

AFTERMATH OF FRAUD BY IMMIGRATION ATTORNEYS

HEARING BEFORE THE SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED TWELFTH CONGRESS SECOND SESSION

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JULY 24, 2012
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AFTERMATH OF FRAUD BY IMMIGRATION ATTORNEYS

TUESDAY, JULY 24, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION
POLICY AND ENFORCEMENT,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:08 p.m., in room 2141, Rayburn House Office Building, the Honorable Elton Gallegly (Chairman of the Subcommittee) presiding.

Present: Representatives Gallegly, King, Gowdy, and Lofgren.

Staff Present: (Majority) Dimple Shah, Counsel; Andrea Loving, Counsel; Emily Sanders, Professional Staff Member; (Minority) David Shahoulian, Subcommittee Chief Counsel; and Gary Merson, CIS Detailee.

Mr. GALLEGLY. I call to order the Subcommittee and welcome to the hearing of the Subcommittee on Immigration Policy and Enforcement. I especially want to welcome our witnesses and thank you all for joining us here today.

I am joined by my colleague from California, the distinguished Ranking Member of the Subcommittee, Ms. Lofgren, and we will start the hearing with an opening statement and then we will allow Ms. Lofgren to have her opening statement.

Unscrupulous notary publics, immigration consultants, and immigration lawyers have increasingly utilized fraudulent tactics to obtain immigration benefits for their clients. Unfortunately, this type of immigration fraud is usually identified after the fact, when an immigrant has already fraudulently obtained the benefit.

In order to combat this fraud, on June 9, 2011, the executive branch unveiled a multi-agency nationwide immigration service scams initiative. As part of the initiative, the Department of Justice works with ICE and USCIS investigators to secure convictions—with sentences up to 8 years in prison and forfeiture and restitution of over \$1.8 million—for those who commit fraud on the immigration system as legal representatives.

But what of the immigrants who receive the immigration benefits based upon fraudulent applications? On its ICE Web site, ICE boasts of numerous instances where Homeland Security investigations charged, and the Department of Justice has gone on to prosecute and convict, attorneys committing fraud. In one of the largest cases in immigration fraud history, Earl Seth David and his law firm submitted fraudulent claims to labor and immigration authori-

ties concerning tens of thousands of immigrants sponsored for immigration benefits. David pled guilty and faces a minimum sentence of 25 years in prison. To date, the government has identified at least 25,000 applications submitted by his firm.

In another example, Maryland lawyer Patrick Tzeuton was convicted of conspiracy to prepare false asylum applications, immigration fraud, and obstruction of official immigration proceedings. Tzeuton prepared over 1,100 asylum applications, many of which are believed to be fraudulent. In support of these applications, he and his assistants submitted fraudulent supporting affidavits such as fake medical certificates demonstrating that an immigrant had been beaten and tortured in Cameroon. So far, of the 1,100-plus cases he handled, only 40 have been identified for further action by ICE and referred to USCIS. Tzeuton was convicted in 2009. None of the immigrants involved have been removed as of this date.

The jury is still out on whether DHS makes a concerted and vigorous effort to go back and revoke immigration benefits after attorneys have been found to engage in fraud. In some instances, DHS has apparently revoked thousands of benefits. In other cases, little seems to have been done, even where attorneys were convicted years ago and DHS boasted of uncovering the fraud. Clearly, how DHS responds to the David case will be the acid test of its commitment.

Immigrants who obtain benefits by fraud with the assistance of counsel make a mockery of our immigration system, which is the most generous anywhere in the world. We must hope that at the very least when DHS proclaims that it has uncovered immigration attorney fraud, it will conduct a thorough case-by-case review of immigrants that that attorney represented.

At this point I will yield to the gentlelady from California, the Ranking Member, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

Today's hearing is an important one. Immigration fraud undermines the integrity of the U.S. immigration system. At the same time, it harms innocent victims, delays adjudications for legitimate individuals and employers, and can cost the government significant resources. Immigration fraud, especially when committed by members of the Bar, is deplorable and it has no place in our system.

One of the fraud schemes mentioned by the Chairman we will discuss today was massive. That is the fraud scheme of New York attorney Earl Seth David, who may have submitted as many as 25,000 fraudulent applications and petitions, according to the U.S. Attorney's Office in the Southern District of New York. USCIS, ICE, the Department of Labor, and the U.S. Attorney's Office should be commended for identifying, investigating, and successfully prosecuting this fraud. But work needs to be done. As we will hear today, USCIS is reviewing the immigration cases connected to the David fraud scheme to ensure that benefits were properly granted, and USCIS will continue to take action to revoke or rescind those that were not.

I oppose fraud, and earlier in this Congress I introduced the Student Visa Reform Act to address fraud in our student visa program. That legislation would require that colleges and universities be fully accredited before they can accept and enroll foreign students.

If enacted, my bill would go a long way toward ending large-scale immigration fraud schemes recently uncovered in various institutions throughout the country. I want to thank Chairman Smith for working with me on this bill and for his efforts to have the bill considered on the House floor.

Based on what we learn at this hearing, we may very well need to work together to address fraud in other areas as well. For example, USCIS may need additional authority to conduct site visits or audits in questionable cases. When conducted in an efficient manner that is not redundant or overly burdensome, site visits and audits can be effective tools to combat fraud. I will work with my colleagues and USCIS leadership to explore this and other means to ensure the continued integrity of the immigration system.

While we seek ways to prevent immigration fraud, I do want to sound a cautionary note and provide a bit of context. The immigration fraud we discuss today is significant, but we must keep in mind that USCIS adjudicates some 6 million immigration benefits applications and petitions annually—the vast majority for qualified and legitimate individuals and employers.

Additionally, although some immigrants are complicit in fraud, some are unwilling victims. Some may have been truly eligible for immigration benefits but nevertheless charged exorbitant legal fees or left to wait months or even years for applications that were never properly filed. Some were taken advantage of and are now paying the price as their hopes of becoming permanent residents or U.S. Citizens are delayed or even shattered. So we must consider such victims when we decide how to move forward. To allow immigration fraud to irreparably harm vulnerable innocents who are in fact eligible for immigration benefits would only add insult to injury.

We have a distinguished panel, including government officials from ICE and USCIS here today, and I look forward to hearing their testimony, Mr. Chairman, and I yield back.

Mr. GALLEGLY. I thank the gentlelady.

At this time we will go to our panel of witnesses. Our first witness is Mr. Waldemar Rodriguez. He currently serves as the Deputy Assistant Director for Homeland Security Investigations' Transitional Crime and Public Safety Division. Prior to this assignment, Mr. Rodriguez served as DAD for HSI Domestic Operations, acting as Assistant Director for the HSI Workforce Management Division and as the Unit Chief for HSI Workforce Management Staffing Solution Unit at the U.S. Immigration and Customs Enforcement.

Mr. Rodriguez began his law enforcement career in 1991 as a police officer with the Puerto Rico Police Department. In 1997, Mr. Rodriguez entered the Federal service as a Special Agent with the Office of Inspector General, Federal Emergency Management Agency, and then transferred to the former U.S. Customs Service as a Special Agent in 2001. Mr. Rodriguez holds a Bachelor of Arts Degree in social services from the University of Turabo and a Master's Degree in public administration from the University of Puerto Rico.

Welcome, Mr. Rodriguez.

TESTIMONY OF WALDEMAR RODRIGUEZ, DEPUTY ASSISTANT DIRECTOR, TRANSNATIONAL CRIME AND PUBLIC SAFETY DIVISION, HOMELAND SECURITY INVESTIGATIONS, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE), U.S. DEPARTMENT OF HOMELAND SECURITY (DHS)

Mr. RODRIGUEZ. Chairman Gallegly, Ranking Member Lofgren, thank you for the opportunity to discuss ICE's efforts to address large-scale immigration benefit fraud, our investigation into the Earl David Law Firm, as well as our efforts to investigate benefit fraud facilitators in general.

Benefit fraud undermines the integrity of the legal immigration system. In most cases, it involves the knowing and willful misrepresentation of a material fact on a petition or application to gain an immigration benefit. Fraudulently obtained benefits enable an alien who would otherwise be declined a visa or other immigration benefits to enter or reside in the United States and live in our communities under a guise of legitimacy. Large-scale fraud facilitators, such as those found in the Earl David law firm, have the potential not only to provide access to illegally obtained benefits and documents but to provide coverage for those engaged in criminal activity.

Benefit fraud is complex and challenging to investigate and often involves sophisticated schemes and multiple coconspirators. These cases can require substantial resources and time to investigate and prosecute. USCIS refers suspected fraud to the ICE Benefit Fraud Units, or ICE BFUs, for all conspiracies as well as individual violators when certain criteria are met. Once the fraud referral is received by the ICE BFU, the BFUs vet and potentially refer the suspected instances of fraud to the appropriate Homeland Security Investigations office, or HSI.

The memorandum of agreement between USCIS and ICE on the investigation of immigration benefit fraud was signed in September 2008, to formalize this referral process. This MOA defines the roles and procedures that enable both agencies to focus resources on taking action against criminal organizations, fraud facilitators, and corrupt attorneys.

HSI directs most of its antifraud efforts to the HSI-led Document and Benefit Fraud Task Forces, or DBFTFs. There currently 19 DBFTFs nationwide working in collaboration with our Federal, State, and local partners. DBFTFs combat the criminal organizations that exploit the United States immigration system and investigate individuals who violate criminal or immigration laws who may pose threats to national security or public safety.

While HSI is responsible for investigating the criminal aspects of those schemes, it also plays a role in preventing unauthorized applicants from obtaining and retaining benefits through fraud. HSI recognizes that in investigations of large-scale benefit fraud, the work does not end with the prosecution of the attorney, facilitator, or preparer. To that end, the ICE BFUs supply USCIS Fraud Detection and National Security Directorate, or FDNS, with its case findings on the completion of the criminal case. HSI and USCIS have agreed that HSIs will initiate removal proceedings when applicable on subjects who were criminally prosecuted. USCIS pur-

sues administrative action on the remaining beneficiaries of fraudulent applications identified over the course of the investigation.

This process is aided greatly by FDNS, a major partner in our DBFTFs and a significant contributor in the identification, investigation, and prosecution of these large-scale fraud schemes. Our HSI field offices regularly coordinate on a local level with their respective FDNS partners regarding benefits suspected to have been obtained fraudulently. This gives USCIS the opportunity to take necessary administrative action on these cases. By implementing criminal and administrative remedies and educating the public on these efforts, we seek to prevent the identified broad conspiracies from continuing, ensure the profits are eliminated, and deter others from perpetrating these schemes.

The Earl David law firm case is just one example of the work HSI, FDNS, and our DBFTF partners have accomplished since the task force was established. HSI recognizes the importance of ensuring that all aspects of a benefit fraud investigation are addressed as it specifically pertains to the people who receive a benefit to which they were not entitled. We have identified best practices and are evaluating how to institutionalize these practices across the board, using our existing budget and resources.

Along with USCIS, we will continue to work on these and other benefit fraud initiatives to ensure the integrity of the legal immigration system. ICE is committed to working these important cases and recognizes the significance of addressing the fraudulent beneficiaries identified through our criminal investigations.

Thank you again for the opportunity to appear before you today. I would be pleased to answer any questions at this time or later.

Mr. GALLEGLY. Thank you, Mr. Rodriguez. A particular thank-you for keeping an eye on the lights.

[The prepared statement of Mr. Rodriguez follows:]



U.S. Immigration and Customs Enforcement

STATEMENT

OF

WALDEMAR RODRIGUEZ

DEPUTY ASSISTANT DIRECTOR
TRANSNATIONAL CRIME AND PUBLIC SAFETY DIVISION
HOMELAND SECURITY INVESTIGATIONS
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"THE AFTERMATH OF FRAUD BY IMMIGRATION ATTORNEYS"

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

Tuesday, July 24, 2012 – 2:00 p.m.
2141 Rayburn House Office Building

INTRODUCTION

Chairman Gallegly, Ranking Member Lofgren, and distinguished members of the Subcommittee:

On behalf of Secretary Napolitano and Director John Morton, I would like to thank you for the opportunity to discuss the efforts of U.S. Immigration and Customs Enforcement (ICE) to address benefit fraud, our investigation into the Earl David Law Firm in New York, and other large-scale investigations of immigration benefit fraud facilitators.

As you know, identity and benefit fraud pose significant threats to national security and public safety. Identity and benefit fraud are also integral elements in many immigration-related crimes, such as human smuggling and human trafficking, and are regularly found in investigations involving critical infrastructure protection, worksite enforcement, visa compliance enforcement and investigations of terrorism and other national security threats.

Benefit Fraud

In most cases, benefit fraud involves the knowing and willful misrepresentation of a material fact on a petition or application to gain an immigration benefit. Types of benefit fraud include employment-based fraud, asylum fraud and marriage fraud. Benefit fraud may enable an alien who would otherwise be declined a visa or other immigration benefit due to ineligibility, whether based on criminal, security or any other grounds, to enter or reside in the United States and live in our communities under a guise of legitimacy, ultimately undermining the integrity of the legal immigration system in the process.

While identity and benefit fraud are a means by which aliens attempt to enter or remain in the United States, typically to obtain work, it is well-documented that terrorists and other

criminal organizations have engaged in these types of fraud to facilitate illicit activity. Large-scale fraud facilitators, such as those found in the Earl David Law Firm investigation, have the potential not only to provide access to illegally-obtained benefits and documents, but to provide cover for others engaged in criminal activity.

An alien who engages in benefit fraud receives an actual benefit, such as lawful permanent residence in the United States and access to government services and programs. Further, the alien receives government-issued documents containing his/her photograph and the biographical information he/she provided. These documents provide the appearance of legitimacy to the alien and in some cases can be used to obtain other government issued documents, such as a driver's license. They can also be used to obtain employment, open bank accounts, gain access to public buildings, and board airplanes. By perpetrating or benefiting from this fraud, an alien can disguise his or her true identity or intent and purpose for being in the United States.

Combating Benefit Fraud

Benefit fraud is complex and challenging to investigate and often involves sophisticated schemes and multiple co-conspirators. These cases can require substantial resources and time to investigate and prosecute. If USCIS suspects fraud in its review of applications or petitions, USCIS documents its suspicions and, if the case meets certain criteria, refers the case for criminal investigation to an ICE Benefit Fraud Unit (BFU). BFUs are located at or near the four regional USCIS Service Centers. USCIS will not refer individual instances of suspected fraud to ICE unless certain criteria, such as whether: the alien is from a country of interest; the alien has a criminal record; or USCIS suspects the involvement of an attorney or other preparer, are met.

Once the fraud referral is received by the BFUs, the BFUs vet and potentially refer the suspected instances of fraud to the appropriate HSI field office. The Memorandum of Agreement (MOA) between USCIS and ICE on the Investigation of Immigration Benefit Fraud was established on September 25, 2008 to formalize this referral process. This MOA defines the roles and procedures that enable both agencies to focus resources on taking action against criminal organizations, fraud facilitators and corrupt attorneys.

HSI directs most of its anti-fraud efforts to the HSI-led Document and Benefit Fraud Task Forces (DBFTF). There are currently 19 DBFTFs nationwide working in collaboration with our federal, state and local partners. DBFTFs combat the criminal organizations that exploit the United States immigration process and investigate individuals who violate criminal or immigration laws or who may pose threats to national security or public safety.

The DBFTFs maximize resources, eliminate duplication of efforts, and promote the sharing of information between HSI and its law enforcement partners. DBFTFs combine a variety of law enforcement knowledge and authorities to achieve focused, high-impact criminal prosecutions and financial seizures. DBFTF partners vary from task force to task force but can include agencies and components such as: USCIS Fraud Detection and National Security Directorate (FDNS); U.S. Attorney's Offices; U.S. Department of Labor, Office of the Inspector General; U.S. Department of State, Bureau of Diplomatic Security; the Social Security Administration, Office of the Inspector General; and numerous state and local agencies.

DBFTF criminal investigations seek to uncover the entire fraud organization, including front companies, middle-men, facilitators, brokers and beneficiaries. These investigations seek to remove the incentive to commit these crimes by utilizing forfeiture statutes to seize the illegal proceeds. Further, sentences imposed serve as a visible deterrent. HSI makes every effort to

ensure that the public is educated about these consequences through its outreach efforts, such as the ICE Department of Motor Vehicle (DMV) Partnership, to raise awareness about employee misconduct and alert law enforcement to identity and benefit fraud schemes perpetrated at DMV facilities, and through ICE's Office of Public Affairs.

While HSI is responsible for investigating the criminal aspects of these schemes, it also plays a role in preventing unauthorized applicants from obtaining and retaining benefits through fraud. HSI recognizes that in investigations of benefit fraud, the work does not end with the prosecution of the attorney, facilitator, or preparer. To that end, HSI supplies USCIS FDNS with its case findings at the completion of the criminal case on a local level in order to inform USCIS decisions to deny, revoke, or rescind any pending applications for or approved benefits that were obtained through fraud. HSI and USCIS have agreed that HSI will initiate removal proceedings, when applicable, on subjects who were criminally prosecuted. USCIS pursues administrative action on the remaining beneficiaries of fraudulent applications identified over the course of the investigation.

This process is aided greatly by our task force partner, USCIS FDNS, which is a significant contributor to the identification of these beneficiaries. Our HSI field offices coordinate independently with their respective FDNS partners regarding benefits suspected to have been obtained fraudulently to give USCIS the opportunity to take necessary administrative action in these cases. By implementing criminal and administrative remedies, and educating the public on these efforts, we seek to prevent the identified fraud conspiracies from continuing, ensure the profits are eliminated, and deter others from perpetrating similar crimes.

The Earl David Law Firm Investigation

In April 2012, Earl Seth David, aka Rabbi Avraham David, an attorney who headed a law firm in New York City, pleaded guilty to operating a large-scale immigration fraud mill. From 1996 until early 2009, David's firm made millions of dollars by helping its clients gain immigration status through fraudulent means. The firm, which charged up to \$30,000 per client, applied for and obtained thousands of Department of Labor (DOL) certifications based upon phony claims that U.S. employers had sponsored the aliens for employment.

As part of the scheme, David's firm used fabricated documents, including fake pay stubs, fake tax returns and fake experience letters, purporting to show that the sponsorships were real and that the aliens possessed special employment skill sets justifying labor-based certification by DOL. In reality, the sponsors had no intention of hiring the aliens and the sponsor companies often did not exist, other than as shell companies for use in the fraudulent scheme.

DOL uncovered the fraud in their process and shared the information with the HSI NY DBFTF, which initiated an investigation. HSI and DOL Office of the Inspector General (OIG), as well as other DBFTF partners such as FDNS, worked jointly throughout the investigation.

As is typical in benefit fraud investigations, HSI made efforts to identify fraud indicators used by the David Law Firm, such as boilerplate language or supporting documentation. HSI referred these indicators as they were discovered to USCIS in order to aid USCIS in determining which files were fraudulent. To ensure close coordination between HSI and USCIS regarding the fraud uncovered during this investigation, the HSI New York case agent visited both the USCIS Texas Service Center and the USCIS Vermont Service Center to discuss the fraud and to review files. The HSI New York case agent also spoke to the USCIS Nebraska Service Center and numerous adjudicators across the country about the fraud.

This case exposed vulnerabilities in the system. However, HSI has shared these vulnerabilities with our partner, USCIS, and together we will continue to work on this and other benefit fraud investigations to ensure the integrity of the lawful immigration process.

CONCLUSION

ICE is committed to ensuring that it continues its work on these important cases while recognizing the significance of addressing the fraudulent beneficiaries identified through the criminal investigation. Working with our partner, USCIS, we have made significant strides and achieved considerable results in the area of benefit fraud investigations.

Thank you again for the opportunity to appear before you today to discuss our investigative and enforcement efforts related to benefit fraud and our strategy to review the new cases resulting from our investigation of the David Law Firm and similar cases.

I am pleased to answer any questions at this time.

Mr. GALLEGLY. You heard the bells go off a few minutes ago. What that means is in about 8 minutes we are going to start voting. I think we have two votes. I would like to come back and finish this hearing. And, hopefully, we won't keep you waiting too long. If you can stay with us for another half hour after we get back, we

can probably wrap this up. But we will probably be out for about a half hour.

Our next witness, Ms. Sarah Kendall, is the Associate Director for the Fraud Detection and National Security Directorate at U.S. Citizenship and Immigration Services, USCIS. In May, 2012, Ms. Kendall joined USCIS directly from the National Security staff, where she served as the Director for Border and Interior Enforcement since January, 2010.

Ms. Kendall received her Bachelor's Degree in international affairs and Spanish from Trinity University in 1989. She received her Juris Doctorate from the University of Houston Law Center in 1996.

Welcome, Ms. Kendall.

**TESTIMONY OF SARAH M. KENDALL, ASSOCIATE DIRECTOR,
FRAUD DETECTION AND NATIONAL SECURITY DIREC-
TORATE, U.S. CITIZENSHIP AND IMMIGRATION SERVICES**

Ms. KENDALL. Chairman Gallegly and Ranking Member Lofgren, Members of the Subcommittee, thank you for the opportunity to testify before you today on behalf of U.S. Citizenship and Immigration Services on the processes for reviewing cases associated with attorneys and preparers convicted of immigration fraud.

Created in 2004, the Office of Fraud Detection and National Security was promoted to a directorate by USCIS Director Alejandro Mayorkas in early 2010 to further reflect the prioritization of our agency's mission to help safeguard our Nation's security and to protect the integrity of the legal immigration system. As the newly appointed Associate Director of FDNS, I maintain oversight responsibility for USCIS's fraud detection and national security efforts. I am eager to lead the directorate and I am excited about the mission and work of FDNS, which spans the USCIS priority areas of fraud and national security.

FDNS is responsible for managing procedures and policies governing our fraud work, prevention work, and national security threats. FDNS performs administrative investigations designed to ensure consistent detection, documentation, and prevention of immigration benefit fraud.

USCIS's process for combating fraud involving attorneys and preparers includes close collaboration with our partners at ICE and our law enforcement agencies. We regularly apply what we have learned from these relationships through information sharing, investigation, and training.

As Director Mayorkas testified before this Subcommittee on February 15, USCIS has undertaken significant steps to protect the integrity of the Nation's immigration system and to help safeguard our Nation's security. We take careful note of fraud indicators, patterns, and schemes, as we did in the David Law Firm case. This allows us to strengthen our standard operating procedures and reduce program vulnerabilities.

I would like to take a minute to reiterate for you just a few of these proactive measures and provide a short list of what is already detailed in my written testimony on USCIS's current progress and prioritization in the area of antifraud enhancements.

Since 2010, FDNS has increased the number of officers, analysts, and staff by approximately 25 percent and allocated new FDNS positions in field offices and service centers to strengthen coordination and collaboration with our front office and front line employees. USCIS and ICE have prioritized attorney and preparer fraud as one of the priority case types that is referred to ICE for criminal investigation and USCIS and ICE work closely together to successfully manage such cases.

USCIS has issued recent NTA guidance to all field offices that instructs that when there is a finding of fraud in any case, the NTA will be issued and the matter will be referred to ICE. USCIS has worked with the Department of Justice, the Federal Trade Commission, and State and local authorities to launch the Unauthorized Practice of Immigration Law Initiative and we are members of the Sentinel Law Network. We have established guidelines for the eligibility of attorneys and other representatives who practice before us. We have implemented and improved antifraud training programs nationwide to provide adjudicators with new skills for fraud detection, referral, and the use of fraud indicators.

We have launched fraud reporting tools to begin delivering fraud bulletins in real time to agency personnel. We have implemented the Validation Instrument for Business Enterprise, commonly known as the VIBE, to enhance our ability to verify key information about suspected sponsoring employers, organizations, or companies.

Earlier in the process, we have performed 17,000 site inspections under the Administrative Site Visit and Verification Program. Finally, we have enhanced our oversight verification efforts through collaboration with the Department of State and enhanced information sharing for asylum fraud initiatives.

The fraud improvements I have detailed in my testimony today allow USCIS to more swiftly recognize and address fraud in the immigration system. I want to assure the Subcommittee that USCIS and its FDNS Directorate take every measure to ensure that the agency deters, detects, and responds aggressively to immigration benefit fraud.

On behalf of USCIS Director Alejandro Mayorkas and all of our colleagues at USCIS, I thank you for your continued support of the work of FDNS. Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to provide you information on the status of our program, and I look forward to responding to your questions.

Mr. GALLEGLY. Ms. Kendall, thank you very much for your testimony.

[The prepared statement of Ms. Kendall follows:]



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

WRITTEN TESTIMONY

OF

**SARAH M. KENDALL
ASSOCIATE DIRECTOR**

**FRAUD DETECTION AND NATIONAL SECURITY DIRECTORATE
U.S. CITIZENSHIP AND IMMIGRATION SERVICES**

FOR A HEARING ON

“The Aftermath of Fraud by Immigration Attorneys”

BEFORE

**THE HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT**

JULY 24, 2012

TIME: 2:00PM

**2141 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC**

Introduction

Chairman Gallegly and Members of the Subcommittee, my name is Sarah Kendall. I am pleased to have the opportunity to testify on U.S. Citizenship and Immigration Services' (USCIS) process for reviewing cases associated with attorneys and preparers suspected or convicted of immigration fraud. USCIS created the Fraud Detection and National Security Office (FDNS) in 2004 and Director Mayorkas promoted FDNS to a Directorate in early 2010 to reflect and implement his prioritization of our agency's mission to help safeguard our nation's security and protect the integrity of its immigration system. As the Associate Director of FDNS of USCIS, I have oversight responsibility for USCIS's fraud detection and national security efforts.

USCIS's process for combating fraud includes case identification, close collaboration with our partners at Immigration and Customs Enforcement (ICE) and our other Federal, State, local and tribal law enforcement partners, appropriate follow-up based on investigation outcomes, and application of what we have learned in adjudication, training and investigation. More specifically, my testimony will review USCIS's work reviewing pending and previously approved immigration cases that attorney Earl Seth David and his law firm associates at the David Law Firm filed on behalf of their clients. I will provide an overview of the processes in place today that would assist us in detecting fraud schemes similar to the one the David Law Firm perpetrated. I will begin my testimony with a summary of the procedural steps for reviewing cases of suspected fraud, including those of attorneys suspected or convicted of perpetrating immigration fraud.

FDNS Administrative Investigations

The Secretary of Homeland Security maintains broad authority to administer and enforce the Immigration and Nationality Act (INA) and all other laws relating to the naturalization and immigration of aliens. Among the authorities the Secretary delegated to the Director of USCIS is the authority to conduct interviews and investigate civil violations of immigration law. USCIS does this by verifying information applicants and petitioners submit to USCIS, in order to ensure compliance with applicable laws and regulations before USCIS makes a decision in a case. USCIS also reviews some cases after adjudication as an added means to detect and deter fraud.

Within USCIS, FDNS is responsible for managing procedures and policies governing USCIS's management of fraud detection and prevention efforts. FDNS also manages policies and procedures governing USCIS's detection of persons seeking immigration benefits who pose a threat to national security and/or public safety. FDNS officers are located in every domestic USCIS office and certain overseas locations. They conduct administrative investigations focused on the detection of immigration benefit fraud and on cases in which national security and public safety concerns have been identified.

FDNS conducts administrative investigations to produce and document findings that USCIS adjudicators may use to determine an individual's eligibility for an immigration benefit. FDNS performs administrative investigations that are tailored to verify relationships and

circumstances that purport to form the basis of an immigration benefit and to identify violations of relevant sections of the INA and/or other grounds of inadmissibility or removability.

FDNS administrative fraud investigations follow standard procedures designed to ensure consistent detection, documentation, and prevention of immigration benefit fraud. These procedures set forth the guidelines for the receipt, documentation, investigation, and recording of the results of investigative action for either criminal investigation referral to ICE or administrative investigation to remain within USCIS. The standard procedures also address the sharing of information for adjudicative review and follow-up actions.

The administrative investigation of immigration benefit fraud is generally initiated by the articulation of fraud to FDNS from one of three primary sources: referral from an adjudications officer, referral from another government agency, or a referral received from the public. FDNS processes all fraud referrals similarly, irrespective of the source of referral. The FDNS process typically begins with an officer systematically determining whether or not the referral contains sufficient amount of information to continue with its review or whether it is possible to open a case for further investigation. The officer then identifies the referral type, determines if the matter is a new or existing referral, enters the referral into the system of record, and evaluates the referral for the next level of scrutiny.

The standard process then requires FDNS to determine whether there is sufficient public and government information to support the initiation of an administrative investigation. FDNS officers rely on varied sources of information to assess referred cases and take into consideration factors including whether there is a reasonable suspicion of fraud that is clearly articulated and actionable. An administrative investigation may include searches of government and commercial databases, file reviews, domestic or overseas site visits, overseas verification of documents, witness interviews, and verification of facts and events relevant to the case.

Upon conclusion of an administrative investigation, and as described in further detail below, the FDNS officer will then document the results into the FDNS Data System (FDNS-DS) to allow for tracking, collaboration, and information sharing across USCIS. FDNS will also then provide USCIS adjudicators with a written statement of findings. USCIS adjudicators use these findings to inform their decisions on the immigration applications. When fraud has been verified by FDNS, in an individual case, USCIS adjudicators generally will deny the case or, if the benefit has already been granted, issue a Notice of Intent to Rescind or Revoke the benefit. In either case, the USCIS adjudicator will then issue a Notice to Appear (NTA), subjecting the applicant to removal proceedings.

In addition, if USCIS uncovers information during the course of an administrative investigation that warrants any criminal investigation, FDNS will suspend adjudication of the matter and refer the case to ICE's Benefit Fraud Unit (BFU) which reviews the referral and potentially refers the suspected fraud to the appropriate Homeland Security Investigations (HSI) field office. The ICE HSI field office then reviews the case to determine whether it will accept it for criminal investigation. If the case is not accepted for criminal investigation,

USCIS will resume administrative investigative action on the case to include further inquiry and adjudication. It is important to note if ICE's determination is that it will not pursue prosecutorial action, the determination does not preclude USCIS from taking all appropriate action, including denial of the immigration benefit sought, based on USCIS's civil immigration fraud authorities or from referring the case to another law enforcement agency for review and possible acceptance for investigation. Each case is evaluated on its own merits under the applicable legal authorities.

USCIS's Joint Anti-Fraud Strategy with ICE

Since 2004, USCIS and ICE have collaborated in a strategic partnership to combat immigration fraud through the coordinated referral of benefit fraud cases for criminal investigative action. This approach has enhanced DHS's effectiveness in detecting, deterring, and combating immigration benefit fraud as it maximizes both USCIS's civil immigration authority with ICE's criminal immigration authorities, as delegated, to address fraud under the Immigration and Nationality Act. Over time USCIS and ICE have refined the referral process to remain consistent with Departmental priorities and resources.

Under this initiative, FDNS refers to ICE for criminal investigation all fraudulent cases involving attorneys, notaries, interpreters and preparers, and those classified as major conspiracies. In instances when USCIS suspects other criminal activity, USCIS will also refer cases to ICE for investigation and subsequent presentation to the Department of Justice for prosecution. Until ICE completes its criminal investigation, FDNS suspends its administrative adjudication process.

In situations involving an attorney or a law firm, such as in the case of the David Law Firm, HSI agents work directly with FDNS officers to share information to address all facets of the investigation. After HSI has completed its criminal case, FDNS officers will use the information provided by HSI or other sources to open administrative investigations on cases associated with an attorney or preparer either suspected or convicted of immigration fraud. When an attorney or preparer is suspected or has been convicted of fraud, USCIS will conduct a thorough review of each pending and previously approved case to determine the appropriate administrative follow-up action to be taken against the parties involved. Where, as in the David Law Firm case, the matter raises concerns of a major conspiracy involving attorneys or preparers, FDNS undertakes specific additional steps to appropriately partner with ICE on such a complex investigation, as explained below in more detail.

USCIS Combats Major Conspiracies Involving Attorneys and/or Preparers

FDNS action on major conspiracy cases often involves filings across multiple offices and large volumes of applications and petitions that originate from a single source. These cases require close coordination with multiple USCIS field offices. Once such cases are referred to ICE, FDNS coordinates closely to help develop the investigation. This is essential as both ICE and USCIS have multiple field offices providing support and resources working toward the shared goal of allowing ICE to successfully present the case to the appropriate U.S. Attorney's Office for criminal prosecution. Finally, FDNS works with USCIS adjudications units after

ICE has concluded its action to determine which cases in the system were affected by the fraud scheme and to address any fraud on a case-by-case basis.

When working a possible major conspiracy investigation, the FDNS process is to first identify the scope of the conspiracy, then to identify the conspiracy's structure in order to make a referral to ICE. When USCIS identifies a major conspiracy to commit immigration benefit fraud, the USCIS adjudication component with jurisdiction over the case will conduct a thorough review of each implicated application or petition to determine the appropriate follow-up action to be taken against the parties involved. To ascertain the scope of the scheme, USCIS conducts systems searches using the indicators specific to the suspected conspiracy to identify other associated cases. FDNS then reviews USCIS records to identify pending and previously approved immigration filings that relate to the scheme. FDNS reviews each relevant case or file identified during the investigation of a major conspiracy to determine if characteristics of the conspiracy are present, and subsequently catalogues any related cases in the FDNS-DS system for management and tracking purposes. FDNS also carefully reviews each case on its individual merits. FDNS and USCIS adjudications units first identify those who participated in the fraud or who are otherwise not qualified for the benefit they received so that USCIS may deny applications or revoke benefits. USCIS can then ensure that innocent parties who qualify for immigration benefits are not disadvantaged by the actions of a conspirator in the fraud scheme.

Once a suspected major conspiracy has been successfully prosecuted, USCIS will identify, retrieve, and review any remaining related cases. Where jurisdiction rests with a USCIS Service Center, as in the David Law Firm case, the Service Centers will work in consultation with FDNS and USCIS Counsel to determine the most appropriate action to be taken on each grouping of cases. Where appropriate, Service Centers will take action to revoke or deny cases through the creation of customized notices for those cases that are determined to be part of the fraud scheme. In certain instances, cases related to the party or parties involved in the fraud, but which do not have the identified characteristics of the fraud scheme, may be left intact.

Similarly, cases requiring action from a USCIS Field Office, such as rescission of permanent resident status, will be referred to the appropriate jurisdiction after consultation with the Field Operations Directorate and/or the appropriate Regional Office. Applicants or petitioners who are identified as removable may be issued an Notice to Appear (NTA), the charging document that initiates removal proceedings before the Department of Justice, consistent with our existing fraud policies and priorities. NTAs are issued when a Statement of Findings (SOF) substantiating fraud is part of the record. An NTA will be issued upon final adjudicative action on the petition and/or application or another appropriate eligibility determination. NTAs will be issued even if the petition and/or application is denied for a ground other than fraud (such as lack of prosecution or abandonment), is terminated based on the petitioner's or applicant's withdrawal, or where an approval is revoked, provided an SOF substantiating fraud is in the record.

Background of the Earl Seth David Case

According to the criminal indictment, Earl Seth David perpetrated a fraud scheme that caused as many as 25,000 fraudulent petitions to be filed between 1996 and 2009, when law enforcement officials shut down the David Law Firm. The fraud scheme generally operated through the filing of fraudulent immigration petitions using non-existent U.S. companies or shell companies. These companies then “sponsored” aliens for employment in the U.S. To support this scheme, David and his associates in the David Law Firm submitted false records of employment, Federal tax returns, and corporate governance documents and provided falsified evidence to substantiate applicants’ work experience and special skills, all of which were required to establish lawful eligibility for the visa.

USCIS’s Discovery of the David Law Firm’s Fraud Scheme

USCIS first recognized irregularities in David Law Firm filings in 2005, when internal referrals of petitions for employment-based visas were made by Vermont Service Center (VSC) adjudicators to the FDNS officers located at VSC.

FDNS personnel at the VSC initiated an administrative investigation into David Law Firm cases involving petitions for nonimmigrant workers (filed on Form I-129) due to articulated suspicions of immigration fraud. The Form I-129 is used by an employer to petition USCIS for an alien beneficiary to come as a nonimmigrant to the United States temporarily to perform services or labor or to receive training. The suspicions included a lack of supporting documentation and FDNS’ identification of shell companies that the David Law Firm used in filings for the immigration benefits. During the course of its investigation, FDNS learned that ICE also had an open criminal investigation into the David Law Firm and closed its administrative investigation. At the conclusion of its administrative investigation, FDNS consulted with ICE and then provided USCIS adjudicators with information about the presence of fraud indicators and recommended that requests for evidence be issued to any petitioning employers and reviewed carefully to establish the legitimacy of the business. The David Law Firm continued to file applications and petitions with the USCIS.

Shortly thereafter, in 2006, the Texas Service Center’s (TSC) FDNS personnel initiated an administrative investigation into David Law Firm cases involving immigrant petitions for alien workers (filed on Form I-140) due to articulated suspicions of immigration fraud. The Form I-140 is used to petition USCIS for an immigrant visa for an alien worker and can be filed by the employer or the alien, depending on the circumstances of the case. Unlike the Form I-129, which is a nonimmigrant petition, the I-140 could eventually lead to lawful permanent residence. FDNS’ suspicions were whether the petitioning organization existed and whether the David Law Firm had misrepresented the alien beneficiaries’ work experience.

During the course of its administrative investigation, TSC’s FDNS personnel coordinated with ICE and Department of Labor (DOL) in reviewing David Law Firm-associated cases located at the TSC in an attempt to ascertain the scope of the fraud being committed. At the conclusion of the administrative investigation, TSC FDNS personnel issued a fraud alert to the Associate Center Directors at the TSC for dissemination to adjudications officers, alerting

them to the David Law Firm fraud scheme. This resulted in a more thorough and scrutinized review of David Law Firm filings to ensure the bona fides of the individual case being adjudicated.

USCIS's Review and Analysis of All David Law Firm Filings

USCIS is continuing to identify and review the more than 25,000 receipts in our system associated with the David Law Firm. These are receipts for petitions and applications that USCIS has not already denied on other grounds. We are also searching our systems to locate additional receipts associated with the David Law Firm and the other individuals who have been charged in the indictments related to this scheme. As we continue to proceed with this search we expect the total number of filings to be higher than the current number because we will also review filings for other types of immigration benefits, such as extension of nonimmigrant status, petitions for family-based immigrant status, and the replacement of lawful permanent residence cards. To date, of the over 29,000 previously approved applications associated with the David Law Firm, USCIS has reviewed over 2,000 substantive cases, of which 203 have subsequently been denied or revoked for fraud, or are in the process of being denied for fraud. USCIS continues to review the remaining approved cases to determine whether any benefits were obtained through fraud.

USCIS Has Strengthened Its Fraud Detection Capabilities

USCIS takes careful note of fraud indicators, patterns, and schemes, as it did in the David Law Firm case. This allows us to strengthen our standard operating procedures and reduce program vulnerabilities, ensuring that future cases are identified and dealt with swiftly. USCIS has implemented new operational tools and process improvements to detect and combat attorney-based fraud and major fraud conspiracy cases, like the David Law Firm case.

For example, to assist the agency in identifying and verifying key information about suspect sponsoring employers, organizations, or companies earlier in the adjudicative process, USCIS has implemented a screening tool referred to as VIBE, the Validation Instrument for Business Enterprises. VIBE became fully operational in December 2011. It is a web-based system to enhance our ability to verify key information for certain employment-based petitions, including the financial standing of the company, the number of employees both on-site and globally, and the status of the company as either active or inactive. With the advent of VIBE, we have made a monumental shift away from reliance on paper documentation submitted by a petitioning company or organization to an ability to verify its assertions against commercially-held information in establishing a petitioner's existence and eligibility for the requested benefit.

Other improvements that have been implemented since the initiation of the David Law Firm investigation, although not all directly related to that case, include enhanced fraud referral criteria and processes and increased targeted site visits of those suspected of committing immigration benefit fraud. Standard Operating Procedures have been updated to reflect improvements in fraud detection capabilities. In order to detect and deter fraud, USCIS has also implemented an Administrative Site Visit and Verification Program (ASVVP). USCIS

uses the ASVVP to verify information contained within certain employment-based petitions, including religious worker petitions. The ASVVP process is explained in more detail below. Critical to the understanding and identification of fraud, USCIS has implemented an improved training program that will provide training to all adjudicators by the end of the second quarter of FY 2013. This training provides information on current fraud trends and indicators while also alerting adjudicators to the new tools and capabilities that FDNS offers. Through the implementation of such specific efforts, USCIS is confident that if the David Law Firm filed its first cases today, USCIS and ICE would identify and dismantle the scheme very early in its life.

I will now explain these efforts in further detail, along with other proactive measures USCIS is undertaking to strengthen its national security safeguards.

USCIS's Anti-Fraud Enhancements

As Director Mayorkas testified before this Committee in February, USCIS has undertaken significant steps to protect the integrity of our nation's immigration system and to help safeguard our nation's security. I want to provide again a synopsis of just a few of these proactive measures and our current progress in the area of anti-fraud enhancements:

- To date, we have increased the number of FDNS officers, analysts, and staff to more than 780, an approximately 25 percent increase over the prior two years, and allocated new FDNS positions in Field Offices and Service Centers to strengthen coordination and collaboration with our front-line employees.
- We have worked with the Department of Justice's Civil Division and Executive Office for Immigration Review (EOIR) and the Federal Trade Commission to launch the Unauthorized Practice of Immigration Law initiative. Together, we have partnered with state and local governments to develop and implement a comprehensive initiative that combats the unauthorized practice of immigration law by building capacity to deliver legitimate assistance, educating the public about finding bona fide legal advice, and strengthening prevention and enforcement efforts.
- Specifically relating to the practice of law, in a memo dated May 23, 2012, USCIS established guidelines for the eligibility of attorneys and other representatives to appear before USCIS while representing applicants for immigration benefits. This guidance encourages USCIS officers to verify the eligibility of attorneys and other representatives by consulting the DHS Disciplinary Counsel website and the list of disciplined practitioners maintained by EOIR. The memo cautions USCIS officers to be aware of individuals who have falsely claimed to be attorneys or other accredited representatives, as well as individuals who have been the subject of federal, state, or local court action to stop their unauthorized practice of law or to stop their theft of fees for legal services they may not lawfully provide.
- We have enhanced our overseas verification efforts by increasing our FDNS staffing footprint and collaborating with the Department of State's Fraud Prevention Program

in countries where there is no USCIS presence. Our overseas verification program combats immigration fraud, both in pre- and post-adjudication of benefits, by assisting domestic USCIS adjudicators in the verification of an applicant's assertions through site visits or the authentication of suspect documents by liaising with the issuing authority in the host country. We continue to develop and update standardized protocols to enhance the program's consistency and effectiveness, and we continue to support domestic offices by sharing best practices and up-to-date verification information. Additionally, USCIS continues to participate in the development of immigration fraud information sharing under international agreements.

- Our Administrative Site Visit Verification Program (ASVVP) performed more than 17,000 site inspections in FY 2011 (an increase of over 2,000 ASVVP inspections from the previous fiscal year). Through ASVVP, we conduct unannounced pre- and post-adjudication site inspections to verify information contained in certain visa petitions. The program is designed both to detect and deter fraud. We hired and trained more than 75 new federal officers to replace contractors, and hired 13 senior officers and analysts to oversee the program. We also are expanding the use of data derived from the ASVVP that will inform and improve our ongoing anti-fraud efforts by establishing fraud indicators, as derived from site visits, to be used earlier on in the adjudicative process and allow the adjudicators to make a more well-informed decision on the case before them.
- We enhanced the analytics and reporting capabilities of our Fraud Detection and National Security Data System (FDNS-DS). FDNS uses the system to document, analyze, and manage our agency's fraud and national security cases. Among other advances, the separate processes previously used to manage fraud and national security cases, respectively, were combined into a single system. The new, consolidated system allows officers to conduct person-centric queries and display all relevant information about an applicant, petitioner, or beneficiary. We also expanded the system's ability to import application-related data from other USCIS systems, substantially enhancing the breadth, accuracy, and utility of records in FDNS-DS. As system limitations are identified and as our anti-fraud and national security programs mature, FDNS-DS is updated to reflect the needs and capabilities of our officers. Along with improvements in data integrity, these refinements give us better capabilities in the identification, tracking, and resolution of fraud, national security, and public safety issues.
- We launched fraud reporting tools and began delivering fraud bulletins in real-time to agency personnel. The fraud-detection bulletins are designed to inform our officers of the latest fraud issues, including identifiable trends and practices.
- The USCIS FDNS Training Branch and Fraud Division, in partnership with the Field Operations Directorate (FOD), Refugee, Asylum, and International Operations (RAIO) Directorate, and Service Center Operations (SCOPS) Directorate have created a standardized training course—Identifying and Combating Immigration Benefit Fraud (FRAUD)—to assist FDNS officers and immigration service officers in identifying,

detecting, and deterring immigration fraud. This course is the first step in providing standardized national fraud detection and deterrence training to USCIS officers and includes techniques to identify various types of immigration fraud, discusses best practices to follow in file review and interviewing, and emphasizes the fraud referral and statement of findings processes as communication tools between FDNS and adjudications. Training has already been initiated and will occur throughout the year and beyond. All adjudicators will have received this training by the end of the second quarter of FY 2013.

- Finally, we have enhanced our collaboration with ICE Document and Benefit Fraud Task Forces (DBFTFs), the FBI Joint Terrorism Task Forces (JTTFs), and all State and Major Urban Area Fusion Centers. FDNS officers are detailed to the ICE National Security Unit, the U.S. Customs and Border Protection National Targeting Center, the Department of Homeland Security's Office of Intelligence and Analysis, the Department of Homeland Security's Threat Task Force, the National Joint Terrorism Task Force, the National Counter-Terrorism Center, the Department of State's Kentucky Consular Center and National Visa Center, the FBI's Operational Deconfliction and Analysis Team, the Terrorist Screening Center, the FBI's National Name Check Program, the Central Intelligence Agency, and INTERPOL's U.S. National Central Bureau. These relationships provide USCIS with greater access to information that is critical to the development of fraud inquiries, while also facilitating the sharing of USCIS information and subject matter expertise that is useful to our partners.

Conclusion

USCIS, with the support and oversight of its FDNS Directorate, takes every measure to ensure that it detects immigration benefit fraud and aggressively addresses cases that involve it. USCIS is vigilant in addressing all cases involved in an immigration conspiracy and revoking or rescinding benefits that have been obtained through fraud, while at the same time ensuring that individuals who are eligible for benefits are not harmed by the unscrupulous actions of others.

On behalf of USCIS Director Alejandro Mayorkas and all of our colleagues at USCIS, I thank you for your continued support of the work of the Fraud Detection and National Security Directorate.

Mr. Chairman and Members of the Subcommittee, thank you again for the opportunity to provide information on the status of our program. I look forward to answering your questions.

Mr. GALLEGLY. With the panel's patience, we will have two votes, and I will do everything possible to have us back by 3 o'clock. I really do appreciate your patience, something that we have no control over.

The Committee stands in recess until we return from this series of votes.

[Recess.]

Mr. GALLEGLY. Calling the Subcommittee back to order. Thank you very much for your patience. It seems inevitable that we end up having votes right in the middle of our hearings, but we have got to keep America going.

Our next witness is Mr. Chris Crane. Mr. Crane currently serves as the President of National Immigration Customs Enforcement Council 118, American Federation of Government Employees. He has worked as an immigration enforcement agent for the U.S. Immigration Customs Enforcement, better known as ICE, at the Department of Homeland Security since 2003. Prior to his service at ICE, Chris served 11 years in the United States Marine Corps. Semper fi and welcome.

TESTIMONY OF CHRIS CRANE, PRESIDENT, NATIONAL IMMIGRATION AND CUSTOMS ENFORCEMENT COUNCIL 118, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. CRANE. Thank you, Chairman Gallegly and Ranking Member Lofgren. In preparation for my testimony, I spoke with ICE attorneys, Citizenship and Immigration Service employees and supervisors, and ICE employees and supervisors. All voice strong concerns that immigration fraud is widespread and ignored by the Federal agencies tasked with enforcing United States immigration laws.

As a rule, when fraud is suspected or confirmed, no action is taken against the alien involved or their attorney. While fraudulent claims are common during court proceedings, not all private attorneys engage in fraudulent activity and not all aliens engage in fraudulent activity. Typically, the same attorneys engage in fraudulent activities again and again.

ICE attorneys allege that supervisors and judges openly discuss these fraudulent activities but take no action. Some private attorneys blatantly lie to ICE, making fraudulent claims from being deported. Employees I spoke with are not aware of any private attorney being investigated or disciplined for attempting or succeeding in preventing the deportation of an alien through fraudulent and false claims made to ICE.

The CIS adjudicators and field supervisors expressed similar concerns. Both indicate that CIS supervisors are aware that fraud occurs daily, but no action is taken. One employee attending a CIS town hall meeting reported that managers told CIS employees at the meeting that if 50 percent of the application for benefits is fraudulent, it should still be approved, showing the extent to which fraud is accepted by managers in the field. CIS employees report that aliens and their attorneys frequently lie during interviews to obtain benefits, but disciplinary action is not sought, no action is taken to stop future fraud, and the alien's application is not impacted. CIS adjudicators and field supervisors claim that training for fraud prevention is not provided and training requests are ignored. One CIS supervisors stated, "It's as if they don't want employees trained in fraud detection."

Similarly, most employees don't know how to report suspected fraud by private attorneys for investigation. Veteran CIS and ICE employees all indicated that reports to supervisors regarding suspected fraud by private attorneys resulted in no action and that as employees they did not know how to file reports of fraud outside their chain of command.

As immigration fraud is a crime, it is no surprise that many aliens who receive status through fraud often commit crimes after receiving lawful status. These criminal activities often result in investigations by ICE. If an investigation indicates the alien or attorney engaged in immigration fraud, supervisors direct officers to ignore the fraud, officers are told that once lawful status is granted to an alien, even though violation of law was involved, no action will be taken to revoke the alien's status unless that status is revoked based on new convictions.

Likewise, no action is taken against private attorneys involved. Employees maintain that ICE and CIS will only take action in cases involving large-scale fraud or the media. One CIS supervisor confirmed it is the unwritten policy of CIS that once lawful status is granted it will not be revoked, even when known that the status was obtained through fraud.

As a rule, there is no consequence to private attorneys or their clients who engage in fraud, even when reported by CIS and ICE employees. Attorneys who are suspected of fraud continue to practice in immigration courts and CIS offices. As one ICE attorney stated, Why play by the rules when there is no consequence for violating the law?

Employees believe that CIS has become a production line with a singular purpose of approving as many benefits applications as possible, ignoring fraudulent activities. Resisting these practices results in retaliation by managers.

Private attorneys arrested for fraud often continue to represent aliens inside government facilities. One attorney was arrested following grand jury indictment for obtaining fraudulent visas for as many as 5,000 clients. Released on ankle monitor pending trial, the attorney was permitted to enter CIS facilities and continue representing aliens seeking benefits. A CIS employee arrested for the same crime would of course be prohibited from entering the CIS offices altogether.

It is alarming that fraud has become an accepted practice within our immigration system. In post-9/11 America, it is concerning that employees are not trained to detect fraud, employee reports of fraudulent activities are ignored, and agencies have not adopted zero tolerance policies to stop fraudulent activities.

This concludes my testimony. Thank you.

Mr. GALLEGLY. Thank you very much, Mr. Crane.

[The prepared statement of Mr. Crane follows:]

Statement by Chris Crane, President,
National Immigration and Customs Enforcement Council 118
of the
American Federation of Government Employees

Before the
Judiciary Subcommittee on Immigration and Policy Enforcement

July 24, 2012

Thank you Chairman Gallegly and Ranking Member Lofgren.

In preparation for my testimony today I spoke with ICE Attorneys, Citizenship and Immigration Service Employees and Supervisors, and ICE Officers and Supervisors to ensure that I had the latest information from a diverse group of federal employees in the field whose duties frequently expose them to immigration fraud.

Every employee and supervisor I spoke with voiced strong concerns that immigration fraud is widespread and virtually accepted by all of the federal agencies tasked with enforcing United States immigration laws. The agencies I reference in my testimony today are Citizenship and Immigration Services (CIS), Immigration and Customs Enforcement (ICE) and the Executive Office for Immigration Review (EOIR).

As a rule, when fraud is suspected or confirmed in a case no action is taken against the alien involved or their attorney representative. ICE attorneys explain that while fraudulent claims are common during court proceedings before an immigration judge, it is not that all private attorneys engage in fraudulent activities, but instead that the same attorneys and/or firms engage in fraudulent activities again and again. ICE attorneys allege that their ICE supervisors as well as EOIR judges openly discuss the fact that certain attorneys or firms engage in fraudulent activities before the court, so everyone is aware that fraudulent acts are committed, yet no action is ever taken.

Some private attorneys blatantly lie to ICE making fraudulent claims in order to prevent their clients from being deported. Sometimes successful and sometimes not, employees are not aware of any private attorney being subjected to discipline or being placed under investigation

for attempting and/or succeeding in preventing the deportation of an alien through fraudulent and false claims to the agency.

CIS adjudicators and field supervisors express similar concerns. Both indicate that CIS supervisors are aware that fraud is taking place within CIS offices daily and that no action is being taken. One ICE Officer attending a CIS town hall meeting reports that CIS management officials told CIS adjudications officers at the meeting that if 49% or less, or basically half of the information contained in an alien's application for benefits is fraudulent then the application should still be approved. An alarming public announcement showing the extent to which fraud is accepted and condoned by managers. CIS adjudicators report that aliens and their attorney representatives frequently lie during interviews in an attempt to gain benefits for the alien, but once caught in a lie no disciplinary action is sought, no preventative measures are put in place to curtail future fraud, and the alien's application is not impacted and proceeds forward.

CIS adjudicators and field supervisors claim that training for fraud prevention is not provided, and formal requests for training are ignored with no response from upper management. As one CIS field supervisor stated to me, "it's as if they don't want employees trained in fraud detection."

Similarly, most employees don't know how to report suspected fraud by private attorneys for investigation. Veteran CIS adjudicators and CIS supervisors, ICE attorneys and ICE agents and officers all indicated that reports to their respective supervisors and chain of command regarding suspected fraud by private attorneys resulted in no action, and that as employees they were not aware of any investigative component with the authority to investigate allegations of

fraud involving private attorneys, clearly preventing employees from filing reports of suspected fraud outside their chain of command.

As immigration fraud is a criminal activity, it should come as no surprise to anyone that many aliens who receive a benefit such as Lawful Permanent Resident Status through fraud often engage in other criminal activities once granted lawful status to reside in the United States. These criminal activities often result in investigations by ICE agents and officers to determine if the alien should be placed in removal proceedings. ICE agents and officers report that when investigations indicate the alien and/or their attorney representative engaged in immigration fraud to obtain lawful status for the alien, CIS and ICE supervisors direct officers and agents to ignore the fraud and take no action. Officers and agents are literally told that it is the position of ICE and CIS that once lawful status is granted to an alien even though fraud and violation of law was involved no action will be taken to revoke the fraudulently obtained status. Only convictions for new crimes, if any, can initiate actions against the alien who gained lawful status illegally. Likewise, no action is taken against private attorneys who may have been involved. CIS and ICE employees maintain that ICE and CIS will only take action in these cases if large scale fraud involving a large volume of cases is uncovered or if the case could otherwise be of interest to the media. One CIS supervisor confirmed to me that it is still the unwritten internal policy of CIS that once lawful status is granted it will not be revoked, even when it later becomes known that the status or other benefit was obtained through fraud by an alien and/or their private attorney representative.

As a rule, there appears to be no consequence to private attorneys or their clients who engage in fraudulent activities, even when suspected and reported by CIS and ICE employees. Private attorneys who are believed to engage in fraudulent activities continue to practice in EOIR

courts and continue to enjoy full access to government facilities such as CIS offices which provide opportunities for financial gain and the continued ability to participate in fraud against the U.S. government. As one ICE attorney stated to me, "Why play by the rules, when there is no consequence for violating the law?" The impression left with CIS and ICE employees is that CIS has to some extent become a "production line" or "mill" with the one and only purpose of approving as many benefits applications as possible, ignoring fraudulent activities and the fact that many applicants don't actually qualify for benefits. Employees believe that resisting these practices will result in harassment from supervisors, and of course lost promotions and career opportunities. CIS and ICE employees believe that because of agency practice, aliens applying for benefits and their private attorneys are above the law and free to engage in fraudulent activities.

Private attorneys whose suspected involvement in fraudulent activities against the government go beyond the level of employee allegations and reach the level of criminal arrest maintain the ability to represent aliens inside government facilities. As an example, an attorney in Salt Lake City, Utah was arrested as the owner of a law firm indicted by a grand jury for fraudulently obtaining visas for as many as 5,000 clients. Released on an ankle monitor pending trial, the attorney was permitted to enter U.S. CIS facilities wearing his ankle monitor and continue representing aliens seeking benefits. Had a CIS adjudicator been arrested for criminal activities of that level, even if the criminal activities were unrelated to fraudulent immigration activities, the CIS adjudicator would be stripped of all credentials, escorted from the building, placed on administrative leave pending conviction and not be permitted to enter CIS facilities.

It's alarming that fraud has become an accepted practice within our immigration system. That management officials in multiple agencies tasked with upholding U.S. immigration laws

and safeguarding our nation and its communities have chosen to ignore it. It's concerning that, especially in a post 9/11 America, employees are not trained to detect fraud, that employee reports of fraudulent activities are ignored and that agencies don't declare a zero tolerance policy for fraudulent activities and immediately start taking actions to that end, first and foremost encouraging and rewarding law enforcement officers and officers of the court who bring allegations forward.

Allegations made by employees in the field are accurate. Fraud is accepted. Agencies only act when leadership essentially feels forced. As one employee stated, what little the agencies have done is really just "window dressing" intended to cover a much larger problem.

This concludes my testimony; I welcome any questions that you may have.

Mr. GALLEGLY. Our next witness, Ms. Laura Lichter, is the President-Elect of the American Immigration Lawyers Association, or AILA. She has been an elected member of AILA's leadership for over a decade and has served as the association's top liaison to key immigration enforcement bureaus of the Department of Homeland Security and the Department of Justice. Ms. Lichter is AILA's liaison to the American Bar Association Commission on Immigration and serves on the Federal Bar Association's Immigration Law Sec-

tion Advisory Board. Ms. Lichter recently served on the Homeland Security Council's task force on ICE's Secure Communities. She is also former chair of AILA's Colorado chapter.

Ms. Lichter is the founder and managing partner of Lichter Immigration and Immigration Practice. Miss Lichter received her undergraduate at Swarthmore College and her JD from the University of Colorado School of Law.

Double welcome to you this afternoon, Ms. Lichter.

**TESTIMONY OF LAURA LICHTER, PRESIDENT,
AMERICAN IMMIGRATION LAWYERS ASSOCIATION**

Ms. LICHTER. Thank you, Chairman, and thank you, Ranking Member Lofgren, for inviting AILA to testify on this extremely important issue.

As many of my co-panelists have testified today, terrible harm results when unscrupulous individuals prey on the ignorance of others, falsely claiming that they can help people comply with our complicated immigration laws. The financial and human cost to these victims is enormous, as is the cost to integrity of the immigration system and the legal profession itself.

AILA takes criminal or ethical violations quite seriously. But we are a voluntary bar membership organization. Our members must be licensed and in good standing in order to be part of our organization. But attorney discipline is the unique province of the State Bar and the Disciplinary Council for the Executive Office of Immigration Review and the Department of Homeland Security. Neither DHS nor EOIR have the authority, unfortunately, to effectively go after these criminals, and this Federal inaction needs to be addressed.

AILA itself does not investigate or discipline its members. Only a State Bar can revoke the authority to practice law. Loss of membership in a voluntary Bar Association, on the other hand, has no impact on the authority to practice law and, ironically, only impacts the attorneys' access to resources that would help make a better lawyer.

If an AILA member is suspended or disbarred or convicted of a serious crime such as immigration fraud, AILA takes immediate action to suspend that member. Over the past 10 years, AILA has removed from membership for ethics violations an average of six attorneys per year. That is an average of .0005 percent of our membership.

When there is a complaint, we make sure that the victims know where to bring that complaint and what action they can take, whether or not that perpetrator is an AILA member. AILA takes its professional obligation to educate its members quite seriously. We also strive to educate the public. We have a dedicated Practice and Professionalism Center. We provide hundreds of hours to CLE each year. We have launched in recent years two websites, one in English, one in Spanish, that are entitled stopnotariofraud.org that identify how to bring complaints against unscrupulous practitioners whether they be admitted members of the Bar or simply posing as members of the Bar or notarios or immigration consultants.

Despite these efforts, a handful of attorneys do engage in fraud and the effects of that fraud can be devastating. We condemn that unethical and illegal practice and remain committed to doing what we can as a Bar Association to end that practice.

For our part, when AILA members identify victims of fraud, we try to assist those victims to pick up pieces by screening those files, providing free consultations, trying to organize pro bono representation or reduced fees to those victims.

This is a serious problem, but I would urge this Committee to widen the scope beyond simply looking at immigration attorneys. As many of my co-panelists have mentioned today, the issue is not simply limited to licensed members of the Bar. It is notarios and other unscrupulous people who fill the vacuum that is created by a lack of adequate resources for indigent and low-income individuals. On AILA's part we try to provide pro bono, reach out through clinics, we have a military assistance program, and we also sponsor citizenship days to make sure that we can actually bring good information out into the community.

I urge the Committee to realize that many of those implicated in these fraud schemes are in fact victims. They might not have understood that they weren't eligible for the benefit they sought. They might not have been terribly well educated. They may not have been able to read the applications or even seen the applications that were submitted on their behalf. They may have even been compelled to sign a blank form that was later submitted with inappropriate information on it. Weekly, I see people in my office who have been misled by these consultants or bad attorneys simply because they went into some place and a guy in a suit told them, "Look, this is how we do it. Don't worry. You paid your money. I can get you status."

I would suggest that given the complexity of immigration laws, that it is quite reasonable for people to be duped by those situations. Once people find out that they have been victimized, what do they do? Frankly, often not much, mostly because they are worried. They are scared. They are undocumented. They may not have much trust in the system if they come from a country where lawyers part of the problems, where there is real corruption. Unfortunately, our State and local bar authorities say this is not a priority. We don't see much action by them. Frankly, notarios are hard to find and harder to prosecute.

Finally, I would urge the Committee not to confuse the question of eligibility or technical issues with actual fraud.

Mr. GALLEGLY. Thank you very much, Ms. Lichter.

[The prepared statement of Ms. Lichter follows:]



**Testimony of Laura Lichter, President
American Immigration Lawyers Association**

**Submitted to the
Subcommittee on Immigration Policy and Enforcement of the
Committee on the Judiciary of the U.S. House of Representatives**

**Hearing on July 24, 2012
“The Aftermath of Fraud by Immigration Attorneys”**

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Distinguished Members of the Subcommittee, I am Laura Lichter, national President of the American Immigration Lawyers Association (AILA). I appreciate the opportunity to appear before you today concerning the serious problem of immigration fraud. Terrible harms result when unscrupulous individuals prey upon the ignorance of others by falsely claiming they will help people comply with the immigration laws. The financial and human cost to their victims is enormous, as is the cost to the integrity of the immigration system.

AILA has nearly 12,000 attorney and law professor members. For more than 60 years, this organization has remained focused on excellence in immigration law practice by providing continuing education, guidance, and mentoring to our members. Our commitment to professionalism is a prominent component of our mission.

Attorney Discipline and Training

AILA regards very seriously any criminal or ethical violation, such as immigration fraud, by an attorney.

Attorney discipline is the province of state bar licensing authorities and the disciplinary counsel for the two major immigration agencies, the Executive Office for Immigration Review (EOIR) and the Department of Homeland Security (DHS). State bar authorities can censure, suspend or fully disbar attorneys, among other remedies. EOIR and DHS have similar sanctions at their disposal with respect to practice before those agencies.

As a voluntary bar association, AILA does not have a role in disciplining lawyers. That is because loss of membership in a voluntary bar has no impact on the attorney's authority to practice law. It only impacts the attorney's access to resources that help him or her be a better lawyer. Only the bar of the state in which the attorney is licensed can revoke the attorney's authority to practice law.

AILA does require, however, that all members be licensed to practice law and in good standing with their state bar association. When a member of AILA is suspended or disbarred from the practice of law by one of these disciplinary bodies, or convicted of a serious crime such as immigration fraud, we take immediate action to suspend or expel that member from our organization in accordance with our by-laws. As part of our commitment to protect consumers,

we provide guidance to help them locate the appropriate state and federal disciplinary agencies to help resolve any problem they may have with their lawyer—whether or not the attorney is an AILA member. Over the past ten years, AILA has removed from membership for ethics violations an average of six attorneys per year.

One of AILA's primary roles is to provide immigration lawyers with the resources to be effective, ethical attorneys. For example, in 2006, AILA launched the Practice & Professionalism Center, which is dedicated to the shared ideals of the profession, including service to clients, ethical conduct, increasing competence, respect for the legal system, and pursuit of the public good.

The Practice & Professionalism Center provides a wide array of resources promoting ethical conduct and increasing professionalism among immigration lawyers:

- timely articles to help attorneys better understand state and federal ethical rules;
- an on-line directory of over 250 volunteer mentors who provide professional guidance to our members to help them avoid making critical mistakes;
- weekly practice tips to encourage best practices;
- informative podcasts on ethical issues for our members to download 24/7;
- frequent national and local seminars to improve the delivery of legal services and address immigration-specific ethical concerns; and
- free one-on-one consultations with our in-house ethics director to help our members discuss and resolve difficult ethical issues.

Furthermore, AILA provides hundreds of hours of Continuing Legal Education each year on a national and chapter basis to make sure attorneys build their competency and expertise in immigration law and practice.

Despite these efforts, a handful of attorneys do engage in fraud. The effects of that fraud can be devastating. AILA condemns such unethical and illegal practices and remains committed to ending them.

When an Immigration Practitioner Commits Immigration Fraud it Hurts Everyone

When a lawyer, BIA-accredited representative, or unlicensed immigration consultant, commonly known as a *notario*¹, commits immigration fraud it causes harm to innocent immigrants, to the legal system, to the integrity of the immigration process, and to the legal profession. Often clients believe they are being directed through a legitimate legal process, and are unaware of the fraud being perpetrated by the lawyer, accredited representative or consultant. Often individuals suspect that something is amiss. Unfortunately, with such a complicated process, it is easy for unscrupulous practitioners to convince their victims that they don't understand immigration law. In other cases, an applicant may just be so desperate that he or she will ignore the warning signals. These practitioners often dupe their clients with unattainable promises in order to take their money. Almost without exceptions, these hopeful immigrants wind up in a worse position because of the unscrupulous actor. They are very much victims of this crime.

A few examples of victims' situations are:

¹ The term *notario* is used in some Latin American countries to refer to lawyers with certain credentials. Unlicensed, unregulated consultants often adopt this title in the U.S. to convey the impression of being an attorney, while they prey upon unknowing immigrants by claiming they can obtain immigration benefits for a bargain price.

- Peter (not his real name) went to an individual who falsely claimed to be an attorney. She told him that he qualified for permanent residence under a law that, in fact, does not exist. He turned over to her the original of his previously-approved immigrant visa petition approval, and paid her more than \$2,000. When he queried about the progress of his case, she spoke vaguely of “complications” and asked for more money, which he did not have. He later came to realize that he had been the victim of a scam.
- Maria (not her real name) was advised by an immigration consultant to apply for asylum, even though Maria was clearly not eligible. To acquire a patina of legitimacy, the consultant used a relationship with a licensed attorney who had little actual involvement in the case.² A few months and \$8,000 later, her application was denied, and Maria is now potentially facing deportation in removal proceedings.
- Several companies in the New England area filed legitimate petitions on behalf of individuals needed in their businesses, but they and/or their employees had been represented at the time by an attorney who was later sanctioned for immigration fraud. Not all of his petitions were fraudulent, however, and these petitions were among that group. Their petitions have been, understandably, the subject of investigation. At least one has been rescinded, despite being a legitimate case, and that rescission is currently under appeal. They did not know that they had sought counsel from an attorney engaged in fraud, they did not themselves engage in fraud, and in fact their petitions and labor certifications had no fraudulent elements. But, because of the suspicion cast on all of that attorney’s cases, they have seen their petitions revoked, denied, or delayed to such an extent that it is tantamount to a denial.
- In 2010, after New York’s largest *notario* operation was shuttered by then-Attorney General Cuomo, Agustin (not his real name) attended a pro bono clinic co-sponsored by AILA to specifically help victims like him. The lawyer used by the *notario* to make the actual immigration court appearance was so incompetent that Agustin was set to be deported even though he had been legally admitted to this country and has a U.S. Citizen spouse. Fortunately, his new lawyer was able to stop the deportation, successfully appealed to the BIA to reopen his case, had his immigration petition properly approved, and the man—a successful professional in his home country of Argentina—has his interview for his green card this week. Not every victim is as fortunate as Agustin.

Addressing Practitioner Misconduct

What can be done for these victims? Unfortunately, often very little. Frequently the victims are undocumented, and thus unwilling to come forward to report the malefactor to law enforcement. They sometimes come from countries where the attorney licensing structure is tied in with law enforcement or with corrupt institutions, and thus do not view bar complaints as a safe means of redress.

Law enforcement inaction sometimes is the problem, as many of the state and local entities charged with enforcing the law consider these cases low priorities. Plus, the *notarios* can be

² This is a common scheme for consultants and *notarios*. The attorneys in these schemes breach their ethical duties by partnering with a non-attorney, not supervising the case, and committing fraud. The consultants engage in the unauthorized practice of law.

notoriously hard to find. When a state agency begins investigating a *notario*, the person often quickly closes up shop, moves to another state, and opens under a new name.

Some states' attorneys general do pursue the perpetrators, seeking to close them down and impose penalties. Texas and New York attorneys general have made some notable strides in this regard. But most often these perpetrators are ignored by local law enforcement. The person in "Peter's" case is still operating, despite at least three victims having come forward. Others continue in the same vein.

For attorneys, 51 state court disciplinary agencies investigate the misconduct of lawyers. But these agencies, in most cases, do not have authority to investigate accredited representatives or *notarios*.

Under federal law, lawyers and accredited representatives are authorized to provide immigration legal services to the public. The Executive Office for Immigration Review (EOIR), within the Department of Justice, and the Department of Homeland Security (DHS) may investigate misconduct of lawyers and accredited representatives that appear before them.

Lawyers and most accredited representatives are easy to find, *notarios* are not. Lawyers and accredited representatives are licensed or otherwise authorized, have identifiable places of business, and can be easily located in the event of a criminal investigation. They generally identify their involvement in case by signing the documents that they submit to the agencies. *Notarios* are unlicensed, can disappear in a matter of hours, rarely reveal themselves on the documents they submit, and are not easily located to face criminal charges.

The result of these challenges is that resources to uncover misconduct by *notarios* are woefully inadequate. There are thousands of *notarios* in every ethnic community in America, and they harm thousands of immigrants every year. These fly-by-night predators either fail to file a benefit application as promised or make incompetent or fraudulent applications that may prevent the unknowing immigrants from ever obtaining their American dream.

Recently, the Federal Trade Commission has filed two cases against *notarios* by using its authority to prosecute deceptive advertising. These are important, innovative prosecutorial efforts. But there are thousands of *notarios* that commit fraud with impunity. Neither EOIR nor DHS have the authority to go after these criminals. This federal inaction needs to be addressed.

We believe lawyers—just as any other unscrupulous practitioner—should be punished for committing immigration fraud. We also believe that more resources must be directed at these unlicensed immigration consultants.

Because of the damage *notarios* and unqualified consultants practicing immigration law cause to the lives and families of immigrants, AILA is committed to stopping them. In 2010 we launched www.StopNotarioFraud.org, our latest effort to educate the public on the harmful, dishonest, and criminal conduct of these predators. We are saddened by the heart-wrenching stories we hear when immigrants come to our members after a *notario* has destroyed any opportunity the immigrant had to stay in this country legally. Because our professional lives are dedicated to helping others, we simply cannot stand by and watch the damage being done by these *notarios*.

We urge EOIR, DHS, and Congress to commit more resources to educate unknowing consumers, and to bring these unscrupulous and hard-to-prosecute *notarios* to justice.

Within DHS, U.S. Citizenship and Immigration Services (USCIS) has increased its efforts in this regard, launching its own Stop Notario Fraud efforts and reaching out to educate the public that “the wrong kind of help can hurt.”

In addition, USCIS’ Fraud Detection and National Security Directorate (FDNS) investigates fraud. In its earlier years, that unit tended to lack focus and cast such a wide net that it seemed more a waste of resources than an effective law enforcement tool. Its risk identifiers were so broad as to be useless.³ Recently, its focus has improved, though we still see intrusive site and home visits based not on a reasoned analysis of potential risk, but on an apparent need to meet a quota of visits made. It is our understanding that better risk assessment tools are being developed, which should make for a more effective use of resources.

Helping the Victims

When fraud is uncovered, the immigration bar tries to step in to help the victims of unscrupulous practitioners to return them to a proper immigration path. If a lawyer or accredited representative is suspended from practice, AILA members in the local area often assist the immigrants by providing screening files, providing free consultations and reduced fee services to the victims. Over the past several years our members have responded to a variety of situations:

- The Attorney General of New York closed a large unlicensed immigration consultant in 2011, so our New York Chapter organized several large free clinics to provide information and guidance.
- When attorney Jose Del Castillo was convicted of immigration fraud, members of our Connecticut Chapter responded by helping the court-appointed custodian to promptly protect the clients’ interests, take over their court cases, and help them file grievances against Mr. Del Castillo. Furthermore, when Mr. Del Castillo sought reinstatement to the Connecticut Bar, our Connecticut Chapter publicly opposed his request. They wrote a letter to the Bar in opposition, and several attorneys who had taken over his cases appeared to testify about the appalling condition of the cases when they took them over.
- When the Federal Trade Commission filed a complaint against a *notario* in Baltimore last year, AILA responded by organizing two clinics, in conjunction with several local community partners, to provide free legal screening and referral services to the victims.
- Currently our members are participating in a joint effort to sort through thousands of cases undertaken by a well-known accredited representative in New York City who was stripped of his authorization after taking on far more cases than he was able to competently handle.

AILA chapters will continue to be of assistance in these matters whenever possible. We view this work as part of our professionalism.

Helping the System

³ A primary example is USCIS’ “10-25-10” formula, which maintained that a petitioning employer with annual revenues of less than \$10 million, 25 or fewer employees, OR an existence less than 10 years should be subject to additional scrutiny because those factors were, oddly, seen to be indicators of fraud despite the history of smaller and newer businesses as engines of job creation.

A factor contributing to the presence of fraudulent practitioners is the lack of low-cost and no-cost legal services to meet the needs of foreign nationals trying to navigate our extraordinarily complex immigration system. For more than a decade, EOIR's Office of Legal Access Programs has run several programs that improve access to legal information and increase the rate of legal representation for individuals in removal proceedings. Though EOIR does not offer direct legal representation, these legal orientation and pro bono programs reach thousands of unrepresented individuals annually and help educate them about the immigration legal process and facilitate their access to counsel.

AILA is dedicated to doing its part, both alone and in conjunction with others, to address these needs. A few of our pro bono programs are:

- The AILA Member Pro Bono Pledge is an association-wide effort to inspire and support each other to publicly commit (or recommit) ourselves to pro bono service. We ask all members to take the Pro Bono Pledge—committing a minimum of 50 hours per year per attorney, and encouraging up to 150 hours of service per year. AILA members have a long and respected history of being extremely generous with their time by providing pro bono services to their communities. Even with the valiant efforts of so many, the need for pro bono continues to grow, so as attorneys specializing in immigration, we have a professional responsibility to help meet this need.
- The AILA Military Assistance Program is a collaboration between AILA and the legal assistance offices of the United States military Judge Advocate General's Corps. Since the inception of this program in 2008, AILA members have provided free immigration legal services to active duty service-members and their families to provide peace of mind to these courageous men and women of the United States Armed Forces.
- AILA Citizenship Day is a single-day, nationwide event to provide free or low-cost assistance to eligible legal permanent residents who wish to apply for U.S. citizenship, utilizing partnerships between AILA chapters across the country and the National Association of Latino Elected and Appointed Officials (NALEO). Over the past six years, this event has helped thousands of legal permanent residents take that last step to realize their dream of being a proud U.S. citizen. AILA Citizenship Day received the 2008 Award of Excellence in the Associations Advance America Awards program, a national award sponsored by the American Society of Association Executives (ASAE) and The Center for Association Leadership.
- In response to the tragic earthquake in Haiti and the ensuing humanitarian crisis, AILA developed a comprehensive list of resources on pro bono efforts nationwide. We provided resources for our local AILA chapters and non-profit legal service providers to host pro bono TPS clinics throughout the United States, and provided additional TPS resources for the public while warning against the harm of *notario* fraud.
- For the past several years, AILA has organized a pro bono clinic in the city that hosts our annual convention. We organize and coordinate this effort with local immigrant organizations as a way to say thank you to our host city.

- In addition to these and other national efforts, many of AILA's 38 local chapters conduct their own pro bono programs, providing free assistance to indigent immigrants and their families facing the complexities of the immigration system.

Conclusion

Fraud in the immigration process is of serious concern, and merits attention and resources to combat it and its effects. Every day, members of AILA see dreams broken by the very people who promised to help those who need help. We applaud the attention to this problem, and look forward to working with all concerned toward a solution.

Thank you again for the opportunity to address this important topic.

Mr. GALLEGLY. Mr. Rodriguez, in your testimony you got into quite a bit of depth of the concerns of fraud. Do you believe that ICE and USCIS effectively share information and collaborate with each other in an efficient manner and how high a priority does ICE place on providing resources to immigration fraud investigations?

Mr. RODRIGUEZ. Yes, I do believe we have excellent cooperation and exchange of information, and that is evidenced by the number

of cases that are before the Subcommittee in which if not all, most there have been significant FDNS participation. In terms of resources, just looking over a 3-year snapshot, consistently our case hours, basically converted to FTEs, have increased at a rate of over 20 percent. 2010, 446 FTE hours; 2011, 543 FTE hours; and by the third quarter of this fiscal year we were already reaching 369. So I do believe that the outcomes of our efforts are there. They are part of the record. In this hearing specifically the cases show the importance that we give to these cases and we have prosecuted cases that are completely, or that are extremely sophisticated in those schemes and very hard to break and we have done that effectively time and time again.

Mr. GALLEGLY. What kind of information is provided to USCIS by HSI with respect to the instances of fraud and what kind of actions might USCIS take in response?

Mr. RODRIGUEZ. Well, speaking about the type of information that we would provide, any information from cooperating defendants, information we might have obtained through proffer. The information can be generic in the sense of we find boilerplate language, but it can also mean this company that is referenced in these applications are shell companies. They do not exist. And we have testimony to that effect and we provide them with a memo for inclusion to the file so that they can follow up with their proceedings.

Mr. GALLEGLY. Ms. Kendall, how many bogus green card petitions did Attorney Koortzky, who used the power of attorney to sign petitions, how many were approved by DHS and how many of those petitions were revoked and how many aliens who had revoked actually been removed?

Ms. KENDALL. I am sorry.

Mr. GALLEGLY. The first question is: How many of these petitions were approved by DHS? The second question is: How many petitions were revoked: And of those that were revoked, how many actually were removed?

Ms. KENDALL. In which case?

Mr. GALLEGLY. Where Mr. Koortzky used the power of attorney to sign petitions.

Ms. KENDALL. I don't know that I have those exact statistics at my fingertips.

Mr. GALLEGLY. Could you provide those to the Committee in a reasonable amount of time for part of the record of the hearing?

Ms. KENDALL. It would be my pleasure to do so.

[The information referred to follows:]

U.S. CITIZENSHIP AND IMMIGRATION SERVICES
Fraud Detection and National Security Directorate



Executive Level
Case Summary

August 10, 2012

Note: This investigation pre-dated the creation of the Department of Homeland Security. Washington, DC area attorney, Samuel G. Kooritzky, was indicted in October 2002 and convicted in December 2002.

Name of subject: Samuel G. Kooritzky

Type of fraud: Employment/Labor Certification.

Fraud indicators: The investigation was based on allegations by the managers of chain restaurants that Kooritzky was filing labor certifications on behalf of the restaurants without their consent or knowledge. The applications contained false job offers and the forged signatures of managers of the businesses. Mr. Kooritzky presented the applications as legitimate to his clients, charging them \$7,000 to \$20,000 per application.

Number of filings: Kooritzky Law Firms filed a total of 9,557 immigration filings, of which over 4,000 were reviewed as potentially related to the fraud scheme.

Action taken in the case: This investigation involved Washington, DC area attorney, Samuel G. Kooritzky, who filed a total of 9,557 immigration filings with the legacy Immigration and Naturalization Service (INS).

This was a task force operation involving legacy INS Investigations, DOL, INS Domestic Operations, Department of State (DOS), Internal Revenue Service, and the Fairfax County Police Department. At the conclusion of the investigation, Kooritzky was indicted on sixteen offenses and convicted of eight including conspiracy, making false statements, immigration fraud, labor certification fraud, money laundering, and extortion. He was subsequently sentenced to ten years imprisonment and ordered to forfeit \$2.3 million. One of his associates, a DOS employee named Ronald Bogardus, pled guilty to one count each of conspiracy, labor certification fraud, money laundering, immigration fraud, extortion, and was sentenced to eight years imprisonment and ordered to forfeit \$4 million. Another associate, Ronald Carl Von Neumann, was indicted on three offenses and pled guilty to one count of extortion by an employee of the United States and sentenced to serve one year in prison.

Outcome of case: During the course of the investigation, adjudications officers located at the Texas Service Center processed suspect cases. Of the 4,000 filings that were reviewed as potentially related to fraud, duplicates and ancillary filings were removed and 2,182 cases were identified as requiring physical review and analysis. Ultimately, 1,170 cases were denied, revoked, rejected, or terminated.

Mr. GALLEGLY. Fine.

Mr. Crane, in your testimony you paint a pretty grim picture of pervasive fraud throughout the system. You state little action is taken, even when there is known fraud. To what level does the fraud have to rise, in your opinion, before any official action is taken, based on your statement?

Mr. CRANE. I think generally speaking it does have to be of a very large scale. There has to be a large number of individuals involved in it and it has to be something that probably is going to be to the scale of hitting the newspapers, making the news.

Mr. GALLEGLY. Do you think that increased enforcement and punishment against private attorneys would help deter pervasive policies?

Mr. CRANE. I absolutely believe that is the case, but I think that we need to do something at the ground level with the employees to encourage them to do their jobs. These are law enforcement officers. Let them to do their jobs. Give them the time that they need to do the investigations. Give them a process to report these instances to and give them a way of controlling individuals that come into their offices and commit fraud.

Mr. GALLEGLY. Thank you. My time has expired. I yield to the gentlelady, Ms. Lofgren.

Ms. LOFGREN. Thank you very much, Mr. Chairman. I think that in some cases we are doing too much and in some cases not doing enough. This is part of the concern I have. We had a hearing a while ago about the use of requests for evidence. And I have a concern about when that is triggered. My understanding is that additional review is triggered if two or more of the following indicators are present: Less than \$10 million in revenue, less than 25 employees, or the company is less than 10 years old. Well, that is a start-up. Startups aren't frauds per se. That is my district.

So I don't understand why that would be the indices. And yet I have seen requests for evidence to the largest employer in my district—not to say whether or not the petition should be approved. I mean, that is a separate issue. Does the company exist? Well, yeah. They have 50 buildings. Or, requests for financials from Microsoft or a request from the former prime minister of a major European country for evidence of his past employer—the country he ran. Those are things that are just crazy. And yet there are some things out there that really should be investigated.

What are you doing to try and get the remedies applied to the problem areas and not bug the non-problem areas?

Ms. KENDALL. Thank you. We are always conscious as an agency of our obligation to make sure that we are managing our programs in a rational and data-driven way. When we implemented the VIBE, one of the best options that the VIBE brought into our organization was the ability to have third-party information brought into the adjudicative process. This allows us to have a better quality way of verifying information so that we can reduce the number of unnecessary RFEs, for example. In addition to which, for example, we are doing an internal review in our site visit program to see how we can be more efficient in the way that we use site visits so that we are not unnecessarily burdening those that have been subject to site visits and perhaps we are being more fiscally responsible in reducing the number of site visits. Bundling, for example, if we can do multiple visa verification processes in one visit of a location as opposed to visiting the same location over and over.

Ms. LOFGREN. That is very helpful. Whether or not the visa should be issued to a specific person is a separate issue. Whether the employer exists, you can find that out.

Ms. KENDALL. So we are always conscious of our obligation to improve our processes, find more ways to be more effective with the resources we have, and to work with communities of interest within the immigration world to be effective, and we are always interested in suggestions and concerns from the public. For this reason, we have a very proactive and aggressive means of soliciting comments from the public, and we are interested in any ideas the Committee has.

Ms. LOFGREN. Let me ask you, you heard Mr. Crane's testimony and it included pretty extravagant assertions made about fraud in the agency. Now I am mindful that Mr. Crane is president of his union, which we respect, but he is not representing ICE trial attorneys or HSI agents. Do you have comments on the assertions that he made as someone who actually is in charge of this?

Ms. KENDALL. USCIS is absolutely committed to an adjudications environment which combats, detects, deters fraud in our process. We have an obligation to the American public to ensure the integrity of the immigration process. Director Mayorkas came to this Subcommittee in February of 2012 and expressed completely our obligation and commitment to getting to the correct answer in every adjudication that we undertake. This is reflected in the fact that our primary and first strategic objective at USCIS is national security and fraud detection. This is reflected by Director Mayorkas' elevating fraud detection and national security to full directorate status in 2010, making it on par with the adjudications directorate within the agency.

From 2010 forward, in the last 2 years, he has increased and the agency has invested 25 percent increases in personnel at the front line agency level to make sure that our adjudication staff is able to more effectively combat the fraud and national security threats that we find in our immigration beneficiaries stream.

Further, we are currently implementing, in addition to the basic training on fraud that we do for every incoming employee in the agency, we are right now implementing fraud training for all existing employees that covers fraud indicators, how to better work with existing FDNS personnel, how to better understand FDNS processes, including a statement of findings, which is the fundamental document that records our investigative processes. We anticipate that that will be finished nationwide within the adjudications corps I believe in early fiscal year 2013.

We have further inculcated into our standard operating procedures requirements of referral of fraud cases from the adjudications to the FDNS side of the house to make sure every adjudicator in our agency knows where fraud is to be referred and can be trained on how that can be done.

Further, through my testimony I have explained, but I will reiterate this because it is important to understand this, in every opportunity given built antifraud measures into our programs and we look aggressively to improve those programs at every opportunity. We have built the Administrative Site Visit and Verification Program, which this year completed 17,000 site visits, which is about compliance, not "I gotcha" culture but compliance with our existing site visit, which is 2,000 more site visits than last year's program.

We have increased our international information sharing on fraud for asylum cases. We have implemented a nationwide anti-fraud training for adjudicators, which I have just mentioned. We have basically built MOAs with ICE, in which the three priority case types—preparer, attorney, and interpreter case fraud—is a priority, which is separate from conspiracy and multiple conspiracy fraud.

And finally, we have made sure that referral of NTAs to ICE, because of fraud, is a priority.

These are the priorities of the agency. I believe that they speak for themselves, ma'am.

Ms. LOFGREN. Thank you very much.

Mr. GALLEGLY. The time of the gentlelady has expired.

Mr. KING. Thank you, Mr. Chairman. I thank the witnesses for your testimony. Some of that I think I heard a couple of times and so I have got that soaked in. But I have a question for Ms. Kendall, and that is that some in this country would advocate that we really shouldn't have borders, that if you just let the supply and demand of the labor markets determine the flow of people, that people have a right to go anywhere in the world they would like to go and work and earn a living and provide for their families, et cetera. So I just would point out that that philosophy does exist in this country and other places around the world.

If that were the public policy of the United States of America, would there be anything for USCIS to do?

Ms. KENDALL. If there were fraud involved in that, there would be a job for FDNS, sir.

Mr. KING. Could I point out that if there were completely open borders, without any restrictions, there wouldn't be any fraud. So is your answer there wouldn't be anything for USCIS to do if we didn't have immigration laws?

May I ask the witness to answer yes or no to that?

Ms. KENDALL. Sir, I don't have a clear answer, beyond I don't know—

Mr. KING. Well, I think that is the does the Sun come up in the East question for USCIS, actually.

Ms. LOFGREN. Will the gentleman yield?

Mr. KING. I would be happy to yield.

Ms. LOFGREN. I think that, number one, and I appreciate the gentleman yielding, I am not familiar with the individuals who are recommending no borders, but certainly it is the U.S. Immigration and Citizenship Service. And so individuals who are applying for citizenship, if we didn't have immigration laws, we would still have people applying to become U.S. citizens.

Mr. KING. Reclaiming my time.

Ms. LOFGREN. I think obviously the witness is a little flummoxed by the hypothetical, and I think I understand why.

Mr. GALLEGLY. It is the gentleman's time.

Mr. KING. Reclaiming my time from the gentlelady from California who is well versed in these type of questions and an immigration attorney in her own right whom I respect. I think it is important for us to ask these kind of questions because each time we go to work during the day there has got to be a purpose, and that purpose is that Congress writes laws, and then we direct the execu-

tive branch to carry out those laws, and looking again, reviewing the testimony of Mr. Rodriguez, it says that a benefit fraud involves, I quote, "the knowing and willful misrepresentation of a material fact on a petition or application to gain an immigrant immigration benefit. Types of benefit fraud include employment-based fraud, asylum fraud, and marriage fraud."

And as I read that and I listen to the testimony, I began to wonder, and I pose this question again to you, Ms. Kendall, if the President's memorandum that was issued by Secretary Napolitano dated June 15th which sets up four classes of people and directs USCIS to issue work permits, if that is implemented into place, is there going to be more or less reason for benefit fraud to come before USCIS?

Ms. KENDALL. I am not in the position to discuss the particulars of the deferred action memorandum and program that will flow from it today.

Mr. KING. Okay, thank you, Ms. Kendall.

Ms. KENDALL. I can—

Mr. KING. I understand that you are not in a position to answer those questions. I will just answer it for you that if somebody is between the ages of 16 and 30 and there is no reason for marriage fraud if you can claim that you have been in the United States for 5 years, went to school, et cetera. So I would submit that we are going to see a lot more fraud, a lot more document fraud, a lot more fraud from people that want to qualify under this selective amnesty program that the President did his press conference on June 15th that is the subject of this memorandum, and we are here discussing fraud, and every time that we see some form of amnesty, we see a tremendous amount of fraud that is associated with it. I might take the 1986, for example, that the numbers tripled on what were anticipated. We are looking with this memorandum of 800,000 to 1.4 million, and that likely will triple, and I will go on record as saying that is more likely than those estimates being accurate.

But I turn to Mr. Crane and ask him, do you anticipate that there will be a significant amount of fraud associated with this memorandum of June 15th?

Mr. CRANE. Absolutely I do as well as employees in the field on the CIS and ICE side. I think from CIS managers that I have talked to in the field, there is some discussion at CIS headquarters that this is going to be done through the service centers, which would mean that the interview process would more than likely be taken out, so people would just basically be sending their applications to an individual, they would be approved, there will be no interview process, and that is going to open the doors wide open for fraud in multiple different ways, one of them being that that fraud is not going to be detected, those trends are not going to be detected until it is all over. I mean, we are dealing today, CIS and ICE, with the fraud that took place back in the 1980's, we are still dealing with that today. So absolutely employees in the field are very concerned that this is going to result in widespread fraud.

Mr. KING. Have you seen any direct effect of this memorandum to date?

Mr. CRANE. I have not, sir. In terms of fraud I have not.

Mr. KING. I thank you and I yield back.

Mr. GALLEGLY. I thank the gentleman for yielding back. Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman.

Ms. Kendall, do you know who will be charged with investigating to determine whether or not the June 15 memo is applicable for those seeking, I think the word the Administration uses is "deferred action?" Whose responsibility will it be to determine whether or not those factors have been met?

Ms. KENDALL. USCIS I believe is the responsible party for adjudicating those requests, sir.

Mr. GOWDY. So whose resources will be consumed determining whether or not all of those qualifiers are met in terms of age, the absence of any serious misdemeanor or felony convictions, education, whose responsibility is it to expend the resources to determine whether or not those qualifying conditions have been met?

Ms. KENDALL. I mean, beyond the basic idea that USCIS has been determined as the agency that will adjudicate the deferred action requests—

Mr. GOWDY. Well—

Ms. KENDALL [continuing]. I am not in a position to discuss the particular program details, although I am part of a team of leaders at USCIS that is integrally involved with program development for the deferred action program, particularly—

Mr. GOWDY. I am probably missing something because I thought the reason for that memo was because you want to direct your resources other places, and then it just struck me when the Secretary was here last week whose resources are going to be consumed determining whether or not the memo is applicable or not?

Ms. KENDALL. I can address the issues of attorney preparer fraud, that is what I came to talk about here today, sir. I can address only those issues for today's hearing. I am part of a team of professionals who are preparing the deferred action program, consistent with what is expected in that memo. I can't offer any further details, as that program is in development at this time.

Mr. GOWDY. Mr. Crane, if my notes are correct, you said half the information, that adjudicators were told that as long as half the information contained in an alien's application for benefits is true, the application should be approved?

Mr. CRANE. That is what one supervisor allegedly told their employees, yes.

Mr. GOWDY. Half just doesn't seem like that much. Fifty percent is an F on the test in South Carolina. Trust me, I know, from first-hand experience, a 50 is an F.

Mr. CRANE. One question can mean the difference between having legal status and not having it. So for 50 percent to be fraudulent, it is completely unacceptable. I mean, one question is not acceptable on an application for status in the United States.

Mr. GOWDY. Ms. Lichter, can you talk to me about punishment for attorneys who engage in fraud, the full panoply of punishment. You mentioned the Bar can suspend you or disbar you I suspect. Some States the Supreme Court handles sanctions against attorneys. Are there any criminal statutes that would be applicable to attorneys who engage in fraud, pervasive or otherwise?

Ms. LICHTER. And my general disclaimer is I am an immigration attorney, not a criminal defense attorney.

Mr. GOWDY. That is okay, I am sure you are aware of what can send you to jail and what cannot.

Ms. LICHTER. Right. And framing—

Mr. GOWDY. You don't do homicide cases, but you know you can't do that, so—

Ms. LICHTER. Correct. As a practical matter, I think most attorneys are going to run afoul of the ethical restrictions in their Bar long before they trip any criminal sanctions, and if the Bar—

Mr. GOWDY. Are there criminal sanctions?

Ms. LICHTER [continuing]. If the Bar is doing their job, that person's license to practice law would be revoked.

Ms. LOFGREN. Would the gentleman yield?

Mr. GOWDY. I will be happy to.

Ms. LOFGREN. I would just note we had a situation in my county where there was a member of the Bar who was defrauding people. We took it to the district attorney, they prosecuted them for theft.

Mr. GOWDY. Under State law?

Ms. LOFGREN. Under State law, and he did time.

Mr. GOWDY. Good. Punishment for those—you used the term "victims," that may be the appropriate phraseology in some instances, and "co-conspirators" may be the appropriate phraseology in some other instances. Again, what is the full panoply of consequences for those who—not victims, not people who were taken advantage of, but people who were just willing to circumvent the system and go to attorneys in an effort to have fraudulent documents prepared, what is the full panoply of consequences for those people who are not attorneys?

Ms. LICHTER. Well, as a practical matter, the consequences that are faced by the true bad actors are, unfortunately, almost exactly the same as for the true victims of these scams. Certainly criminal proceedings might be appropriate in certain circumstances. By and large most people who find themselves on the wrong end of an application are finding themselves permanently barred from ever adjusting their status or ever finding a path toward citizenship. We have a very unforgiving system, and my biggest concern with some of the seeking out of fraud is not trying to take enough time to understand that we have probably more victims here than true co-conspirators.

Mr. GOWDY. Mr. Chairman, my time has expired.

Mr. GALLEGLY. I thank the gentleman. I am going to take the privilege of the Chair and ask one last question of Ms. Lichter. As an immigration lawyer and as someone who is well known across the country as an immigration lawyer, can you tell me what you understand the statute for the penalty for either manufacturing or using a counterfeit document for immigration purposes, what the penalty is in the statute?

Ms. LICHTER. It again is going to depend on whether somebody is prosecuted under a State law or under Federal law.

Mr. GALLEGLY. I am talking about Federal law.

Ms. LICHTER. Honestly, I do immigration civil defense, so I know that if somebody has a particular conviction the first thing I am going to look to see, is this a bar to admissibility, is this a ground

of removability? And then I am going to take my analysis from there.

Mr. GALLEGLY. Well, I would just advise that you may take a look at the 1995 law and see that the penalty for counterfeiting a document for this purpose or the penalty for using such document is exactly the same as counterfeiting currency or using counterfeit currency. See, we all leave today a little more learned.

With that, I appreciate all of the witnesses' testimony, and I would ask that all Members have 5 legislative days to submit to the Chair additional written questions for the witnesses which will be forwarded and ask the witnesses to respond as promptly as you can so the answers will be made a part of the record of the hearing. Without objection, all Members have 5 legislative days to submit any additional material for inclusion in the record, and with that the Subcommittee stands adjourned.

Thank you.

[Whereupon, at 3:53 p.m., the Subcommittee was adjourned.]

