism and behavioral science training, no cultural training, and rarely received follow up training. They also wrote that "critical continuing education on document fraud was rare."

The report also recognized that our visa process allowed terrorists to exploit our system and gain extended stays within our country. Recognizing this defect, terrorists concentrated on ways to exploit legal entry into our country, whether by lying on entry forms or using manipulated or fraudulent documents. All but two of the nonpilots were admitted as tourists and were granted automatic six-month stays. This allowed them to maintain a legal immigration status through the end of the 9/11 attacks. We should examine the process by which length of stay is determined to ensure that inspectors grant an appropriate time period.

And make no mistake, this type of exploitation continues. Just last week, FBI Director Mueller testified that he was aware of people going to Brazil, assuming false identities, and making their way through Mexico to cross the U.S. border with their new identities and documents.

The border security report makes clear, *all* of the 9/11 attackers entered our country through a legitimate port of entry, passing though border security sixty-eight times prior to carrying out their deadly attacks. These border encounters are the time to detect and arrest those who use document fraud and manipulation to enter. Immigration inspectors must receive periodic updated training about document manipulation, fraud, and other illicit methods used to enter the country because these inspectors are in the best position to stop those who come here to do us harm.

But we also know that al Qaeda and other terrorists plot their attacks, and modify their plans, over long periods of time. Undoubtedly, they will attempt to gain entry into the United States undetected in between the ports of entry. I recently toured a portion of the Texas/Mexico border and I am concerned that this expansive and porous boundary leaves our country vulnerable.

This vulnerability was highlighted by Deputy Homeland Security Secretary Admiral James Loy in recent testimony before the Intelligence Committee. He said:

> "Recent information from ongoing investigations, detentions, and emerging threat streams strongly suggests that al Qaeda has considered using the Southwest Border to infiltrate the United States. Several al Qaeda leaders believe operatives can pay their way into the country through Mexico and also believe illegal entry is more advantageous than legal entry for operational security reasons."

It is imperative that we find a solution to this exposure. Clearly, a part of the ultimate resolution is well equipped, trained, and funded border patrol officers and inspectors must be a part of the solution.

Our front line border personnel are highly dedicated and loyal public servants. They process visitors in a timely fashion to avoid legitimate travel and commerce backlogs, while simultaneously identifying those who should not be allowed to enter the country. This is a high stress job, particularly in the post 9/11 environment.

Yet, we will never have effective enforcement at our borders unless we adequately train the people we task with carrying out this job. And, the thought that inspectors may unwittingly facilitate the introduction of terrorists, weapons of mass destruction or illegal drugs into our

country because they have not received the information or training they need is unacceptable. That is why we must do everything within our power to ensure that these front line defenders have all of the training, equipment and information they need to get the job done.

I hope to hear today how DHS has enhanced their training programs to reflect the increased importance of our front line inspectors' role in the defense of our country and how DHS considers and grants visas to ensure that the system is not exploited.

And with that, I will turn the floor over to Senator Kyl, and then to Senator Kennedy and Senator Feinstein, for any introductory remarks that they each may have.

U.S. Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship

and

U.S. Senate Judiciary Subcommittee on Terrorism. Technology, and Homeland Security

"Border Security and Enforcement: The 9/11 Commission Staff Report on Training for Border Inspectors, Document Integrity, and Defects in the U.S. Visa Program"

March 14, 2005

Written Statement of Susan Benesch

Refugee Advocate

Amnesty International USA

I am responding to testimony submitted by Janice Kephart, now of The Investigative Project on Terrorism and formerly of the National Commission on Terrorist Attacks Upon the United States (hereinafter the 9/11 Commission). I honor and share Ms. Kephart's deep concern for the security of the United States, of course – but respectfully take issue with her views on asylum, which could lead the United States to crack down on people fleeing from terrorists, rather than on terrorists themselves.

In her testimony, Ms. Kephart asserts that the U.S. asylum system is "rampantly abused" by terrorists. This statement is compelling – but contrary to the facts. Ms. Kephart, who had full access to U.S. government data on asylum cases during her time at the 9/11 Commission, was unable to name a single case in which someone obtained asylum in the United States and was convicted of terrorism. As she noted, "the views I present today are my own, and do not necessarily reflect those of the 9/11 Commission." Indeed, her views regarding asylum are not supported by the 9/11 Commission's findings and reports, nor by her own evidence, nor, where she attacks a body of federal caselaw, by the jurisprudence itself.

A. Views and Findings of the 9/11 Commission

As the 9/11 Commission recognized, none of the 9/11 terrorists ever applied for asylum – much less won it. This was not surprising, to those familiar with the U.S. asylum system, since asylum is a poor option for terrorists.

As the 9/11 Commission's staff report, "9/11 and Terrorist Travel" points out, like other terrorists seeking to attack the United States, the 9/11 terrorists needed: 1) to enter the United States and 2) to remain here undetected.[1] Asylum provides no means of entry to the United States, since one must already be on U.S. soil or in U.S. custody in order to apply. Moreover, since the extensive reforms of the mid-1990s,[2] which were carried out partly in response to the first World Trade Center bombing on Feb. 26, 1993, asylum has become a difficult process that yields limited benefits even for those who win it, and subjects applicants to immediate, extensive background checks, using biometric fingerprint data. Today asylum applicants in the United States are forbidden to work for 180 days after applying, and many are kept in detention or on electronic monitoring devices.

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[1] 9/11 and Terrorist Travel, A Staff Report of the National Commission on Terrorist Attacks Upon the United States (2004) at 11.

[2] Regulatory reforms were implemented in 1995, and statutory reforms in 1996 and 1997. See Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 279. and The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") Pub. L. No. 104-208, 110 Stat 3009 (Sept. 30, 1996). Extensive changes in both statutes eliminated incentives to use asylum as means to stay in the United States or remain free while the application is pending.

The final report of the 9/11 Commission reviews the consular processing and immigration histories of the 9/11 terrorists in detail, and makes a series of recommendations designed to guard against future attacks. Notably, the report makes no specific recommendations for changes in the asylum system.

B. The Critique of Ninth Circuit Caselaw is Misplaced

In her written testimony, Ms. Kephart sharply criticized some of the Federal Circuit Court of Appeals for the Ninth Circuit caselaw on asylum. The details of the critique are erroneous and its implied premise – that the Ninth Circuit's asylum decisions are favorable to terrorists – is also mistaken.

No known terrorist has been granted asylum in the Ninth Circuit, yet Ms. Kephart implies that this could happen easily, by asserting that if an asylum applicant's government has accused him or her of being a terrorist or a member of a terrorist organization, "such an accusation stands alone as a valid basis for a claim of political persecution." This is inaccurate.

All would-be applicants are statutorily barred from asylum and withholding of removal if they are found to have engaged in, are likely to engage in, or incited terrorist activity. 8 U.S.C. § 1158(b)(2)(A)(v) and 1251(b)(3)(B). Terrorist activities are very broadly defined in the Immigration and Nationality Act, especially since the USA PATRIOT Act expanded the definition.[3] The definition covers cases including those where "a consular officer or the Attorney General knows, or has reasonable ground to believe" that the would-be applicant "is engaged in or is likely to engage after entry in any terrorist activity." 8 U.S.C. § 1182(a)(3)(B)(i)(II). In other words, if the applicant's government has accused him or her of terrorist activity and the U.S. government has reasonable grounds to believe that the accusation is true, the applicant is barred from asylum. An applicant who has been accused by his or her government of terrorism could only qualify for asylum if our own government did not have reasonable grounds to suspect him or her.

It makes sense to rely on the U.S. government's opinion, rather than that of a foreign government, since it is common for rogue governments to attack their opponents and critics by calling them terrorists. In Zimbabwe, for example, President Robert Mugabe has frequently accused independent journalists of being terrorists.

More generally, a would-be applicant is ineligible for asylum if "the Attorney General determines" that "there are reasonable grounds for regarding an alien as a danger to the security of the United States." 8 U.S.C. §1158(b)(2)(A)(iv)-(v)(1997). Ninth

[3] The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001) [hereinafter the USA PATRIOT Act].

Circuit case law has applied this provision, for example, in the case of Bellout v. Ashcroft, (363 F3d 975, 9th Cir. April 12, 2004). The petitioner sought review of the denial of his applications for asylum, withholding of deportation, and relief under the United Nations Convention Against Torture (CAT) before the Ninth Circuit. The immigration judge had determined that the petitioner was statutorily ineligible for the requested relief after concluding that he had engaged in terrorist activity when he joined the Armed Islamic Group (GIA), a designated terrorist organization, in 1995 and lived in GIA camps in Algeria for three years. The Board of Immigration Appeals (hereinafter BIA) summarily affirmed the denials.

On review, the Ninth Circuit held that it lacked jurisdiction under the plain language of INA § 208(b)(2)(D) to review the immigration judge's determination, duly noting that INA § 208(b)(2)(D) provides that "[t]here shall be no judicial review of a determination of the Attorney General under [INA § 208(b)(2)(A)(v)]." The Court further held that substantial evidence supported the immigration judge's conclusion that the petitioner was ineligible for withholding of removal based on national security grounds and that substantial evidence also supported the immigration judge's decision to deny deferral of removal under CAT on the merits. Bellout v Ashcroft, 363 F3d, 975, 979 (9th Cir. 2004).

Even if an applicant's government has made a baseless charge of terrorism and the U.S. government has no reasonable grounds to believe it, such an accusation cannot "stand alone" as a valid basis for an asylum claim, contrary to Ms. Kephart's assertion. Just as with any other claim, an applicant must show a well-founded fear of persecution, including both a subjective and objective basis for the claim. The BIA, in Matter of Mogharrabi, set forth four elements that an asylum applicant must show in order to establish a well-founded fear of persecution. Matter of Mogharrabi, 19 I&N Dec. 439, 445 (BIA 1987).[4]

Ms. Kephart also asserts that "The Ninth Circuit will overturn an immigration judge's finding of credibility while essentially refusing to hear any evidence that contradicts the applicant's credibility." Presumably she meant that the Ninth Circuit will overturn an immigration judge's finding *against* credibility, or that an applicant is *not* credible. In any case, this description of Ninth Circuit law is mistaken.

Ninth Circuit judges, like their colleagues in the other circuits, review the credibility determinations of immigration judges with great deference. As the Ninth Circuit held in Wang v INS, citing several of its own previous cases, "The record before us does not cause us to reject the immigration judge's adverse credibility determination of Wang. 'Under [our] 'extremely deferential' standard, we 'must uphold the [Board]'s findings unless the evidence presented would *compel* a reasonable finder of fact to reach

[4] The four elements are: (1) The applicant possesses a belief or characteristic a persecutor seeks to overcome in others by means of punishment of some sort; (2) the persecutor is already aware, or could become aware, that the applicant possesses this belief or characteristic; (3) the persecutor has the capability of punishing the applicant; and (4) the persecutor has the inclination to punish the applicant. Matter of Mogharrabi, 19 I&N Dec. 439, 446 (BIA 1987).

a contrary result.' Monjaraz-Munoz v INS, 327 F.3d 892, 895 (9th Cir. 2003) (emphasis in original), quoting Singh-Kaur v. INS, 183 F.3d 1147, 1149-50 (9th Cir. 1999) (internal quotations and citations omitted)." Wang v INS, 352 F.3d 1250, 1257 (9th Cir. 2003).

Still without citing the law to which she ostensibly refers, Ms. Kephart goes on to say that Ninth Circuit case law "places the burden on the government in terrorism cases, essentially requiring the government to prove that the asylum applicant is a terrorist rather than placing the burden of proof on the applicant that he or she is not a terrorist."[5] If this is a reference to asylum cases, it is true that where the U.S. government suspects an applicant of being a terrorist, it must persuade a judge that the suspicion is reasonable. Without such a showing, how could an asylum applicant be expected to prove that he or she is not a terrorist?

Ms. Kephart asserts, in essence, that the Ninth Circuit is comparatively favorable for asylum-seekers. In doing so, she echoes proponents of the REAL ID Act (H.R. 418). The Act's original sponsor, Rep. James Sensenbrenner, argued in a recent Dear Colleague letter that the U.S. Court of Appeals for the Ninth Circuit was "making it difficult for immigration judges to deny fraudulent asylum applications by terrorists or simply by scam artists. In recent decisions, the Ninth Circuit has failed to give deference to the adverse credibility determinations of immigrations judges in asylum cases. As a result, many fraudulent asylum applications are being approved."

This ignores the reality known to those who practice asylum law that immigration judges too often deny applications in superficial and shoddy fashion.[6] Since an August 2002 "streamlining" that restructured the BIA and required that it issue summary "affirmances without opinions" (AWOs) for many decisions, often the only way to correct these life-threatening decisions is to appeal to a federal court.[7]

The Ninth Circuit, for example, reversed a BIA decision upholding the decision of an immigration judge who denied asylum to a young Tamil woman from Sri Lanka. Paramasamy v. Ashcroft, 295 F.3d 1047 (9th Cir. 2002). The judge cited the applicant's

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[5] It is unclear to what body of law or specific case Ms. Kephart is referring, since she does not cite any in her written testimony. An asylum applicant in any U.S. court, administrative or judicial, bears the burden of demonstrating that s[he] is a refugee and eligible for asylum. See generally 8 C.F.R. part 208.13.

[6] For example, the Sixth Circuit recently remanded an asylum case finding that "{b}eyond these exchanges where the immigration judge himself was confused by testimony, sometimes holding his own mishearing against the Ahmeds, it is not clear that there is a sufficient basis for the judge's finding of poor credibility." See Ahmed v. Gonzales, 2005 U.S. App. LEXIS 1285; 2005 FED App. 0086P (6th Cir. 2005).

[7] See Fact Sheet: BIA Streamlining, Executive Office of Immigration Review, U.S. Department of Justice, September 15, 2004. See also, Seeking Meaningful Review: Findings and Recommendations in Response to Dorsey & Whitney Study of Board of Immigration Appeals Procedural Reforms, Commission on Immigration Policy, Practice & Pro Bono, American Bar Association, October 2003.

demeanor in findings that were *word for word identical* to the judge's assessment of two other applicants' demeanor in different Sri Lankan asylum cases. The only differences were that the judge substituted one sentence and changed some (but not all) of the pronouns to refer to Ms. Paramasamy as "she" (the other applicants apparently were men).

The Ninth Circuit noted that it owed substantial deference to credibility findings, and particularly to an immigration judge's demeanor findings, but that "[t]his deference presupposes . . . that each case is evaluated on its own merits." As the Ninth Circuit noted, "it strains credulity that three different people would testify in the same 'unnatural manner . . . without . . . occasional pauses.' It is equally improbable that all three petitioners had identical stony countenances except at the same 'point later in the proceedings' describing their 'wish not to return to Sri Lanka.' Could each of the three petitioners fail to show a 'change in countenance or signs of emotional upheaval' at exactly the same time in the hearing sequence?" In addition, the Court noted, the immigration judge's description of Ms. Paramasamy's testimony was also inaccurate—Ms. Paramasamy *did* testify at her merits hearing about "the abuse" she had suffered—specifically, sexual assault at the hands of soldiers.

Moreover, the judges of the Ninth Circuit are hardly alone in their concern that refugees not be sent back to persecution by sloppy administrative decision-making. See, for example, the Second Circuit's decision in Secaida-Rosales v. INS, 331 F.3d 297 (2d Cir. 2003). The Second Circuit overturned the decision of an immigration judge who had denied asylum to a Guatemalan applicant (who had provided extremely detailed testimony and abundant corroborating documentation). The immigration judge denied asylum because the Guatemalan's initial asylum application had not noted two minor details of incidents about which he later testified at his hearing—in an exhaustive account of threats and incidents that spanned a period of six to eight years. [8]

C. Erroneous statistics

[8] See also the Third Circuit in Dia v. Ashcroft (3d Cir. 2003), noting that the immigration judge's "opinion consists not of the normal drawing of intuitive inferences from a set of facts, but, rather, of a progression of flawed sound bites that gives the impression that she was looking for ways to find fault with Dia's testimony." See also the Sixth Circuit (Amadou v. INS (6th Cir. 2000)), reversing an adverse credibility finding by an immigration judge and the BIA based on the applicant's perceived unfamiliarity with the terminology of ethnic groups in Mauritania and alleged inconsistencies in his testimony. It was clear from the record that the court interpreter in the case was from Sierra Leone and spoke a dialect of Fulani that was incompatible with the applicant's; the interpreter commented repeatedly during the hearing that he could not understand the applicant, but the immigration judge, instead of seeking a new interpreter, twice instructed the interpreter to "just translate what he said even if it doesn't make sense." See also the Fourth Circuit (Camara v. Ashcroft (4th Cir. 2004)) ("Because of the nature of the rulings that we have vacated, we recommend that the BIA recommend that the Chief Immigration Judge schedule this case on remand before a different immigration judge.")

In her written testimony, Ms. Kephart cites the following nationwide statistics, apparently to demonstrate the Ninth Circuit's leniency to refugees, "Across the nation, affirmative political asylum cases in FY 2003 had a 44% success rate; defensive claims had a 26% success rate." These statistics indicate nothing about the Ninth Circuit, however. Federal courts consider only defensive asylum claims, not affirmative ones. Moreover, federal appeals courts' decisions are not reflected in the statistics on defensive asylum claims kept by the Executive Office of Immigration Review.

In addition, the figures are wrong. U.S. Citizenship and Immigration Services (USCIS, previously, a division of the Immigration and Naturalization Service, INS), which is responsible for adjudicating all affirmative asylum applications, reports that only 29% of all affirmative applications adjudicated in FY 2003 were approved.[9]

D. Case Examples – Asylum is Not Abused by Terrorists

Mr. Kephart's testimony goes on to list 16 case examples to support the assertion that "political asylum" is a benefit that is "rampantly abused by terrorists." Yet the cases listed do not support that assertion.

One of them, Anwar Nasser Aulaqi, seems never to have applied for asylum at all. According to the 9/11 Commission report, he was born in New Mexico, and is therefore a native American citizen. [10] According to "9/11 and Terrorist Travel," a staff report of the 9/11 Commission of which Ms. Kephart was an author and on which she said she based her testimony, in part, Aulaqi was born in Yemen. In its section on Aulaqi, "9/11 and Terrorist Travel" reports that he entered the United States as a J-1 exchange visitor, enrolled in the civil engineering program at Colorado State University and "later obtained legal permanent residence status in the United States; we were unable to determine on what basis this status was granted."[11] Neither report makes any mention of an asylum claim by Aulaqi. Yet Ms. Kephart stated in her testimony that he "claimed political asylum."

At least six more on the list of whose who "claimed" asylum were actually denied it: Hasan Yilmaz, Hesham Hedayet, Rabih Haddad, Abdel Hakim Tizegha, Abdelhaleem Al-Ashqar, and Omar Abdel Rahman. The last one is an especially well-known case, since Abdel Rahman, also known as the "blind sheikh," became notorious for his role in

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[9] Asylum Cases Filed with Citizenship and Immigration Service Asylum Officers, Approved, Denied, or Referred after Interview, Refugee Reports, 24:9 at 6, source: U.S. Department of Homeland Security, Citizenship and Immigration Services. (11,657 affirmative asylum cases were granted; 28,242 were denied.)

[10] See The 9-11 Commission Report: Final Report of the Commission of Terrorist Attacks Upon the United States, at 221 (2004) (finding "Another potentially significant San Diego contact for Hazmi and Mihdhar was Anwar Aulaqi, an inam at the Rabat mosque. Born in New Mexico and thus a U.S. citizen, Alquai grew up in Yemen and studied in the United States on a Yemeni government scholarship."

[11] 9/11 and Terrorist Travel, supra, at 203.

the Feb. 26, 1993 World Trade Center bombing (he is now in U.S. prison, serving a life sentence). Abdel Rahman was denied asylum. A New York federal appeals court upheld the BIA's determination that Abdel Rahman was ineligible for asylum or withholding of removal, another form of relief. [12]

Where undeserving applicants did not receive asylum, the system worked. Some applicants were not promptly deported from the United States after being denied relief, but that is not a failure of the asylum system, just as it was not the asylum system that brought them into the country in the first place.

Ms. Kephart points out that in the early 1990s, some would-be terrorists found it helpful merely to apply for asylum, even if they were never granted it, since it allowed them to remain in the United States while working legally. Since the reforms of the mid-1990s, however, applicants are not permitted to work until and unless they are granted asylum, asylum cases are decided more quickly, asylum-seekers are more likely to be kept in detention or on an electronic monitoring device, and – most important – the first step after applying for asylum is to be fingerprinted, and subjected to extensive background checks.

Many of the cases on Ms. Kephart's list are pre-1996 cases, including the following: Mir Aimal Kansi, Omar Abdel Rahman, Muin Mohammad, Ramzi Yousef, Biblal Alkaisi, Abdel Hakim Tizegha, and Hesham Mohamed Ali Hedayet.

The case of Ramzi Yousef, who is believed to have been the mastermind of the first World Trade Center bombing, illustrates the point well. He was initially arrested with fraudulent travel documents upon entry at JFK International Airport in August 1992. Yousef then sought asylum and was released pending an immigration hearing. He did not appear for the hearing and remained in the United States.

This would not happen today. Now if an arriving alien asks for asylum, he or she is subject to *mandatory* detention until an asylum officer establishes that the he or she has a credible fear, and establishes the identity of the applicant. Even then, the decision to release a person is solely within the discretion of the Department of Homeland Security. In fact, an asylum seeker can be detained, and many are detained, for the duration of the asylum process. Ramzi Yousef would not have been released at JFK airport and very likely would have been detained for the duration of his asylum process; only 8.4% of asylum seekers subject to expedited removal apprehended at JFK who pass a credible fear determination are released from detention.[13] This removes the incentive for a terrorist to claim asylum upon entry to the United States.

Under the current system, also, an applicant for asylum is not eligible to work while the application is pending, and cases are now decided much more quickly than in the past. Hence, filing for asylum is no longer a way to remain in the country and obtain

[12] Ali v. Reno, 829 F. Supp 1415, 1434 (S.D.N.Y. 1993).
[13] United States Commission on International Religious Freedom, Report on Asylum Seekers In Expedited Removal, Vol I: Findings and Recommendations, at 21.

narrowly escaped and flew to Miami, where he forthrightly told a Customs and Border Protection officer that he might need temporary asylum this time.

Rev. Dantica was taken to Krome Service Processing Center, a detention facility, where his prescription medicines were confiscated and not replaced, although he was ailing. Four days later, he finally had a credible fear interview, and during the interview he pitched forward, vomiting. After a delay of several hours, he was finally taken to a hospital, where his U.S. citizen family members were told they could not visit him, "for security reasons." The next day, alone and handcuffed to his hospital bed, he died.

We cannot allow misplaced fears to cause the United States to punish people who are fleeing from terror, instead of pursuing legitimate terrorists.

Statement of

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And

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U.S. Department of Homeland Security

Senate Committee on the Judiciary

Subcommittee on Immigration, Border Security and Citizenship
and
Subcommittee on Terrorism, Technology and Homeland Security

"Strengthening Enforcement and Border Security: The 9/11 Commission Staff Report on Terrorist Travel"

March 14, 2005

Chairman Cornyn, Ranking Member Kennedy, Chairman Kyl, Ranking Member Feinstein, and distinguished Members, we are pleased to be here today to testify about the role of the Department of Homeland Security (DHS) in visa policy, improvements in the visa process, and training for border officers.

The 9/11 Commission reported that the visa issuance process was exploited to accomplish the September 11 attacks on the United States. The Commission recommended that the U.S. Government consider new approaches to combating vulnerabilities in the visa system.

The Secretary of DHS is vested exclusively with all authorities to issue regulations with respect to the Homeland Security Act of 2002 (the Act) and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas. Per the Act, DHS's responsibility for visa policy is exercised under the terms of a Memorandum of Understanding (MOU) between DHS and the Department of State (DOS) which was signed by Secretary Ridge and Secretary Powell on September 26, 2003.

The Border and Transportation Security (BTS) Directorate is responsible for overall visa policy at DHS. BTS has been working with DHS's Citizenship and Immigration Services (CIS) as well as the Departments of State and Justice to address United States' security interests in the visa issuance process to ensure that visas are issued only to those eligible consistent with applicable law. We have also worked to integrate visa issuance policy into the larger spectrum of programs designed to secure international air travel and U.S. ports of entry.

Visa Policy

We have worked closely with DOS on specific visa policy issues since the MOU was signed. Over the past months, DHS and DOS have made a tremendous effort to combat the perception that security measures implemented since September 11 have made it too difficult for legitimate travelers to come to the United States. DHS recognizes that travel facilitation for students, scientists, tourists, and business visitors to the United States is crucial to the vitality of our economy and society and spreading democratic ideals, furthering scientific development, and promoting the image of America overseas. Working with the DOS we have examined how we can change policies to facilitate travel at the same time increasing security.

Under the Homeland Security Act and the MOU and subject to certain exceptions, DHS establishes visa policy and has final authority over DOS-initiated visa guidance involving the following: alien admissibility and any applicable waivers; visa classification, and documentation; place of visa application; personal appearance/interviews; visa validity periods; and the Visa Waiver Program.

DHS and DOS have also focused on making appropriate changes to streamline the Security Advisory Opinion (SAO) process while maintaining the security benefits it provides. Working with the DHS's ICE Visa Security Unit (VSU), BTS is considering how to improve electronic transfers of information and whether imposing reasonable deadlines on other agencies to review the underlying visa application is appropriate. We are also considering creating an interagency process to review criteria used in the SAO process.

Visa Security Functions and Accomplishments

Section 428 of the Act assigns DHS very specific visa security functions. The Act authorizes DHS to assign officers to each diplomatic and consular post at which visas are issued, and to conduct specific functions at those posts, including:

- providing expert advice and training to consular officers regarding specific security threats relating to the adjudication of visa applications;
- reviewing visa applications; and
- conducting investigations with respect to consular matters under the jurisdiction of the Secretary.

In addition, the Act requires that on-site DHS personnel review all visa applications in Saudi Arabia. It also authorizes DHS to establish permanent positions at overseas diplomatic or consular posts to participate in the terrorist lookout committee operating at post, and vests the Secretary of Homeland Security "with all authorities to issue regulations with respect to, administer, and enforce the provisions of the [INA], and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas..."[1]

BTS has made substantial progress in implementing Section 428. Among the organizational accomplishments, BTS has:

- developed a headquarters organizational structure and assigned functional responsibilities including procedures for in-depth vetting of subjects of interest identified through visa security activities;
- established visa security review procedures and built a database to track visa security review workload;
- developed an academy-based Visa Security Officers (VSO) pre-deployment training program;
- established and maintained visa security operations at two posts in Saudi Arabia, which review 100% of the applications in that country, obtaining program funds and selecting permanent VSO's; and
- evaluated and selected, with DOS Bureau of Consular Affairs, five overseas posts for the next expansion.

Consular Officer Training and Performance

Consular training encompasses both formal and informal training activities. DHS is currently developing a formal training program for consular officers in consultation with the U.S. Immigration and Customs Enforcement (ICE) Office of Training. Informal training occurs on a regular basis at the two Saudi posts and will continue to be a critical form of consular training as the Visa Security Program (VSP) expands. Informal training involves day-to-day interactions

[1] The Homeland Security Act reserves authority over the Executive Office for Immigration Review to the Attorney General.

between VSOs and individual consular officers. The VSOs share their law enforcement expertise and immigration experience with the consular officers to guide their interviews and refine document review methods. Informal training also generates valuable input to VSU about the types of formal training consular officers may need.

With regard to the development of performance standards for DOS's use in evaluating consular officers, DHS views its role as an auditing function of DOS' own evaluation practices. VSU recognizes that its recommendation of performance standards as a basis for such an audit is dependent upon developing a sophisticated understanding of basic consular officer training, of how consular officers currently are evaluated, and of operating practices and skill sets at multiple posts. DHS intends to deploy additional VSOs to overseas posts and send VSU staff to DOS training, thereby enabling VSU to work with DOS to develop performance standards in FY2005.

VSP operations in Saudi Arabia, which began in October 2003, have yielded notable successes. The VSOs and consular officers have developed very cooperative and collaborative working relationships. The VSOs review all applications after the consular officers have completed their adjudication and made a decision whether to issue or deny the visa. In Fiscal Year 2004, DHS VSOs in Saudi Arabia reviewed approximately 21,000 visa applications. Additionally, the consular officers regularly ask the VSOs for assistance during the adjudication process, for example: to review an application, to clarify a question of immigration law, to review suspect documents, and to clarify or interpret derogatory information received about the applicant. In addition to ensuring rigorous scrutiny of visa applications, this practice provides an opportunity for on-the-job training of junior consular officers to enhance their skills in such areas as interview techniques, imposter detection, and fraudulent document identification. DHS officers also assist other law enforcement and intelligence entities at post in a range of areas, conduct liaison with host country officials, and initiate domestic investigations arising from visa security and investigative findings.

Security Advisory Opinion Process

In general, the SAO process provides an interagency review of visa applications selected based on defined risk criteria (established under various SAO category designations) or because they otherwise warrant further scrutiny (based on consular officer discretion). SAO processes are based on grounds of ineligibility found in the Immigration and Nationality Act, including those listed under Section 212(a) and 212(f). Three TDY DHS officers are assigned to the VSP at headquarters. These officers leverage DHS assets and assist in resolving problem cases. These officers investigate and recommend resolution on cases for which other interagency partners disagree.

Section 306 Cases

VSP also investigates visa applicants from State Sponsors of Terror (Cuba, Iran, Libya, North Korea, Sudan, Syria) to determine if they pose a threat to national security. The DHS-State MOU describes the role of each agency in handling Section 306 cases and the final "no-risk" determination under the Act is made by the Secretary of State

Visa Waiver Program

The Visa Waiver Program (VWP) enables citizens of certain countries to travel to the United States for tourism or business for ninety days or less without obtaining a visa. While the VWP encourages travel and trade with our allies, it also makes the program attractive to those wishing to avoid visa-security checks conducted at U.S. consulates abroad. To mitigate the vulnerability posed by the misuse of the VWP as of September 30, 2004, DHS began to enroll VWP applicants in US-VISIT. This step narrowed security gaps by providing biometric watchlist checks and identity verification for subsequent visits to the United States.

The Enhanced Border Security and Visa Reform Act (EBSA) of 2002 required that beginning on October 26, 2004, VWP countries each certify that they have a program in place to issue their nationals machine-readable passports that are tamper-resistant and incorporate biometric and document authentication identifiers that comply with International Civil Aviation Organization (ICAO) standards as a condition of continued participation in the VWP program. The law also required that visitors coming to the United States under the VWP present machine-readable, tamper-resistant passports that incorporate biometric and document authentication identifiers, if the passport is issued on or after October 26, 2004. Furthermore, DHS is required to install equipment and software at all ports of entry to allow biometric comparison and authentication of these passports. The Congress enacted a one-year extension of the deadline for both VWP travelers to use biometric passports and for the U.S. Government to install the equipment to read the passports. The new deadline is now October 26, 2005.

By law, DHS is required to review all participating countries periodically for continued participation in the VWP and report to Congress. Several countries (Slovenia, Belgium, Italy, Portugal, Uruguay, and Argentina) were reviewed by the legacy Immigration and Naturalization Service (INS), and two (Argentina (2002) and Uruguay (2003)) were removed from the program. DHS, in coordination with the Department of State, is finalizing the current reviews for the remainder of the countries. This is the first comprehensive review of the countries and will form the "baseline" for future reviews.

US-VISIT

Prior to the terrorist attacks on September 11, Congress twice mandated the creation of an electronic entry-exit system. Following the events of September 11, Congress added the requirement that the entry-exit system focus on biometric technology as a means to verify the identity of foreign travelers. DHS established the US-VISIT program, and began implementing US-VISIT, as required, at 115 airports and 14 seaports of entry on January 5, 2004. In accordance with direction from the Secretary, biometric technology was incorporated into US-VISIT even though biometrics were not statutorily mandated by that date.

In addition to developing an integrated system that records the arrivals and departures of travelers and uses biometric technology to combat fraud, DHS is designing US-VISIT to: (1) provide information to U.S. Customs and Border Protection (CBP) Officers and DOS consular officers for decision making purposes; (2) reflect any pending or completed immigration

applications or actions; (3) identify nonimmigrant overstays; and (4) provide accurate and timely data to appropriate enforcement authorities.

US-VISIT is a continuum of security measures that begins before individuals enter the United States and continues through their arrival and departure from the country. Enrolling travelers in US-VISIT using biometric identifiers allows the U.S. Government to:

- Conduct appropriate security checks: We conduct checks of visitors against appropriate lookout databases, including the TSDB, and selected criminal data available to consular officers and CBP Officers at the ports of entry, including biometric-based checks, to identify criminals, security threats, and immigration violators.
- Freeze identity of traveler: We biometrically enroll visitors in US-VISIT – freezing the identity of the traveler and tying that identity to the travel document presented.
- Match traveler identity and document: We biometrically match that identity and document, enabling the CBP Officer at the port of entry to determine whether the traveler complied with the terms of her/his previous admission and is using the same identity.
- Determine overstays: We will use collected information to determine whether individuals have overstayed the terms of their admission. This information will be used to determine whether an individual should be apprehended or whether the individual should be allowed to enter the U.S. upon her/his next visit.

With US-VISIT, DHS and DOS together have created a continuum of identity verification measures that begin overseas, when a traveler applies for a visa, and continues upon entry and exit from this country. The system securely stores biometric and biographic data and uses travel and identity documents to access that information for identity verification and watchlist checks. As mentioned, on September 30, 2004, we began enrolling nationals from Visa Waiver Program (VWP) countries in US-VISIT when they travel to the United States and on December 29, 2004, US-VISIT was rolled out to the 50 busiest land border ports of entry.

At designated U.S. border points of entry, certain visitors, as have been determined by regulation, are required to provide biometric data, biographic data, and/or other documentation. This data is checked against various databases, which US-VISIT has successfully integrated and which contain visa issuance information, terrorist (through the Terrorist Screening Database (TSDB)) and criminal watchlists, and immigration status information. That information allows a CBP Officer at the border to verify the identity of the traveler and check terrorist, criminal, and immigration violator watchlists. Since January 5, 2004, 20.5 million entries have been recorded through US-VISIT and 471 criminals and immigration violators have been denied entry based on biometric information.

SEVIS

Among the millions of travelers who arrive in the United States each year are nearly a million students and exchange visitors who come to attend school and to experience the American way of life. The former INS historically did very little to track them. Data on foreign students was not automated or centralized, and remained in paper form with the schools. INS had little idea whether those entering on student visas actually attended school or remained in status. Pursuant

to Congressional requirements, the INS began developing automated tracking systems for students in the early 1980s. The first system developed was the Student/School system. Vulnerabilities identified in that system were corrected by the current Student and Exchange Visitor Information System (SEVIS) which became operational in 2003. It is fully functional at this time. It has enhanced homeland security by allowing real-time access to data on all foreign students and exchange visitors in the country. It has permitted DHS to ensure that only legitimate students are admitted, and to better track their entry and exit. SEVIS has had the corollary benefit of reducing visa application and immigration fraud. ICE has made some 560 arrests of foreigners who violated their student immigration status.

Training

DHS has established a comprehensive training plan for our CBP Officers, Agriculture Specialists, and Border Patrol Agents. Carrying out the nation's homeland security mission requires a workforce with the necessary skills and proficiency to fight terrorist threats while effectively carrying out our traditional missions of interdicting drugs, intercepting illegal immigrants, and facilitating legitimate trade and travel.

New CBP Officer training

Since 9/11, we have developed an integrated curriculum for new CBP Officers. There are 3 specific components to the way new CBP Officers are trained: Pre-Academy, Academy Basic training at Glynco, GA, and post-Academy training conducted at the Ports of Entry (In-port training).

Before attending the Academy, trainees spend up to 30 days at their duty station undergoing both formal classroom and on-the-job training to provide them with a familiarity of their duties and the work environment. New officers now complete a 73-day training regimen which includes anti-terrorism, passenger processing, agriculture fundamentals, immigration, document examination, and customs cargo processing.

Another important addition to integrated CBP Officer basic training is our use of practical exercises throughout a trainee's 15 weeks at the Academy. In FY 2000, the Academy, in concert with the Federal Law Enforcement Training Center, established a full-sized, fully equipped model Port of Entry at the Federal Law Enforcement Training Center in Glynco, Georgia. Interviewing labs require trainees to practice observational skills and questioning skills, while applying their job knowledge of documentation requirements, immigration issues, customs exemptions, prohibited and restricted articles, and agricultural issues.

Trainees also receive 25 hours of formal instruction in Non Intrusive Inspection (NII) devices. In the automated information systems training, instruction has been expanded to 61 hours and stresses how the various systems used in CBP can help our anti-terrorism efforts. At the end of the training, students are graded in two practical exercises – one for the passenger-related systems and another for trade-related systems.

In-port training commences soon after the trainees return to their Ports of Entry. This portion of standardized training combines formal classroom and on-the-job training to develop the competencies required to successfully perform more complicated secondary functions.

Training for the Incumbent Workforce

CBP realized it needed to unify and integrate its existing operations and workforce. At the Ports of Entry, 18,000 inspectors came together from 3 different agencies. While new officers receive a wide range of intensive training during their first two years, the incumbent inspectors complete training based on operational priorities and workforce needs.

CBP has developed an immigration-focused curriculum called Unified Primary Cross Training as part of the training that CBP Officers need to have. Cross-training modules are being delivered at ports of entry all over the country. This training is being conducted by Field Training Officers from the CBP officer ranks with operational as well as training backgrounds. Incumbent CBP officers are expected to undergo cross training on an as-needed basis as determined by operational requirements prior to performing any new function.

Fraudulent Document Training

One of the specific areas addressed in the 9/11 Commission Report was fraudulent documents training. Under our new curriculum, our basic trainees receive 16 hours in fraudulent document training at the Academy that culminates with a graded practical exercise during which trainees examine characteristics of unique documents and determine if the documents are genuine, counterfeit or altered. The course highlights fraud indicators that may be present in evaluating any document for authenticity. Security features of U.S. entry documents and imposter detection are emphasized as well. Trainees that fail to successfully complete the course are removed from training. All instructors teaching this course have received training from the Forensic Document Lab.

In early 2004 CBP, working with the Forensic Document Lab (FDL) in McLean, Virginia, developed and presented an 8-hour fraud document class at all Ports of Entry. We currently have several FDL trained officers in every major field office within CBP.

FDL teaches a 3-day intensive train the trainer session for the Offices of Field Operations and Border Patrol on fraudulent document detection. The FDL assist s our frontline officers with any forensic document analysis, provides training, and issues intelligence alerts about current fraudulent document trends as needed, and does so on a recurring basis. The FDL also created a Pocket guide reference to Document Security Features and Printing Techniques that we sent to all frontline officers. CBP constantly changes training in the field as new information is discovered.

Anti-terrorism training

CBP developed a Counter-Terrorism Response (CTR) protocol and training to address questioning and detaining possible terrorist subjects. CBP also has a Detecting Deception and

Eliciting Reponses (DDER) Course which is advanced training in non-coercive interviewing techniques and includes a day of classroom lectures on such topics as Behavioral Analysis and Interviewing Strategies, followed by 2 days of CBP specific "role playing" exercises. The primary focus of the DDER course is to enhance the CBP Officers' questioning skills and to build upon the officers' arsenal of interviewing techniques while confronting potential terrorists.

Conclusion

We have made much progress to deny terrorists the ability to travel freely into the U.S., identify potential people smugglers, and constrain the mobility of known and suspected terrorists. In addition to the initiatives described above, we are working aggressively with our international partners to improve standards for travel documents, enhance aviation safety and port security, and speed the exchange of terrorist identifying information. DHS understands that we must engage in a global effort each day, through collaboration, information sharing and ongoing dialogue to bring the weight of our collective law enforcement and intelligence capabilities to bear against those who seek to do us harm.

We would be happy to answer any questions you have at this time.

U.S. Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship

and

U.S. Senate Judiciary Subcommittee on Terrorism, Technology, and Homeland Security

"Border Security and Enforcement: The 9/11 Commission Staff Report on Training for Border Inspectors, Document Integrity, and Defects in the U.S. Visa Program"

March 14, 2005

Testimony of Janice L. Kephart

Senior Consultant, The Investigative Project on Terrorism

Former counsel, The National Commission on Terrorist Attacks Upon the United States and an author of *September 11 and Terrorist Travel, A Staff Report of the National Commission on Terrorist Attacks Upon the United States*

U.S. Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship

and

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"Border Security and Enforcement: The 9/11 Commission Staff Report on Training for Border Inspectors, Document Integrity, and Defects in the U.S. Visa Program"

March 14, 2005

Testimony of Janice L. Kephart

Introduction

Good afternoon and thank you for the opportunity to discuss *terrorist travel* with you today. My testimony is based on my work as a counsel on the 9/11 Commission "border security team," as an author of the 9/11 staff report, 9/11 and Terrorist Travel, and as a senior consultant for The Investigative Project on Terrorism. At the Commission, I was responsible for the investigation and analysis of the INS and current DHS border functions as pertains to counterterrorism, including 9/11 hijackers' entries and acquisition of identifications in the United States. My current work includes a study of terrorist travel tactics in the United States; specifically focusing on the abuse of our immigration system by 118 indicted and convicted terrorists.

Please note that the views I present here today are my own, and do not necessarily reflect those of the 9/11 Commission. I want to thank both Chairmen Cornyn and Kyl, as well as Vice Chairman Kennedy and Vice Chairwoman Feinstein and Members of the Subcommittees on Immigration and Terrorism, Technology and Homeland Security for holding this important hearing I also wish to applaud Congress for passing the National Intelligence Reform Act of 2004 that contained many valuable terrorist travel provisions born of the 9/11 Commission's recommendations, including the requirement for a terrorist travel strategy. It is the hope of many of us who are working on this important topic that this Subcommittee and Congress as a whole will continue to exercise its oversight authority on this important issue, to ensure that our Government continues to implement the important lessons learned as a result of the tragic events of September 11, 2001.

From the outset, let me make it clear that I, like many, consider the benefits and wealth of human potential that immigration brings to this country to be one of our greatest strengths as a nation. However, I also believe that we owe it to all Americans to maintain the integrity of our borders. To do so, we must scrutinize effectively those who seek to come here. September 11 has taught us that secure borders are a matter of national security. We will not have secure borders until we enforce the laws already in place; until we

properly train, equip and support our first line of defense; and until we are prepared to share more, not less information with one another.

Today I plan to discuss with you: (1) the threat posed by foreign terrorist travel operations; (2) examples of foreign terrorist travel operations; (3) current vulnerabilities that remain in the U.S. border system; and (4) potential recommendations for your consideration.

Foreign terrorist travel operations

Despite good initiatives by the administration, such as the deployment of U.S. VISIT to international airports, weaknesses in the U.S. border system still exist. Terrorists will continue to successfully enter the United States, because we still lack adequate technologies; integrated information systems that house biometric travel histories of visitors and immigrants; and specialized training in terrorist travel tactics. As noted in *9/11 and Terrorist Travel*, front line immigration officers are not adequately trained to detect fraudulent travel stamps in passports, terrorist indicators in passports, or behavioral cues. Indeed, as a staff member for the 9/11 Commission I had access to more information about the techniques that terrorists use to gain unlawful entry in the United States than frontline officers.

Without repeating the content and findings of *9/11 and Terrorist Travel*, terrorists will use any infiltration tactic if it works, from hiding in a ship's hull or car trunk, to seeking legitimate visas, to entering into a sham marriage that will gain them access to either a visa waiver, or, better yet, a U.S. passport.

The travel operation and jihad. The vulnerability of our border system is well known to foreign terrorists. Take, for example, this translation of an August 2000 wiretap recently acquired from Italian authorities, discussing entering fraudulently the United States, the importance of *jihad*, and what seems to be a pending operation where "the goal is the sky." The conversation takes place between Es Sayed (the document forger active in Italy) and Abdulsalam Ali Ali Abdulrahman (a Yemeni who, according to the wiretap report, travels on a "diplomatic passport"):

> A: This is worse than Iran, it's a terrifying thing, it moves from north to south from east to west: they see this thing only through a picture but it's crazy, who planned this is crazy but is also a genius, it will leave them mesmerized, you know the verse that says he who touches Islam or believes himself to be strong against Islam must be hit?
>
> S: God is great and Mohammed is his prophet. They are dogs' sons.
>
> A: They are. Let me go to Germany and we'll see: there are beautiful and brave women there, we have Jamal Fekri Jamal Sami. **We marry the Americans, so that they study the faith and the Quran.**

S: **I know many brothers who want to get married, the American woman must learn the Quran.**

A: They think they are lions but they are traitors, they perceive themselves as the world power but we'll deal with them. **I know brothers who entered the US with the scam of the wedding publications, claiming they were Egyptians and not revealing their true identity and they were already married.**

S: **You must be an actor, if they catch you it's serious.**

A: Because they like Egyptians there because Mubarak has many interests with them, but sooner or later he'll end up like Sadat.

S: It was a good attack that at the military parade.

A: A mujahid for the cause of jihad never gets tired for jihad gives you the strength to go on. We are in a country of enemies of God but we are still mujahideen fighting for a cause and we should take the youth here as Sheikh Abdelmajid does. The mujahid that fights in the enemy's lines has a greater value. Sheikh Abdelmajid is considered the emir of propaganda for the entire *ummah*.

Statement of Senator Patrick Leahy
Joint Subcommittee Hearing on "Strengthening Enforcement and Border Security: The 9/11 Commission Staff Report on Terrorist Travel"
March 14, 2005

Today's hearing provides a useful opportunity to gain a fuller understanding of the 9/11 Commission's staff report on terrorist travel. The report offered us insight that helped us understand how the 9/11 hijackers exploited our immigration system, and provided some ideas on what we might do in response. It is a valuable report that, I fear, has sometimes been mischaracterized to support mean-spirited and counterproductive immigration proposals that would sacrifice our traditions without making us safer.

One of the overwhelming themes of the report is that those who were responsible for enforcing our immigration laws on the front lines – both at our consulates abroad and our ports of entry at home – often failed to follow those laws. Consular officers and immigration inspectors missed possible grounds for denying visas or refusing entry to some of the hijackers. We need to ask whether our frontline personnel are getting the training they need to do their jobs. We should also ask whether our security depends on continually passing new and stricter immigration laws, or whether our laws, if enforced properly, are sufficient.

We have heard many allegations in recent months about connections between our asylum system and terrorism. Some of those allegations have cited the staff report we discuss today. As someone who has always believed that a fair asylum system with appropriate security guarantees is an essential part of our historic commitment to refugees, I found much that was encouraging in this report. For example, while the report states that a number of terrorists "abused the asylum system" in the early 1990s, it goes on to say that former INS Commissioner Doris Meissner, who is testifying here today, responded to these problems by "creating what was considered a model program that balanced humanitarian and security interests." This "model program" is our current asylum system, and my reading of this report does not suggest that it represents a threat to our safety.

I would like to comment briefly on the report's references to our northern border. The report correctly recounts the prevailing pre-9/11 indifference to security concerns on our border with Canada, stating that "[d]espite examples of terrorists' entering from Canada, awareness of terrorist activity in Canada and its more lenient immigration laws, and an Inspector General's report recommending that the Border Patrol develop a northern border strategy, the only positive step was that the number of Border Patrol agents was not cut any further." As the author of the provision in the PATRIOT Act tripling the number of Border Patrol agents on our northern border, I am pleased that goal has been reached. But this is no time to declare "mission accomplished." I strongly oppose the President's proposed FY 06 Border Patrol budget, which would not place a single new agent on our northern border, and which would add only 10 percent of the total new agents that Congress mandated in the intelligence reform bill we passed and the President signed in December.

Finally, I am pleased that the staff report recognizes the fine work done by the Law Enforcement Support Center (LESC), which is now part of Immigration and Customs Enforcement (ICE). The LESC, located in Williston, Vermont, has provided information regarding the status and identity of aliens to local law enforcement for more than a decade, operating 24 hours a day, seven days a week. The men and women who work there are the unsung heroes in our law enforcement efforts.

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U.S. Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship

and

U.S. Senate Judiciary Subcommittee on Terrorism, Technology, and Homeland Security

"The 9/11 Commission Staff Report on Terrorist Travel"

By

Doris Meissner, Senior Fellow, Migration Policy Institute (MPI)

March 14, 2005

Chairman Cornyn, Ranking Member Kennedy, Chariman Kyl, Ranking Member Feinstein, and Members of the respective Committees, I appreciate the opportunity to testify before you regarding the 9/11 Commission Staff Report entitled "9/11 and Terrorist Travel."

I understand that the purpose of today's hearing is to elicit testimony and debate on two issues highlighted in the Staff Report: (1) the training of immigration officers in terrorist travel indicators, and (2) the policy of not tailoring authorized admission periods to individuals entering on visitor visas. Because I have been out of government since 2000, I am not able to provide testimony on current training policies and practices. So I will focus primarily on the issue of visitor visa admission periods.

I. Admission Period for Visitors on Tourist Visas

A. Background

The policy guideline of six-month stays for temporary visitors for pleasure, the B2 visa, dates from the early 1980's. I was Acting Commissioner and then Executive Associate Commissioner of INS at the time that it was developed and first implemented. The policy was established as part of a broad effort to better manage adjudication workloads and to supply guidance to field offices and ports of entry that would result in greater consistency in decisionmaking by immigration offices and officials.

As remains the case today, adjudication demands far outstripped INS' ability to be current in processing cases, provide timely service, and manage its work to meet the goals of the nation's immigration law and policies. To improve the agency's

performance, INS introduced a broad range of procedural, case management, and regulatory changes. The most far-reaching was the establishment of the four Service Centers where the majority of immigration adjudications are now done.

Among the regulatory changes that were made was the six-month policy for B2 visas. The policy was based on a survey of INS district office workloads. It showed that a substantial proportion of the cases being handled by district officials were requests for extensions of stay of B2 visas. The key findings in the analysis were:

- The visa admission periods granted by inspectors at ports of entry who admitted B2 visitors were inconsistent and often arbitrary.
- Approvals for B2 extension of stay requests were almost always granted by the immigration examiners who adjudicated the cases; and
- Six months was the period typically granted by examiners that met the needs of the vast majority of applicants.

By establishing six months as the norm for B2 visas, INS eliminated the problem of one part of the agency unnecessarily generating work for another. More important, the change freed up precious examiner staff resources in district offices to concentrate on adjustment of status and naturalization casework which are more complex and consequential in safeguarding the integrity of the immigration system. Finally, the policy is a guideline; it did not preclude inspectors from designating less than six months if there is a rational basis for an individually tailored admission period.

B. Current status

The six-month policy has been widely regarded as sensible and successful both within INS and by its major stakeholders. However, in the 20 or more years since it has been in place, I am unaware of any serious review of its impact or broader implications for immigration policy or United States national interests. And had such a review been attempted, it would have been seriously hampered by insufficient data needed to reach sound conclusions.

Many things have changed since it was established. It is appropriate, therefore, to ask whether the policy continues to be sound, particularly against the backdrop of 9/11. The information that would be required to do a meaningful policy review is now being gathered through the US-VISIT system. As exit data is added, US-VISIT makes it possible to analyze trends and patterns of non-immigrant travel and stay in the United States. This is critical not only to detect and defend against possible terrorism as the 9/11 Commission report on terrorism travel recommends, but also to understand and assess questions surrounding issues like B-2 policy.

At the same time, it would be reckless in the utmost to rush to judgment about the six-month policy and change it absent a clear understanding of how it is working and whether it gives rise to national security or other problems. That is because (1) the numbers who would be affected and the workload implications are enormous; and (2) the

circumstances for which B2 visas are granted are wide-ranging, affecting countless stakeholders and many compelling public policy interests.

With regard to the numbers, B2 visas are the single largest category of non-immigrant visas the United States issues. In 2003, nearly 28 million visas were issued for non-immigrants. Slightly more than 20 million, or about 72%, were B2 visas. A large share of the B2's – more than 11 million – is visa waiver issuances. The remaining 8.5 million fall into the category of admission where the six-month guideline applies. This constitutes one-third of all the non-immigrant visas that are issued.

A good illustration of the stakeholder issues arose in spring 2002 when, as part of the government's response to the 9/11 attacks, INS proposed new regulations that would have changed the six-month policy. The proposed rule would have replaced the six-month admission period for B–2 visitors with a period of time that is "fair and reasonable for the completion of the purpose of the visit." The rule continued, "in any case where there is any ambiguity whether a shorter or longer period of admission would be fair and reasonable under the circumstances, a B–1 or B–2 nonimmigrant should be admitted for a period of 30 days."[1] The proposals generated an outpouring of opposition from diverse sectors of the public and have seemingly been set aside.

Proponents of this or similar changes have argued that such changes would enhance our national security and reduce the probability that visitors establish ties in the United States and remain in the country illegally. I firmly support policies that foster this country's national security, and I believe that some immigration measures play a critical role in anti-terrorism efforts. But the idea that our national security would be strengthened by changing the admission period for B-2 visitors or restricting their eligibility to seek extensions of stay is pure conjecture at this point. An individual seeking to remain in the United States beyond the period of authorized stay is as likely to overstay a 30-day admission period as a six-month period, and a change that merely altered the allowable period of admission would provide no additional tools or resources to track and/or remove such individuals. The deeper assumption is that individuals who overstay their visas are more likely to do us harm, an assertion that is also guesswork.

Countervailing considerations include the impact on tourism, investment, commerce, and workloads, including the likelihood of greater delays at the ports of entry and increases in backlogs in case processing. In addition, reciprocal treatment for United States citizens traveling abroad would also have to be taken into account.

A comprehensive review of B-2 policy, relying in particular on analysis of the information being amassed in US-VISIT, could go a long way toward providing answers to what is now guesswork. It would also sharpen our understanding of the patterns and trends pertaining to B-2 visas so that public debate and decisionmaking about policy changes, both to combat terrorism and to better manage immigration policy, can be built on footings of solid information, not speculation. Absent the investment of time and

[1] 67 Fed. Reg. 18065–66 (Apr. 12, 2002).

effort to do homework of this kind and do it properly, I would strongly advise against changing the six-month policy.

There is an additional word of caution that is important here. The policy review and analysis that are needed are increasingly possible as information systems improve and massive public expenditures in broadly expanded controls are evaluated. At the same time, the questions surrounding B-2 policy that the committees and others are asking provide an excellent example of where the current structure of executive branch agencies charged with immigration missions is failing.

B-2 issues are cross-cutting and involve at least three separate parts of the Department of Homeland Security (DHS) as well as the consular functions of the Department of State (DOS.) Apart from the Secretary and Deputy Secretary of DHS whose responsibilities are extremely broad, the current configuration does not have a senior official or bureaucratic focal point where broad questions of immigration policy and the intersections between anti-terrorism and immigration policy can effectively be raised, pursued and decided.

There seems to be a growing recognition of this vacuum both inside and outside government. The most readily achievable "fix" would be to establish a new position of Undersecretary for Policy at DHS. An analogous structure has worked well in the Department of Health and Human Services. The responsibilities of the Office of the Undersecretary would be Department-wide policy development, coordination and assessment; with such a structure, immigration matters would constitute a significant (though by no means exclusive) element of the Undersecretary's portfolio. Without substantial strengthening of the capacity of DHS at the Departmental level, it is unlikely that questions such as those surrounding B-2 policy will be systematically addressed.

II. Visitor visa policy considerations

If the administration and Congress were to undertake a re-thinking of B-2 policy, some of the considerations that should inform the assessment are outlined below.

A. Visiting family members and cohabiting partners

Family members of foreign national employees often visit for extended periods of time. Mothers and grandmothers come to help out with a new baby, elderly parents need companionship, college-age children visit for the summer, and unmarried partners wish to remain together. In addition, foreign national parents often come to care for foreign students under the age of majority. Families often plan and save for these visits long in advance.

It is also common practice for cohabiting partners to accompany E, H, and L and other nonimmigrant workers to the U.S. for an extended period. The INS officially recognized this particular use of the B-2 visitor's visa in 1994, sanctioning its use for long-term visits

to accompany a nonimmigrant worker.[2] In 2001, the State Department formalized this practice by amending the *Foreign Affairs Manual* to provide specifically for the issuance of B–2 visas to cohabiting partners, as well as to extended family members and other household members not eligible for derivative status, such as the parents and adult children of these nonimmigrant employees, as well as parents coming to care for F-1 students under the age of majority.[3] In addition to family members of nonimmigrants who are not eligible for derivative status, the *Foreign Affairs Manual* also provides that "B-2 classification may also be accorded to a spouse or child who qualifies for derivative status (other than derivative A or G status) but for whom it may be inconvenient or impossible to apply for the proper H-4, L-2, F-2 or other derivative status."[4]

For all cases in which the above classes of individuals plan to remain in the U.S. for more than six months to accompany the nonimmigrant employee, the *Foreign Affairs Manual* instructs that "they should be advised to ask INS for a one-year stay at the time they apply for admission. If needed, they may thereafter apply for extensions of stay, in increments of up to six months, for the duration of the principal alien's nonimmigrant stay in the United States."[5]

These family members and cohabiting partners are, for the most part, not eligible for other nonimmigrant visas. In such cases, the 30-day admission period envisioned under the 2002 proposed rule, for example, would be seriously inadequate. Moreover, most such individuals would have been rendered ineligible for an extension of stay under the proposed rule's amended extension language, as the need for such an extension would be neither "unexpected" nor required for a "compelling humanitarian need."

Shortened admission times would also affect the ability of parents of United States citizens who reside abroad to visit their stateside families for practical periods of time. While parents of United States citizens are immediately eligible to immigrate, most of them choose not to become permanent residents. However, many of them enter the United States for extended stays to visit with grandchildren and other relatives.

A trip to the United States is costly and a more limited stay would be discouraging to most elderly parents. Additionally, those parents that do enter the United States would be forced to apply for costly extensions of stay, adding burdens to the system in ways that can easily be avoided by establishing realistic periods of stay from the outset.

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[2] Letter from Jacquelyn A. Bednarz, Chief of the Nonimmigrant Branch, INS Office of Adjudications, March 30, 1994, discussed and reproduced in 71 Interpreter Releases 993, 1009 (Aug. 1, 1994).

[3] U.S. Dept. of State, 9 *Foreign Affairs Manual* (*FAM*) 41.31 n11.4. See also "State Department Instructs on B-2 Classification for Cohabiting Partners," 78 Interpreter Releases 1175 (July 16, 2001); "INS Discusses B-2 Eligibility for Parents of Underage F-1 Students," 73 Interpreter Releases 970 (July 22, 1996).

[4] U.S. Dept. of State, 9 *FAM* 41.31 n11.4.

[5] Id.

B. Business visitors and potential investors

The 2002 proposed rule also encompassed changes for B-1 visitors who travel to the United States for business purposes. In 2003, almost 170,000 people received investor visas to come to the United States. These individuals were either principal investors or key employees of international companies that have made substantial investments in the U.S. Many first entered the country as visitors for business to evaluate investment opportunities or to establish new offices, plants and warehouses for their foreign companies.

The *Foreign Affairs Manual* provides that exploring investment opportunities in the United States is an appropriate use of the visitor for business (B–1) visa. More than four million visa were issued in 2003 to visitors for business. Many were prospective investors. With constricted opportunity to research and effectively plan their business investment by seeking out prime locations, quality employees, and adequate resources, foreign investors could be less likely to invest or conduct business here. The inconveniences of extending the period of admission to meet business demands could also become a factor in driving investment to other countries.

Other legitimate business activities that would be affected include circumstances where the B–1 visa is used by international companies for the short-term transfer of key personnel to the United States. This is a widespread practice. Both the State Department and the DHS recognize the "B–1 in lieu of H" visa as a valid use of the visitor for business classification. The *Foreign Affairs Manual* provides:

> There are cases in which aliens who qualify for H–1 or H–3 visas may more appropriately be classified as B–1 visa applicants in certain circumstances, e.g. a qualified H–1 or H–3 visa applicant coming to the United States to perform H–1 services or to participate in a training program for which the applicant will receive no salary or other remuneration from a U.S. source other than an expense allowance or other reimbursement for expenses incidental to the alien's temporary stay. For purposes of this Note, it is essential that the remuneration or source of income for services performed in the United States continue to be provided by the business entity located abroad....[6]

There are cases in which the B–1 is a more appropriate visa than the H, as the individual will continue to be paid from the foreign company, but may need to be in the United States for several months. Any uncertainty surrounding an initial period of admission and extensions of stay would likely render the use of the B–1 visa an historical curiosity for this important class of nonimmigrant workers. The increased cost and time required to transfer key personnel to the United States for brief periods of work or training would almost certainly function as a disincentive for international companies to do business in this country.

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[6] U.S. Dept. of State, 9 *FAM* 41.31 n8.

C. Ports of entry operations and strengthened security

Visitors entering the U.S. currently spend an average of little more than one minute with a DHS inspector at the port of entry. Despite passage of the "Enhanced Border Security and Visa Entry Reform Act of 2002," section 403 of which repealed the previous 45-minute time limit on the inspection of arriving flights, current DHS resources continue to make it unlikely that inspectors would be able to devote the amount of time necessary to make a reasoned determination as to an appropriate period of stay for each individual visitor.

Requiring primary immigration inspectors to elicit from each international visitor the details of his or her prospective visit in order to determine "a period of admission that accurately comports with the stated purpose of the visit" would significantly add to the time required to process arriving travelers.

Current DHS Operations Instructions provide the following guidance to inspectors regarding the admission of B nonimmigrant visitors:

> ***If found admissible***, a B-2 shall be admitted for 6 months. The district director *may delegate individual review of the minimum admission period* no lower than a supervisory inspector. Referral of individual cases to the supervisor may occur when it is evident that the alien is admissible, but does not have sufficient resources available to maintain a 6 months visit. The Service does not require that an applicant for admission have with him or her funds to maintain a 6-month stay, but the applicant must demonstrate that he/she has access to sufficient resources.
>
> A B-1 shall be admitted for a period of time which is fair and reasonable for completion of the purpose of the trip. Any decision to reduce a B-1's admission from the time requested shall be authorized by a supervisor.[7]

The current system allows DHS to focus its resources on "who" rather than on "how long." In other words, in the absence of evidence to the contrary, the difference between admitting an individual for 30 days, 90 days, or six months need not be a material concern if the individual's activities in the United States are appropriate to the visa classification and the person is otherwise admissible.

Just as when it was introduced, the six-month policy continues to minimize the need to adjudicate substantial numbers of applications for extensions of stay by nonimmigrant visitors for pleasure and business. With the workload pressures facing DHS to reduce

[7] INS Operations Instruction 214.2.

backlogs, changes likely to generate myriad additional filings and longer delays at the ports of entry should not be contemplated without strong evidence that national security would be strengthened with different visitor admission periods.

At the same time, measures that have demonstrated they can strengthen national security at ports of entry include adequate resources so that immigration inspectors have the tools necessary to make informed admissions determinations. Such resources include, but are not limited to, adequate numbers of thoroughly trained personnel, investigative support and state-of-the-art database systems that contain the necessary intelligence information.

In addition, technology at ports of entry has improved substantially. With the design and implementation of US-VISIT, vast amounts of detailed information about visitors and other classes of non-immigrants, including biometrics, are being gathered and stored. Inspectors and immigration officials have access to greater stores of information than ever before, and controls have improved significantly as a result.

However, the integration of federal data bases still needs improvement; training and staffing at ports continue to be insufficient; and entry/exit controls will not be fully in place until December 2005. Analyses and strategies need to be developed that effectively use all the new tracking information to strengthen immigration enforcement and increase law enforcement and intelligence officials' understanding of possible national security threats. In the face of this unfinished agenda, it would be highly premature to change the length of admission of visitors without first fully implementing measures that have shown their anti-terrorism effectiveness and then learning whether the length of admission bears any relationship to national security vulnerabilities.

Conclusion: Many of the problems in the nation's immigration system are interrelated as I believe this discussion of visitor visa policy demonstrates. In our post-9/11 world, strengthened security must include striking new balances between security and the lifeblood that flows of goods, capital and people represent for the United States. But to be successful, reforms must address our nation's needs and realities. I hope this hearing opens the door to a broad public debate on immigration and the American future. I and many others stand ready to assist your committees and the Congress in any way we can with that important work.

Thank you.

MALDEF

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TESTIMONY

Submitted to the Senate Judiciary Committee

Immigration, Border Security and Citizenship Subcommittee

Hearing

On

"Strengthening Enforcement and Border Security: 9/11 Commission Report on Terrorist Travel"

By

KATHERINE CULLITON

Legislative Staff Attorney

Mexican American Legal Defense and Educational Fund

March 14, 2005

MALDEF Supports National Security But Cautions Congress Against Unnecessarily Infringing Latino Immigrants' and Citizens' Rights

MALDEF (Mexican American Legal Defense and Educational Fund) is a national, non-profit, non-partisan organization dedicated to protecting the civil rights and serving the nation's 40 million Latinos in the United States through community education, advocacy and when necessary, litigation. MALDEF cares deeply about national security. Among the many Latinos we represent are many who came here to work hard for the American dream and lost their lives in the war against terror. We are very concerned about preventing future attacks, and support the work of the 9/11 Commission in doing so. MALDEF urges that Congress defer to security experts as well as the procedures set forth in the *Intelligence Reform Bill* that was just enacted by Congress on December 8, 2004, and signed into law by the President on December 17, 2004. Moreover, in any immigration enforcement measures to be considered, MALDEF urges Congress to take into account the fundamental rights issues set forth below, as well as the over-arching need for comprehensive immigration reform. Our focus on terrorism prevention and homeland security must not deviate towards service of other and less laudatory aims. Steps resulting in undue restrictions on the rights of immigrants and citizens are an unwarranted diversion from the task at hand. Legislation must focus on those steps that are demonstrably necessary to heightened homeland security.

We understand that this hearing is to discuss the 9/11 Staff Report on *9/11 and Terrorist Travel*,[1] the training needed for immigration and customs officers to keep America safe, and that the state identification and driver's license provisions embodied in the *Intelligence Reform and Terrorism Prevention Act of 2004 (Intelligence Reform Act)*, which after extensive Congressional debate was signed by the President and became Public Law 108-458 on December 17, 2004, may be reopened for discussion.

Part 1 of this testimony will discuss the pending intelligence reform and smart ID measures at stake. Part 2 will discuss that, in order to keep America safe and secure, any immigration or border screening measures must refrain from racial profiling and must provide for fundamental due process rights, and in this regard, certain current federal policies must change and officers need to be trained differently. Part 3 will discuss that, because the immigration system is badly broken, comprehensive immigration reform is urgently needed in order to provide a safe means for deserving immigrants to enter the United States legally and become equal, integrated members of American society.

1. Pending Intelligence Reform and Smart ID Measures

The *REAL ID Act* (H.R. 418) passed by the House on January 10th and referred to the Senate Judiciary Committee on January 17th, would repeal the important state identification document and driver's license measures enacted in the *Intelligence Reform*

[1] 9/11 Commission Staff Report, *9/11 and Terrorist Travel* (Aug. 21, 2004), www.9-11commission.gov/staff_statements/911_TerrTrav_Monograph.pdf.

Act.[2] Title VII of *Intelligence Reform Act, Implementation of 9/11 Commission Recommendations*, includes Subtitle B on *Terrorist Travel and Effective Screening*. Under that Subtitle, §7212 *Driver's Licenses and Personal Identification Cards*, sets forth new rules and procedures based upon the recommendations of the 9/11 Commission. Pursuant to §7212, the U.S. Department of Transportation (DOT), in consultation with the Department of Homeland Security (DHS) must set standards regarding: (1) acceptance of identity documents that applicants present when they apply for a driver's license; (2) the verifiability of such documents' authenticity; (3) fraud prevention; and (4) security features for license cards.[3] Through the *Intelligence Reform Act*, Congress also put into place a DOT-led negotiated rulemaking process, in which relevant security experts, state motor vehicle officials, immigration experts, and state and local governments must be consulted. After such consultation, new federal standards relating to driver's licenses would be implemented.[4] H.R. 418 would repeal this negotiated rulemaking process, which was just put into law based upon the advice of the 9/11 Commission, and instead legislate a laundry list of strict requirements for immigrants' access to driver's licenses. Restricting immigrants' access to driver's license would not make America safer, and it is not what the 9/11 Commission recommended.

The 9/11 Public Discourse Project, a public education campaign created by members of the 9/11 Commission, issued a Fact Sheet clarifying that immigration status-based restrictions would not have prevented the 9/11 terrorist attacks. In fact, all of the hijackers who committed the attacks were in the United States lawfully when they obtained driver's licenses.[5] Imposing immigration status-based restrictions could actually make America less safe, by diverting our resources and intelligence investigations into immigration enforcement, rather than finding the real terrorists.[6] Such a costly diversion disserves the goal of increased security.

MALDEF also respectfully submits that Congress already decided these issues through its debate and careful deliberation of the *Intelligence Reform Act*. Congress made the right decisions about these issues through §7212 *Driver's Licenses and Personal Identification Cards* Title VII, Subtitle B *Terrorist Travel and Effective Screening*, of the *Intelligence Reform Act*, which requires consultation with state and local governments, motor vehicle associations, immigration experts, and most importantly, national security experts.

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[2] §207 of the *REAL ID Act* provides that: "Section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458) is repealed." §207, H.R. 418, Cong. Rec. H536-541 (Jan. 10, 2005).

[3] *Intelligence Reform Act* §7212(b)(2), *Minimum Standards*.

[4] *Id.* at §7212(b)(4), *Negotiated Rulemaking*.

[5] 9/11 Public Discourse Project, *Fact Sheet: Driver's Licenses, 9-11, and Intelligence Reform* (2004).

[6] Center for Advanced Studies in Science and Technology Policy, "Not Issuing Driver's Licenses to Illegal Aliens is Bad for National Security," *U.S. Newswire* (Dec. 17, 2004).

The American Association of Motor Vehicle Administrators (AAMVA) opposes *REAL ID*. AAMVA, a public safety-oriented organization, the National Governors' Association, composed of Governors from both parties, and the equally bipartisan National Conference of State Legislators (NCSL), wrote letters to Congress opposing *REAL ID*.[7] The AAMVA and state and local governments have on-the-ground, relevant experience in public safety and homeland security issues. The State Legislators position is that the *REAL ID Act* is unnecessary, disruptive, prescriptive, unworkable, costly, rigid, and misdirected.[8] The NGA and AAMVA similarly oppose REAL ID, for the following reasons:

> While Governors and motor vehicle administrators share your concern for increasing the security and integrity of the drivers' license and state identification processes, we firmly believe that the drivers' license and ID card provisions of the Intelligence Reform and Terrorism Prevention Act of 2004 offer the best course for meeting those goals.
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> The "Driver's License and Personal Identification Cards" provision in the Intelligence Reform Act of 2004 provides a workable framework for developing meaningful standards to increase reliability and security of driver's licenses and ID cards. This framework calls for input from state elected officials and motor vehicle administrators in the regulatory process, protects state eligibility criteria, and retains the flexibility necessary to incorporate best practices from around the states. We have begun to work with the Department of Transportation to develop minimum standards, which must be completed within 18 months pursuant to the Intelligence Reform Act.
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> ...H.R. 418 would impose technological standards and verification procedures on states, many of which are beyond the current capacity of even the federal government. Moreover, the cost of implementing such standards and verification procedures for the 220 million driver's licenses issued by the states represents a massive unfunded federal mandate.[9]

Civil rights concerns are also at stake. When unauthorized, untrained state and local officials start asking U.S. residents about immigration status, racial profiling of Latino citizens, legal residents and immigrants is likely. Such racial profiling is prohibited as

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[7] NCSL, *Letter to Speaker of the House Dennis Hastert and Minority Leader Nancy Pelosi Regarding H.R. 418 and H.R. 368* (Feb. 3, 2005); NGA and AAMVA, *Letter to Speaker of the House Dennis Hastert, Majority Leader Thomas DeLay, and Minority Leader Nancy Pelosi* (Feb. 8, 2005)("unnecessary, disruptive, prescriptive, unworkable, costly, rigid, and misdirected" is quoted from the NGA/AAMVA letter).

[8] NCSL, *The REAL ID Act Talking Points* (Feb. 2005).

[9] NGA and AAMVA, *Letter to Speaker of the House Dennis Hastert, Majority Leader Thomas DeLay, and Minority Leader Nancy Pelosi* (Feb. 8, 2005).

unconstitutional discrimination.[10] Requiring motor vehicle officials to inquire about immigration status and encouraging other state and local officials to inquire about immigration status will lead to an increased use of racial profiling. Profiling and due process violations may occur even outside of the Department of Motor Vehicles (DMV). In 2003, in a Riverside, California avocado grove, the local police demanded to see the licenses of all Latino workers in the grove, including U.S. citizens and Legal Permanent Residents (LPRs), threatening arrest and turning them over to the Border Patrol, even though only one person was driving.[11]

In 2002 in Texas, MALDEF settled a case in which the motor vehicles department seized a LPR's green card and refused to return it.[12] Incidents of citizens and legal permanent residents being demanded to prove immigration status or being denied licenses demonstrate why state DMVs should refrain from enforcing immigration laws, and instead concentrate on improving public safety.

DMV officials do not have the proper competency to verify immigration status. Immigration law is complex, and President Bush has admitted that the system is badly broken.[13] Many are out of status through no fault of their own.[14] DMV officials could not be properly trained to distinguish which documents prove lawful status, and mistakes are likely. For this reason, the Puerto Rican Legal Defense Fund (PRLDEF) filed suit against New York DMV lawful presence requirements, on behalf of plaintiffs lawfully in the United States who were denied driver's licenses. One plaintiff has Temporary Protective Status (TPS) and another has been granted asylum in the United States.[15] On February 4, 2004, the New York State Supreme Court, in a case against Governor George Pataki and DMV Commissioner Raymond Martinez, issued an Interim Order enjoining New York State "from denying renewal licenses to any of the plaintiffs in this action and any similarly situated persons on the basis of their failure to comply with DMV's legal presence and/or 1 year/6 month policy."[16]

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[10] Disparate treatment based upon immigration status and state DMV inquiries about immigration status may be unconstitutional. Frank J. Kelley, Attorney General, State of Michigan, Opinion No. 2883 (Dec. 14, 1995); J. Joseph Curran, Jr., Attorney General, State of Maryland, Opinion No. 03-014 (Sept. 12, 2003).

[11] "Sheriff Brutality Case Renews Call for Police Conduct Guidelines; MALDEF Opposes CLEAR Act," *MALDEF Newsletter* (Fall 2003).

[12] "Texas Improperly Seizes Work Permit of Driver's License Applicant," *MALDEF Newsletter* (Fall 2002).

[13] *See, e.g., Remarks by the President—On Immigration Policy*, The East Room (Jan. 7, 2004).

[14] *See, e.g. Padilla v. Ridge*, Complaint No. M-03-126 (S.D. Tex. 2003)(class action of persons with valid immigration rights approved by the judiciary unable to receive documentation from the DHS due to backlogs and other breaches of due process rights under the 4th Amendment of the U.S. Constitution).

[15] National Immigration Law Center (NILC), Immigrants' Rights Update, Vol. 18, No. 6, *Lawsuit Challenges N.Y. Requirement That License Applicants Present SSN and/or Proof of Lawful Residence* (Sept. 21, 2004).

[16] *Maria Lubas, et. al., v. Pataki and Martinez*, Interim Order No. 12371/04 (N.Y. S.Ct., March 4, 2005).

Another reason that immigration enforcement is not the purview of state motor vehicle officials is because immigration enforcement is the exclusive jurisdiction of the federal government. This has been confirmed over and over by the Supreme Court. In 2003, in a final rule issued through the federal rule-making process, the Department of Justice (DOJ) and the former Immigration and Nationality Service (INS) cited to Supreme Court precedent, reiterating that:

> Federal control over matters regarding aliens and immigration is plenary and exclusive. "Control over immigration and naturalization is entrusted exclusively to the Federal Government, and a State has no power to interfere." *Nyquist v. Mauclet*, 432 U.S. 1, 10 (1977); *see* also, e.g., *Matthews v. Diaz*, 426 U.S. 67, 81 (1976)('[T]he responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the federal government.').[17]

This is one of the reasons that the *Intelligence Reform Act* requires consultation with immigration experts. Under our constitutional system of federalism, the Congress may not require the states to undertake immigration policy matters, because such matters are the responsibility of the federal government.

For all these reasons, MALDEF urges Congress to refrain from repealing the smart ID and driver's license measures just recently approved in the *Intelligence Reform Act*. As discussed above, §7212 *Driver's Licenses and Personal Identification Cards* of Title VII, Subtitle B *Terrorist Travel and Effective Screening*, of the *Intelligence Reform Act*, requires consultation with state and local governments, motor vehicle associations, immigration experts, and most importantly, national security experts.[18] These consultative processes are to result in new standards regarding: (1) acceptance of identity documents that applicants present when they apply for a driver's license; (2) the verifiability of such documents' authenticity; (3) fraud prevention; and (4) security feature standards for license cards.[19] Moreover, the consultation processes are already underway at the DOT, which issued a public notice on the matter on February 23, 2004.[20] Finally, the new standards must be set within 18 months after the day of enactment of the *Intelligence Reform Bill*,[21] and after two years, states will have to update their procedures and the federal government will not accept any nonconforming state identification document issued after such date.[22] Certainly Congress could monitor the DOT rule-making processes to ensure that concerns raised during today's

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[17] Immigration and Naturalization Service (INS), Dept. of Justice, Final Rule, *Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities*, 19 Federal Register 4364 (Jan. 29, 2003),
[18] *Intelligence Reform Act* at §7212(b)(4), *Negotiated Rulemaking*.
[19] *Id. at* §7212(b)(2), *Minimum Standards*.
[20] DOT, *Notice of Intent to Form a Negotiated Rulemaking Advisory Committee, Driver's Licenses and Personal Identification Cards*, Vol. 70, No. 35 F.R. 8756 (Feb. 23, 2005).
[21] *Intelligence Reform Act*, §7212(b)(2).
[22] Id. at §7212(b)(1).

hearing, along with any concerns that may be raised during the remaining rule-making period, are taken into account.

In sum, the DOT is poised to consult with security experts and state and local officials with direct, relevant experience in these important matters. Congress should defer to security experts who will make objective evaluations about what measures are needed to protect America, rather than overturning the security-focused process already underway and putting fundamental American rights at risk. There are those who would seek to further restrict access to driver's licenses for reasons totally unrelated to security concerns. Those views and objectives can only divert Congress unnecessarily should they be permitted to taint the national security debate.

2. Fair and Just Immigration and Border Procedures Are Needed to Protect Against Increasing Civil Rights Violations and Mistakes

Since 9/11 and since immigration has been transferred to the Department of Homeland Security (DHS), Latino immigrants have become targeted for immigration enforcement actions and their fundamental due process rights limited. Of the numerous anti-immigrant measures taken by the U.S. Government in the name of national security since 9/11, not one has lead to any terrorist convictions.[23] The 9/11 Commission found that, rather than targeting immigrants, better intelligence is needed to make America safer.[24] As former Secretary of Homeland Security Tom Ridge made clear, undocumented immigrants do not pose any particular security risk.[25] Many other national security experts have studied the matter and come to the same conclusion. Despite this, immigrants have been targeted for increased enforcement since 9/11. Since the majority of U.S. immigrants are Latino, targeting of Latino immigrants has been on the increase. One outcome is that, since the post-9/11 changes in immigration enforcement, fewer have been able to adjust to legal status, and have instead been subjected to detention and removal proceedings.[26] Other outcomes include the types of sweeps and raids the Latino immigrant community has not seen for decades. In the past, sweeps and raids had been stopped due to the high risk of civil rights violations associated with such tactics. Also in the past, immigration enforcement was prioritized to target criminals and those who

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[23] *See, e.g.,* Rachel Swarns, "Program's Value in Dispute as a Tool to fight Terrorism," *New York Times* (Dec. 21, 2004); Migration Policy Institute, *America's Challenge: Domestic Security, Civil Liberties and National Unity after September 11* (June 2003), www.migrationpolicy.org.

[24] *9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks on the United States, Official Government Edition*, Ch. 13 (July 22, 2004)(hereinafter *9/11 Commission Report*).

[25] "U.S. Official Upbeat on Migration Pact with Mexico," *Reuters* (July 1, 2003); Rebeca Logan, "Ridge dice que indocumentados no son amenaza a la seguridad interna," *EFE América* (July 1, 2003).

[26] *See, e.g. Padilla v. Ridge*, Complaint No. M-03-126 (S.D. Tex. 2003)(class action of persons with valid immigration rights approved by the judiciary unable to receive documentation from the DHS due to backlogs and other breaches of due process rights under the 4th Amendment of the U.S. Constitution).

would do America harm first.[27] This would seem even more important since 9/11. Therefore, Congress should instruct the DHS to reinstate these security priorities.

The measures recommended in the 9/11 Commission Report regarding terrorist-watch lists and biometrics are not necessarily problematic for the Latino community. What is problematic is that such measures would be applied in the context of an immigration enforcement system that does not protect adequately against civil rights violations. Without such protections, civil rights violations are foreseeable. While the great majority of federal officers would refrain from committing civil rights violations, we know from tough experience that some will and do engage in unconstitutional and unlawful conduct.[28] Therefore, while MALDEF urges the U.S. Government to consider measures that would keep America safe through investigations based upon individualized suspicion, or through smarter identification measures, we caution Congress to ensure that civil rights and civil liberties are protected in the process. As this Subcommittee considers training of customs, border, and immigration officers in intelligence procedures, MALDEF urges Congress to ensure that civil rights and civil liberties training be included. Moreover, certain current Department of Justice (DOJ) and Department of Homeland Security (DHS) policies and practices must be changed in order to effectively guard against civil rights violations.

One way that civil rights are likely to be infringed in the context of immigration and border screening programs is through racial profiling. In a National Hispanic Leadership Agenda special report on immigration, MALDEF, the National Council of La Raza (NCLR), and other national Latino groups documented an increase in racial profiling of Latino immigrants and citizens since 9/11.[29] We are also concerned that on June 17, 2003, the Department of Justice issued a *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies* (*DOJ Guidance*) that was incomplete and could even exacerbate racial profiling.[30] The *DOJ Guidance* contains broad exceptions for the use of racial profiling for "national security" reasons or "in enforcing laws protecting the integrity of the nation's borders," which could easily be interpreted to implicate any and all immigration enforcement activities.[31]

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[27] Migration Policy Institute, *America's Challenge: Domestic Security, Civil Liberties and National Unity After September 11th* (June 2003)(available at www.migrationpolicy.org) (citing national security experts such as Vincent Cannistraro, former head of counter-terrorism for the Central Intelligence Agency).

[28] *See, e.g.*, U.S. Dept. of Justice, Office of the Inspector General, *The September 11 Detainees: A Review of Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks* (June 3, 2003); NHLA, *How the Latino Community's Agenda on Immigration Enforcement and Reform Has Suffered Since 9/11* (June 2004)(documenting post-9/11 civil rights violations of the Latino community in the context of immigration enforcement).

[29] NHLA, *How the Latino Community's Agenda on Immigration Enforcement and Reform Has Suffered Since 9/11* 23-30 (June 2004)(NHLA is the nonprofit, nonpartisan association of 40 major national Latino organizations).

[30] *NHLA Report* at 13.

[31] *DOJ Guidance* (June 2003) at 9.

The Leadership Conference on Civil Rights (LCCR), the national coalition of 180 civil rights organizations, including MALDEF, wrote to former Attorney General Ashcroft to protest this policy.[32] MALDEF also participated in a year's worth of discussions with the DHS, urging them to improve upon the DOJ policy. Unfortunately, we were recently informed us that the DHS adopted exactly the same policy. This is not acceptable as its use as the main policy document and for DHS officer training will predictably lead to further racial profiling by DHS officers in the context of immigration enforcement. This policy should be amended to clarify that the only time race may be used as a factor is during suspect-specific investigations, and then only for the time and to the extent strictly necessary.[33] Such anti-racial profiling policies actually help law enforcement target individualized, suspicious behavior according to objective, reasonable suspicion standards, which in turn help better identify criminals and terrorists.[34] For its part, in order to put a halt to the new wave of racial profiling, Congress should pass the *End Racial Profiling Act of 2004*, which will be reintroduced soon in the 109th Congress.

With regard to any new information sharing programs, the 9/11 Commission made clear that the purpose of new information sharing programs is to find terrorists. The Commission summarized: "We advocate a system for screening, not racial profiling. A screening system looks for particular, identifiable suspects or indicators of risk. It does not involve guesswork about who could be dangerous."[35] MALDEF advises that the minimal civil rights protections needed in this regard are: (a) considering that immigration information is notoriously inaccurate and outdated, assurances about the accuracy and currency of information shared; (b) built-in checks and balances for common name usage; (c) that information shared may be used solely for the purposes of investigating terrorism, and not for other federal, state, and local purposes; (d) information *sought* is also solely used for the purposes of investigating terrorism, and must have a limited shelf-life; and (e) fundamental due process and privacy protections are in place.

Another way that civil rights are likely to be infringed in the context of immigration and border screening programs is through the failure to protect fundamental due process rights. For example, on August 11, 2004, the DHS issued a Final Rule, without respect for the public comment period required by the Administrative Procedures Act, expanding "expedited removal" to the 100-mile Southwest border region.[36] Expedited removal

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[32] LCCR, *Letter to Attorney General Ashcroft regarding DOJ Guidance* (July 14, 2003)("The overly broad and vaguely worded exemptions for law enforcement decisions related to 'national security' and 'border integrity' are unacceptable.")

[33] *See, e.g.*, LCCR *Wrong Then, Wrong Now: Racial Profiling Before & After September 11, 2001* 33 (Feb. 2003).

[34] *See, e.g., United States Customs Service: Better Targeting of Passengers for Searches Could Produce Better Results* (GAO, March 2000); *9/11 Commission Report* at 387 ("We advocate a system of screening, not racial profiling. A screening system looks for particular, identifiable suspects or indicators of risk. It does not involve guesswork about who could be dangerous.")

[35] *9/11 Commission Report* at 387.

[36] DHS *Designating Aliens for Expedited Removal Notice*, 69 Fed. Reg. 48877-48881 (Aug. 11, 2004).

involves the speedy deportation of individuals by immigration officers, without access to counsel and without a hearing. Elimination of deportation hearings for any group of individuals who are present in the United States raises serious constitutional questions. The Supreme Court has long held that all persons within the United States are entitled to due process of law under the Fifth Amendment, even if their presence in the country is unlawful.[37] This was recently confirmed by the Supreme Court in its 2001 decision in the *Zadvydas* case, in which the Court reiterated the rule that "all persons within the territory of the United States are entitled to the protection of the Constitution."[38]

The Supreme Court has been clear that those who have crossed the border, whether or not their presence is legal, are entitled to the due process protections of the Fifth Amendment.[39] As the Court summarized in *Mathews v. Diaz*:

> There are literally millions of aliens within the jurisdiction of the United States. The Fifth Amendment ... protects every one of these persons from deprivation of life, liberty, or property without due process of law. Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection.[40]

Expansion of expedited removal to the border region has meant implementing a program of widespread denial of due process rights to thousands of Hispanics. The right to access to counsel and the right to a hearing are fundamental to a system of justice. At the very least, constitutional due process requirements include those procedural safeguards that provide individuals with "the right to be heard before being condemned to suffer a grievous loss of any kind."[41] Deportation or expedited removal certainly constitutes such a grievous loss.[42]

Border Patrol officers who are performing expedited removal may also now be trained to conduct document and security checks. However, if such document and security checks are performed against a backdrop of failure to provide fundamental due process rights, mistakes are likely. With mistaken deportations, or mistaken document checks, those immigrants who deserve to be in the United States, along with crucial United States interests behind our immigration policy, including our national security interests, will be harmed. Therefore, MALDEF urges Congress to ensure that officers to be trained in document and security checks are also directed to provide for fundamental due process rights. This may very well mean instructing DHS to overturn current expedited removal policies and amending §235(b) of the Immigration and Nationality Act (INA) to prohibit further expansion of expedited removal.

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[37] *See Wong Wing v. United States*, 163 U.S. 228, 238 (1896); *Yamataya v. Fisher*, 189 U.S. 86, 100 (1903); *Wong Yang Sung v. McGrath*, 339 U.S. 33, 50 (1950).
[38] *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
[39] *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 693 (2004).
[40] *Mathews v. Diaz*, 426 U.S. 67, 77 (1976)(*citing Wong Yang Sung v. McGrath*, 339 U.S. 33, 48-51 (1950) and *Wong Wing v. United States*, 163 U.S. 228, 238 (1896)).
[41] *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 168 (1951).
[42] *See Landon v. Placensia*, 459 U.S. 21, 34 (1982); *Bridges v. Wixon*, 326 U.S. 135, 147 (1945).

The current racial profiling and expedited removal policies are just two examples of systemic civil rights challenges in the DHS. In order to avoid further civil rights violations, Congress should mandate training of the officers who will be performing document and security checks to respect fundamental rights. Congress should also take all measures necessary to guarantee rights protections in the DHS, instruct the DHS to amend its current racial profiling and expedited removal policies, among other policies that should be modified to guarantee fundamental rights, and monitor customs, border and immigration activities to ensure against civil rights violations. The accuracy of immigration records must also be dramatically improved. The more orderly and respectful our immigration system is, the safer America will be.

3. The Over-Arching Need for Comprehensive Immigration Reform

As President Bush has made clear, the current immigration system is badly broken.[43] We are looking forward to the president working with Congress to enact comprehensive immigration reform. As President Bush recognized, millions of deserving immigrants are living in the shadows and vulnerable to the abuses of criminals, traffickers, and unscrupulous employers. The future could be bleak, as the immigration bureaucracy is so badly broken that many deserving immigrants do not have access to a safe, orderly, and legal way to enter and stay in the U.S.[44] Immigration backlogs for "first-priority" family reunification of spouses and children from Mexico are over 10 years.[45] Similarly, it is nearly impossible for employers to make "legal" immigrant hires due to the backlogs, and millions of hard-working Latino immigrants upon whom our economy depends are out-of-status.[46] The broken immigration system also leads to the sheer inhumanity of hundreds of deaths in the Arizona desert.[47] Millions of Latino families desperately need

[43] *Remarks by the President—On Immigration Policy*, The East Room (Jan. 7, 2004), at www.hispanicvista.org/010704immigration.

[44] *Id.*

[45] U.S. Dept. of State, *Visa Bulliten*, Number 77, Vol.III, (Jan. 2005).

[46] *See, e.g.,* United States General Accounting Office (GAO), *Immigration Benefits: Several Factors Impede Timeliness of Application Processing*, GAO-01-488 (May 2001); GAO-04-309R (Jan. 2004)(despite President Bush's mandate for backlog reduction, problem continues and backlogs are actually increasing); Center for Immigration Studies, *Overwhelmed by Immigration* (Dec. 20, 2004)(as of Sept. 30, 2004, immigration services had a backlog of 4,054,913 applications)(this means that over 4 million immigrants (about half of whom are Latino) who believe they are qualified for legal status are waiting to receive the results of their application from the Department of Homeland Security).

[47] As the CATO Institute summarizes: "Since 1986, the numbers of tax dollars appropriated and agents assigned for border control have risen dramatically, yet by any real measure of results, the effort to constrict illegal immigration has failed... Demand for low-skilled labor continues to grow in the United States while the domestic supply of suitable workers inexorably declines—yet U.S. immigration law contains virtually no legal channel through which low-skilled immigrant workers can enter the country to fill that gap. The result is an illegal flow of workers characterized by more permanent and less circular migration, smuggling, document fraud, deaths

a program that would recognize the past contributions of deserving immigrant workers and their families by allowing them to adjust their status. Such a program must also be complemented by a safe and legal way for new immigrants to enter the United States and become equal members of our society.

The current system is not helpful to national security, and the alternative to comprehensive immigration reform is untenable. If, for example, only Mexican undocumented immigrants were deported, the U.S. economy would lose $220 *billion annually* in gross domestic product (economic output).[48] The "remittances" that Latino immigrants send to their families are an important source of development dollars in Latin America. U.S. development aid is disproportionately low and has dramatically decreased in Latin America. In the meantime, Latino immigrant remittances have now become the largest portion of the Mexican economy, surpassing tourism and petroleum.[49] It is ironic that millions of Latino immigrants whose economic contribution is so essential to the U.S. and Latin American economies are "living in the shadows," vulnerable to labor and civil rights abuses, and separated from their loved ones, with immeasurable damage being done to Latino immigrant families.

National security depends upon finding the real terrorists rather than targeting all immigrants in a blanket fashion. Although anti-immigrant propaganda has been rampant since 9/11, the truth is that comprehensive immigration reform can provide national security benefits. The ability to conduct background checks and obtain other information from immigrants who are present in or will soon enter the U.S. workforce is preferable to the current situation, in which those who survive the dangerous trek to the U.S. strive to live and work invisibly within its borders. A system in which the U.S. government, rather than smugglers, determine who enters the country is preferable to the current system. Also, any immigration policy reform must be inclusive and comprehensive, so that all qualified current undocumented persons and all qualified future immigrants have access to legal status, rather than living in the shadows.

For all these reasons, MALDEF urges Congress to recall that the 9/11 Commission concluded that: "Our border and immigration system, including law enforcement, ought to send a message of welcome, tolerance and justice to members of immigrant

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at the border, artificially depressed wages, and threats to civil liberties... Legalizing Mexican migration would, in one stroke, bring a huge underground market into the open. It would allow American producers in important sectors of our economy to hire the workers they need to grow. It would raise wages and working conditions for millions of low-skilled workers and spur investment in human capital. It would free resources and personnel for the war on terrorism." Dan Griswold, CATO Institute, *Willing Workers: Fixing the Problem of Illegal Mexican Migration to the U.S.*, Trade Policy Analysis No. 19 (Oct. 15, 2002).

[48] Raúl Hinojosa Ojeda, North American Integration and Development Center, University of California, Los Angeles, *Comprehensive Migration Policy Reform in North America: The Key to Sustainable and Equitable Economic Integration* 6 (2001). http://naid.sppsr.ucla.edu/pubs&news.

[49] See, e.g., Manuel Orozco, Institute for the Study of International Migration, Georgetown Univ./PEW Hispanic Center, *The Remittance Marketplace: Prices, Policy, and Financial Institutions* (July 2004), www.pewhispanic.org.

communities in the U.S... We should reach out to immigrant communities. Good immigration services are one way of doing so that is valuable in every way—including intelligence."[50] The critical nature of this issue is reinforced by the fact that several recent polls have found that approximately 85% of Latinos are in favor of proposals to provide legal status to undocumented immigrants.[51] Therefore, President Bush should follow through on his January 7, 2004 promise to "work with the Congress to dramatically increase the number of visas for green cards,"[52] and Congress should assist in realizing the President's vision in this regard.

Finally, Congress should be aware that Latino groups agree that this generation of Latino immigrants must not be marginalized through a guest-worker only program. On September 4, 2003, the NHLA wrote to the Senate that:

> **NHLA cannot endorse a bill that would let an underclass of migrant workers, mostly Latinos, conveniently meet U.S. labor needs while effectively denying labor rights and the basic dignity of family unity.** Any temporary worker program must be combined with earned legalization for the current hard-working, taxpaying undocumented immigrants, equal labor protections and family unity for new temporary workers, along with a path to permanent status after a reasonable time. Without these elements, America will become a nation exploiting immigrants, rather than the great nation of immigrants. Long-term stability and economic development will be replaced by short-term exploitation of migrant labor, weakening everyone's labor rights. Furthermore, this Congress must not fail to resolve the immigration policy dilemma. [53]

Current Latino immigrants are no different than previous generations of American immigrants who made America a great nation. It is most urgent that the immigration system be reformed now, and in a comprehensive manner—not through a guest-worker only program, but through program that allows for equal opportunity to realize the American dream. This means a path to permanent status with the opportunity to become a U.S. citizen, with the basic dignity of family unity. Also, any immigration policy reform must also include strong civil and labor rights protections, in order to begin to correct the long history of exploitation of vulnerable Latino immigrants who, like everyone else, are here to realize the American dream.

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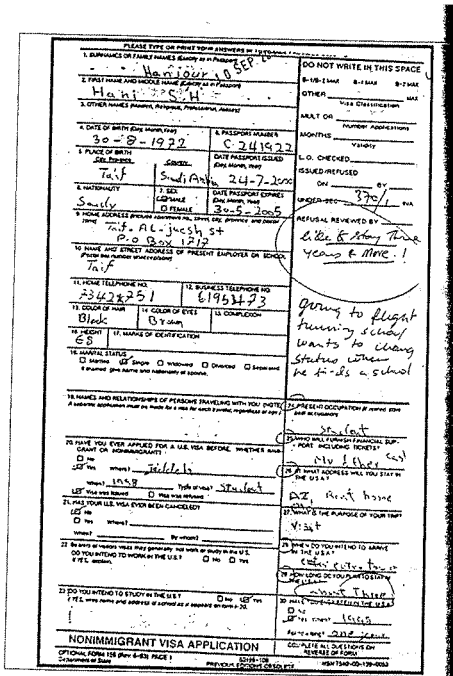
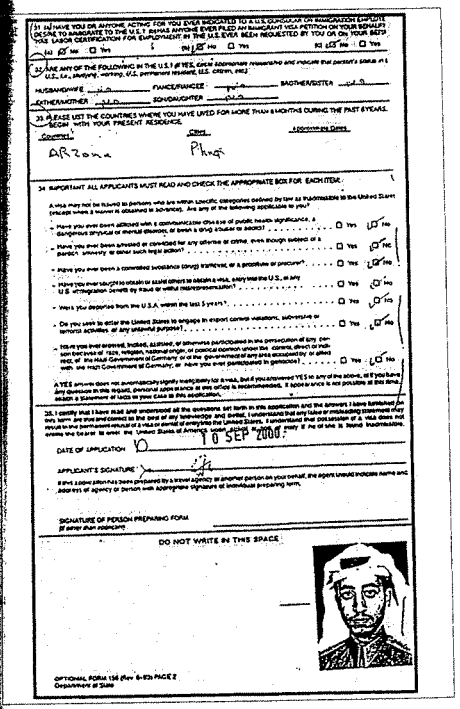
[50] *9/11 Commission Report* at 390.
[51] NCLR Press Release, *Latinos Optimistic About Future, Feel Candidates Ignore Their Issues, and Have a Shared Policy Agenda, Poll Finds* (June 27, 2004)(discussing national Zogby poll findings that overwhelming majority support generous and humane immigration policy reforms).
[52] *Remarks by the President—On Immigration Policy*, The East Room (Jan. 7, 2004).
[53] NHLA, *Letter to the Senate* (Sept. 4, 2003)(on file).

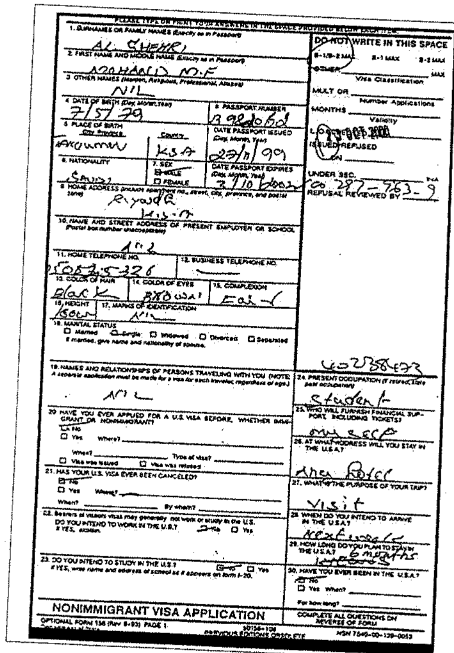


NONIMMIGRANT VISA APPLICATION

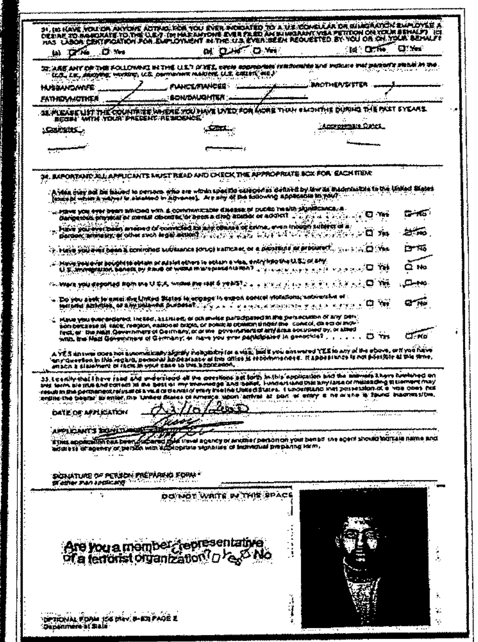
First page of Hani Hanjour's Sept. 10, 2000 visa application. The handwritten notes of a U.S. consular official (top right) indicate concern about Hanjour's desire to stay in the United States for three years. This application was incomplete; Hanjour did not specify the name and address of the school he claimed to be attending.



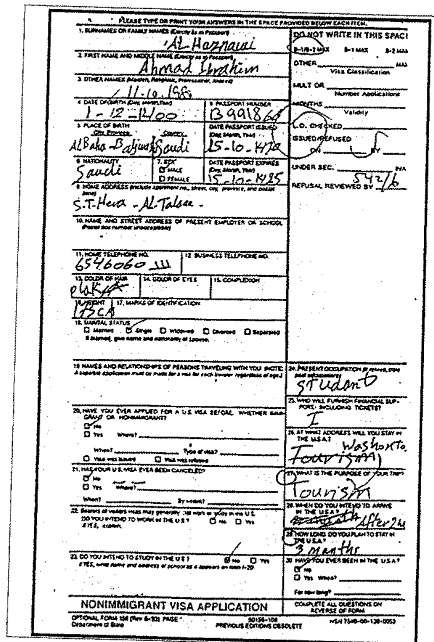
Second page of Hanjour's visa application.



Mohand al Shehri's Oct. 23, 2000 visa application. This application was incomplete. He claimed to be a student (#24), but failed to clearly state the name and address of his school (#10). He also claimed to be supporting himself during his proposed 6-month visit to the United States. This application was approved.



Page 2 of Mohand al Shehri's visa application.


NONIMMIGRANT VISA APPLICATION

1. SURNAMES OR FAMILY NAMES: Al-Haznawi

2. FIRST NAME AND MIDDLE NAME: Ahmad Ibrahim

4. DATE OF BIRTH: 11-10-1981 / 1-12-1400

5. PLACE OF BIRTH: AlBaha - Baljurashi, Saudi

6. NATIONALITY: Saudi

7. SEX: MALE

8. PASSPORT NUMBER: B991864

DATE PASSPORT ISSUED: 15-10-1420

DATE PASSPORT EXPIRES: 15-10-1425

9. HOME ADDRESS: S.T.Hera - Al-Talsee.

11. HOME TELEPHONE NO.: 6546060

24. PRESENT OCCUPATION: student

25. WHO WILL FURNISH FINANCIAL SUPPORT, INCLUDING TICKETS?: I

26. AT WHAT ADDRESS WILL YOU STAY IN THE U.S.A.?: Washonton

27. WHAT IS THE PURPOSE OF YOUR TRIP?: Tourism

28. WHEN DO YOU INTEND TO ARRIVE IN THE U.S.A.?: After 24

29. HOW LONG DO YOU PLAN TO STAY IN THE U.S.A.?: 3 months

DO NOT WRITE IN THIS SPACE

Ahmad al Haznawi's Nov. 12, 2000 visa application. Although he claimed to be a student (#24), he left blank the name and address of his school (#10). He also claimed to be supporting himself while in the United States. This application was approved

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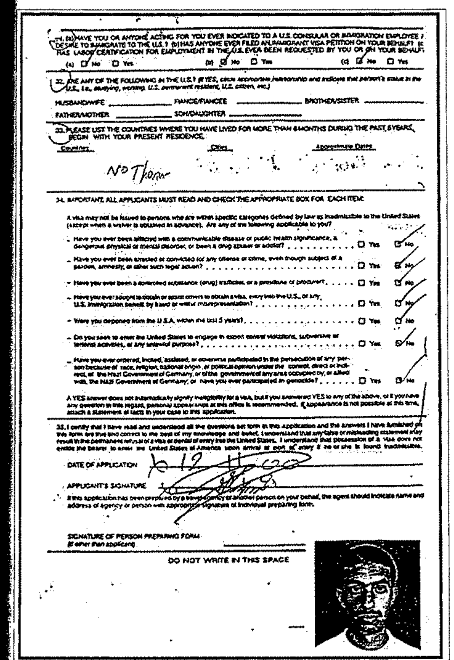
33. PLEASE LIST THE COUNTRIES WHERE YOU HAVE LIVED FOR MORE THAN 6 MONTHS DURING THE PAST 5 YEARS, BEGIN WITH YOUR PRESENT RESIDENCE.

No Thing

34. IMPORTANT: ALL APPLICANTS MUST READ AND CHECK THE APPROPRIATE BOX FOR EACH ITEM:

DATE OF APPLICATION: 12-11-2000

APPLICANT'S SIGNATURE

SIGNATURE OF PERSON PREPARING FORM

DO NOT WRITE IN THIS SPACE

Page 2 of Haznawi's visa application.

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