

**GAO**

Testimony

Before the Subcommittee on Immigration,  
Border Security, and Claims, Committee  
on the Judiciary, House of Representatives

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## HOMELAND SECURITY

# Overstay Tracking Is a Key Component of a Layered Defense

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Highlights of [GAO-04-170T](#), a testimony to Subcommittee on Immigration, Border Security, and Claims, Committee on the Judiciary, House of Representatives

### Why GAO Did This Study

Each year, millions of visitors, foreign students, and immigrants come to the United States. Visitors may enter on a legal temporary basis—that is, with an authorized period of admission that expires on a specific date—either (1) with temporary visas (generally for tourism, business, or work) or, in some cases, (2) as tourists or business visitors who are allowed to enter without visas. (The latter group includes Canadians and qualified visitors from 27 countries who enter under the visa waiver program.) The majority of visitors who are tracked depart on time, but others overstay.

Four of the 9/11 hijackers who entered the United States with legal visas overstayed their authorized periods of admission. This has heightened attention to issues such as (1) the extent of overstaying, (2) weaknesses in our current overstay tracking system, and (3) how the tracking system weaknesses and the level of overstaying might affect domestic security.

[www.gao.gov/cgi-bin/getrpt?GAO-04-170T](http://www.gao.gov/cgi-bin/getrpt?GAO-04-170T).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Nancy Kingsbury at (202) 512-2700 or [kingsbury@gao.gov](mailto:kingsbury@gao.gov).

## HOMELAND SECURITY

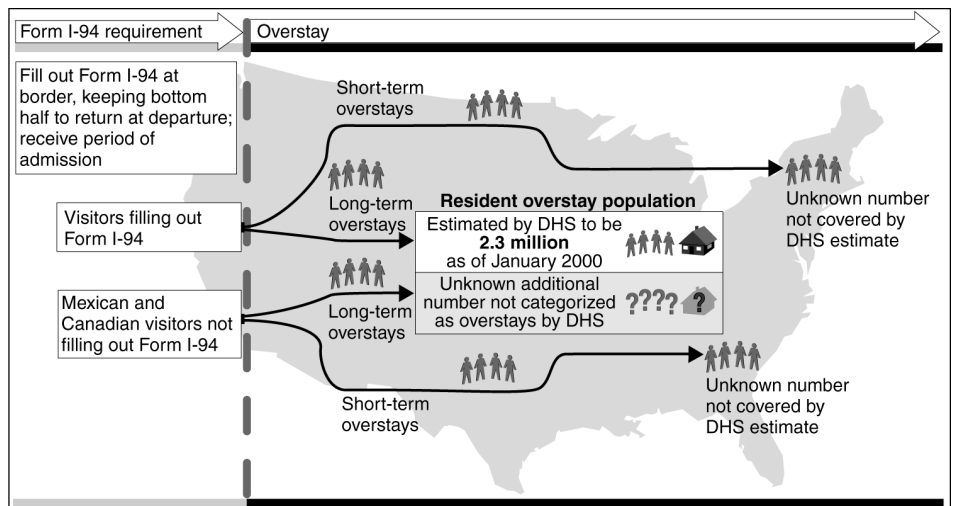
# Overstay Tracking Is a Key Component of a Layered Defense

### What GAO Found

Significant numbers of foreign visitors overstay their authorized periods of admission. The Department of Homeland Security estimates the resident overstay population at 2.3 million as of January 2000. Because the starting point for this estimate is the 2000 census, it does not cover short-term overstays who have not established residence here. It also omits an unknown number of potential long-term overstays from Mexico and Canada.

Because of unresolved weaknesses in DHS's current system for tracking arrivals and departures (e.g., noncollection of some departure forms and inability to match other departure forms to arrivals), there is no accurate list of overstays. Two new tracking initiatives are intended to address these weaknesses. NSEERS, the National Security Entry and Exit Registration System, does not cover most visitors. US-VISIT, the U.S. Visitor and Immigrant Status Indicator Technology, a more comprehensive, automated program, is being phased in. While its design and implementation face a number of challenges, evaluating US-VISIT against the weaknesses GAO identifies here would increase its potential for success.

The current tracking system's weaknesses limit control options and make it difficult to monitor potential terrorists who enter the country legally. Like other illegal immigrants, overstays obtain jobs with fraudulent identity documents, including jobs at critical infrastructure locations, such as airports. Thus, tracking issues can affect domestic security and are one component of a layered national defense. Improving the tracking system could work with intelligence, investigation, information-sharing, and other factors to help counter threats from foreign terrorists.



Sources: GAO and Art Explosion.

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Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss overstays—that is, foreign citizens who enter the United States legally but do not leave when their authorized period of admission expires. Overstay issues have gained heightened attention because some of the 9/11 hijackers had overstayed their periods of admission. While our work is ongoing, my remarks will focus on describing our results to date concerning

- the extent to which overstaying occurs,
- weaknesses in the current overstay tracking system, and
- potential impacts on domestic security.

In examining these issues, our main information sources include (1) relevant GAO and other government reports, (2) interviews with officials and staff at the U.S. Department of Homeland Security (DHS) and the U.S. Department of Justice, and (3) a variety of data, including quantitative data from DHS's overstay tracking system (based on the I-94 form), data that DHS developed, at our request, from Operation Tarmac (the sweep that identified overstays and other illegal immigrants working at U.S. airports), and facts about the arrivals, departures, and overstay status of the 9/11 hijackers and others involved in terrorism.

Our scope did not include aspects of immigration or domestic security unrelated to overstaying. While the vast majority of overstays appear to be motivated by economic opportunities, the few who are potential terrorists could represent a significant threat to our domestic security. An effective strategy to address this risk is best developed within the larger context of a layered defense for domestic security. Intelligence, investigation, and information-sharing are key ingredients supporting this defense, which is designed and implemented by a wide range of agencies, including DHS, the Department of Justice, the Department of State, and the Social Security Administration, among others.

To summarize the results of our analysis of overstay issues and domestic security, we found that

- Overstaying is significant and may be understated by DHS's recent estimate.
- The current system for tracking foreign visitors has several weaknesses.

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- It is more difficult to ensure our domestic security because of the weaknesses in the tracking system and the level of overstaying that apparently occurs.

Viewing these results in the context of our nation's layered defense, we believe that improving the tracking system could work together with other factors—especially intelligence, investigation, and information-sharing—to help counter threats from foreign terrorists.

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## Background

Each year, millions of visitors, foreign students, and immigrants come to the United States. Visitors may enter on a legal temporary basis—that is, with an authorized period of admission that expires on a specific date—either with temporary visas (generally for tourism, business, or work) issued by the Department of State or, in some cases, as tourists or business visitors who are allowed to enter without visas. The latter group includes Canadians and qualified visitors from 27 countries who enter under the Visa Waiver Permanent program.<sup>1</sup> The large majority of these visitors depart on time, but others overstay.

Our definition of an overstay in this testimony is specifically this:

*An overstay is a foreign visitor who is legally admitted to the United States for a specific authorized period and remains in the United States after that period expires, unless an extension or a change of status has been approved.*

*Although overstays are sometimes referred to as visa overstays, this is technically a misnomer for two reasons. First, a visitor can overstay the authorized period of admission set by the DHS inspector at the border while still possessing a valid visa. (For example, a visitor with a 6-month multiple-entry visa from the Department of State might be issued a 6-week period of admission by the DHS inspector and remain here for 7 weeks, thus overstaying.) Second, some visitors are allowed to enter*

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<sup>1</sup>The Visa Waiver Permanent program allows visitors from 27 countries to enter the United States without visas for up to 90 days for business or pleasure; the majority of visitors from these countries do enter under the visa waiver program. (The countries are listed in appendix II.)

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*the United States without visas and to remain for specific periods of time, which they may overstay.*<sup>2</sup>

Form I-94 is the basis of the current overstay tracking system. For visitors from most countries, the period of admission is authorized (or set) by a DHS inspector when they enter the United States legally and fill out this form. Each visitor is to give the top half to the inspector and to retain the bottom half, which should be collected on his or her departure.

When visiting the United States for business or pleasure, two major groups are exempt from filling out an I-94 form:

- Mexicans entering the United States with a Border Crossing Card (BCC) at the Southwestern border who intend to limit their stay to less than 72 hours and not to travel beyond a set perimeter (generally, 25 miles from the border)<sup>3</sup> and
- Canadians admitted for up to 6 months without a perimeter restriction.<sup>4</sup> Thus, the majority of Canadian and Mexican visits cannot be tracked by the current system, because the visitors have not filled out Form I-94. Tracking should be possible for almost all other legal temporary visitors, including visitors from visa waiver countries, because they are required to fill out the form.

Terrorists might be better prevented from legally entering the United States if consular officials and DHS inspectors used improved watch lists to screen visa applicants and make border inspections. However, some terrorists may continue to slip through these border defenses. Keeping all dangerous persons and potential terrorist-suspects from legally entering

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<sup>2</sup>For example, Canadians are allowed to enter without visas for purposes of business or pleasure and to remain for up to 6 months.

<sup>3</sup>The Department of State considers the Mexican BCC, termed a B-1/B-2 Visa and Border Crossing Card, to be (1) a visa authorizing its holder to be lawfully admitted to the United States temporarily for business or pleasure (for example, as a tourist), as well as (2) a BCC (that is, used with the 72-hour and perimeter limits). When the card is used as a visa, Form I-94 must be completed. It should also be noted that DHS inspectors may, at their discretion, require any Mexican using the card as a BCC to fill out Form I-94 as a condition of admission and that Form I-94 is required for visits that exceed 72 hours or include travel beyond the general 25-mile limit (in some cases in Arizona, travel up to 75 miles from the border is allowed).

<sup>4</sup>DHS inspectors may, at their discretion, require any such Canadian to fill out Form I-94.

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the United States is difficult because some do not match the expected characteristics of terrorists or suspicious persons; in addition, some may not be required to apply for visas (that is, citizens of Canada or one of the 27 visa waiver countries).

Watch lists have been improved somewhat since 9/11, but further improvements are needed. For example, earlier this year we reported that the State Department “with the help of other agencies, almost doubled the number of names and the amount of information” in its Consular Lookout and Support System.<sup>5</sup> We also reported that “the federal watch list environment has been characterized by a proliferation of [terrorist and watch list] systems, among which information sharing is occurring in some cases but not in others.”<sup>6</sup>

In this testimony today, we focus primarily on an overstayer’s illegal presence within the United States and the potential consequences for domestic security. Viewed in terms of individuals, the overstayer process can be summarized as aliens’ (1) legally visiting the United States, which for citizens of most nations is preceded by obtaining a passport and a visa and requires filling out Form I-94 at the U.S. border; (2) overstaying for a period that may range from a single day to weeks, months, or years; and, in some cases, (3) terminating their overstayer status by exiting the United States or adjusting to legal permanent resident status (that is, obtaining a green card).<sup>7</sup> Beyond that, the overstayer process can be viewed more broadly in the context of our nation’s layered defense. For example, figure 1 illustrates many issues in this defense that we have analyzed in numerous reports—ranging from overseas tracking of terrorists to stateside security for critical infrastructure locations and aviation.

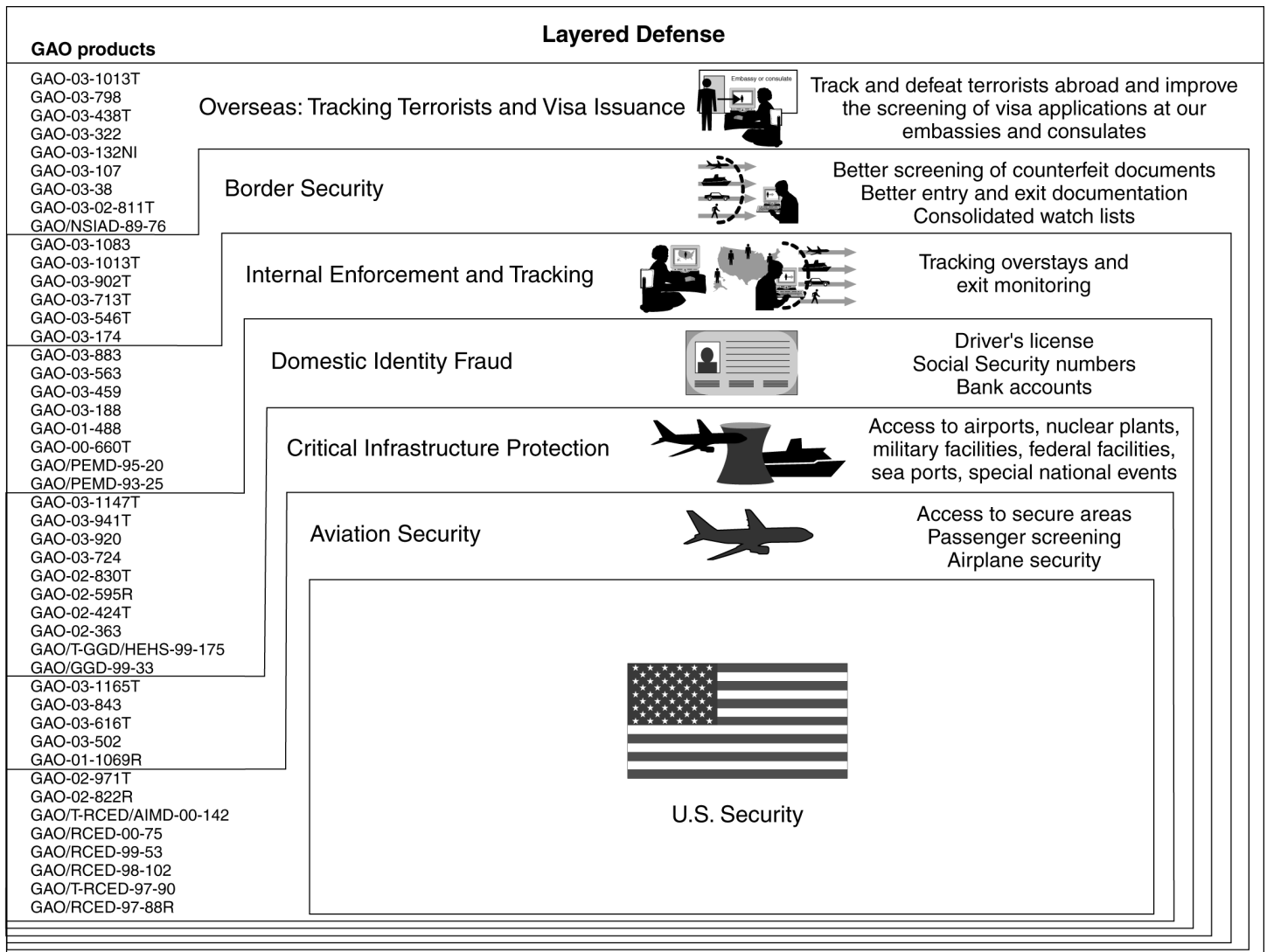
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<sup>5</sup>U.S. General Accounting Office, *Border Security: New Policies and Increased Interagency Coordination Needed to Improve Visa Process*, [GAO-03-1013T](#) (Washington, D.C.: July 15, 2003), p. 3.

<sup>6</sup>U.S. General Accounting Office, *Information Technology: Terrorist Watch Lists Should Be Consolidated to Promote Better Integration and Sharing*, [GAO-03-322](#) (Washington, D.C.: Apr. 15, 2003), p. 28.

<sup>7</sup>In general, aliens who are present illegally in the United States are prohibited from obtaining green cards by adjusting, while here, to permanent resident alien (legal immigrant) status. There are exceptions; for example, this prohibition was waived for certain aliens who applied for such adjustment between 1994 and 2001 under §245(i) of the Immigration and Nationality Act.

**Figure 1: The Layered Defense for Domestic Security**



Sources: GAO and Art Explosion.

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## The Extent of Overstaying Is Significant and May Be Understated by DHS's Estimate

Significant numbers of visitors overstay their authorized periods of admission. A recent DHS estimate put the January 2000 resident overstay population at 1/3 of 7 million illegal immigrants, or 2.3 million.<sup>8</sup> The method DHS used to obtain the 1/3 figure is complex and indirect, and we plan to evaluate that estimate further. However, the 2.3 million overstay estimate excludes specific groups, and we believe, therefore, that it potentially understates the extent of overstaying.

By definition, DHS's estimate of 2.3 million overstays as of January 2000 represents only a part of the total overstay problem. DHS's estimate of 7 million illegal immigrants is limited to illegals who settled and were residing here at the time of the 2000 census.<sup>9</sup> It includes only overstays who were in the actual census count or included in corrections for possible undercounts of illegal immigrants.

DHS's estimate of overstays as of January 2000 is not defined to include the following groups:

**a. Visitors filling out Form I-94 who**

- **overstay for short periods of time.** Many such persons are not likely to be included in the 2000 census, which is the starting point of DHS's 2.3 million estimate of the resident overstay population. In our ongoing work, we will examine indicators of the magnitude, and significance, of short-term overstaying among visitors who fill out I-94 forms.

**b. Mexican and Canadian visitors not filling out Form I-94 who**

- **overstayed and settled here.**<sup>10</sup> Overstays in this group are included in DHS's estimate of 7 million illegal immigrants, but they are categorized as illegal immigrants other than overstays. This is because

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<sup>8</sup>The other two-thirds were generally categorized as illegal border crossers (see U.S. Immigration and Naturalization Service, Office of Policy and Planning, *Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000* (Washington, D.C.: Jan. 2003)).

<sup>9</sup>Essentially, DHS's estimate of 7 million illegal residents is based on subtracting foreign-born persons here legally (who are reflected in statistical immigration records) from census counts of total foreign-born; subtraction is carried out separately for annual cohorts of arrivals in the United States.

<sup>10</sup>As we noted previously, the majority of Mexican and Canadian visits do not require Form I-94.

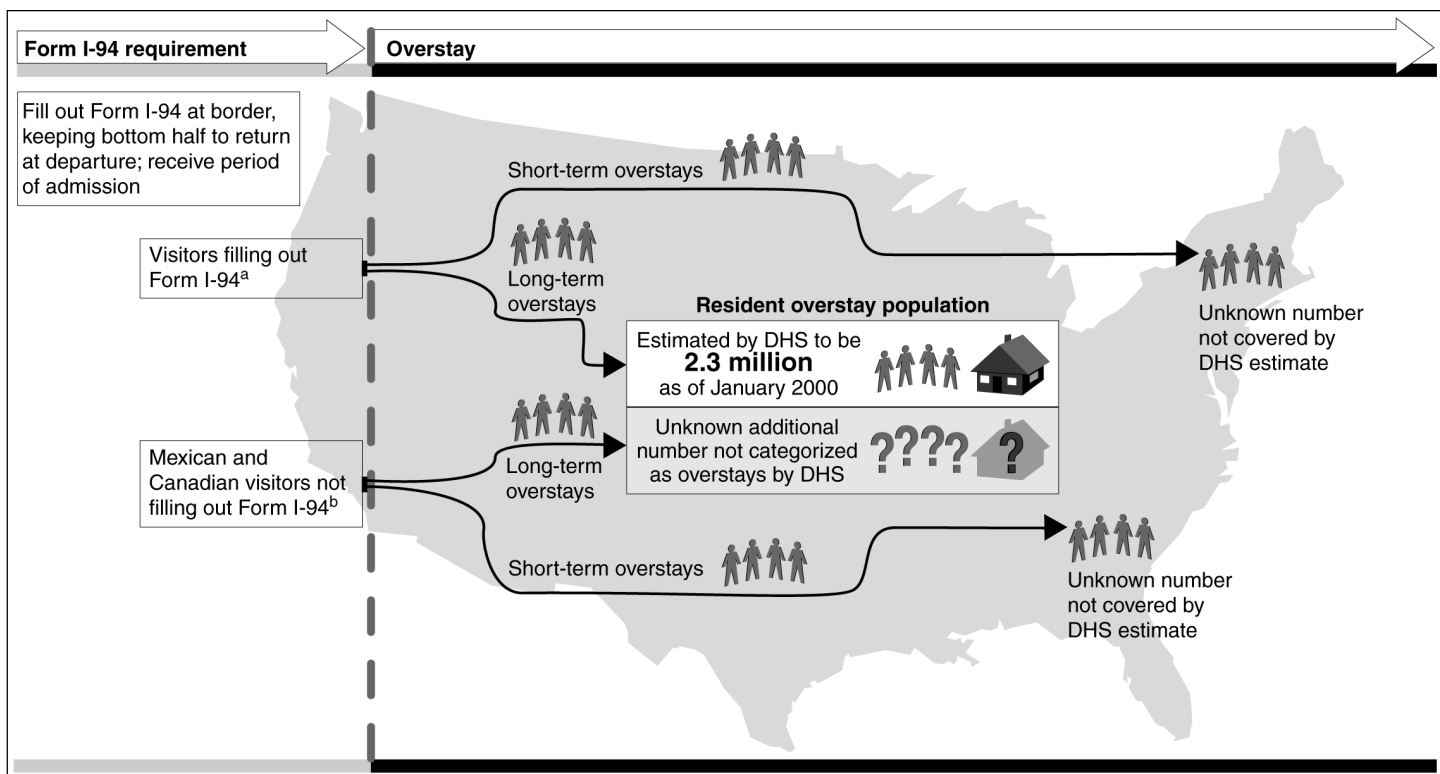


DHS used I-94 data from the early 1990s and projected these data forward to obtain the 1/3 overstay proportion.

- **overstay for short periods.** As indicated above, many short-term overstays are not included in the 2000 census, which is the starting point of DHS's 2.3 million estimate of the resident overstay population.

These groups are illustrated in figure 2.

**Figure 2: Key Groups Covered and Not Covered by DHS's Overstay Estimate**



Sources: GAO and Art Explosion.

<sup>a</sup>During fiscal year 2001, nearly 33 million visits were tracked by I-94 arrival forms. Of these tracked visits, 14 percent (about 4.6 million) were by Mexican and Canadian citizens.

<sup>b</sup>Aliens not tracked were mainly Canadian citizens or Mexican holders of BCCs issued by the Department of State. During fiscal years 1999 to 2003, the Department of State issued 6.4 million Mexican BCCs. According to unofficial DHS planning figures for fiscal year 2002, there were approximately 156 million "inspections conducted" for visits by visa-exempt aliens and aliens with Mexican BCCs at land border crossings. (See Department of Homeland Security, *US-VISIT Program Overview* (Washington, D.C.: Sept. 16, 2003).) DHS's Office of Immigration Statistics told us that very few such visits are tracked by the I-94 system. Because some persons may repeatedly visit the United States, the number of persons inspected is less than the number of inspections.

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In part because of coverage issues, the extent of overstaying has not been definitively measured. In addition, the accuracy of DHS's estimate of the resident overstay population is not known with precision.<sup>11</sup> Other limited data points may help illustrate the possible magnitude.<sup>12</sup>

For this testimony, we obtained two small-sample sources of data. First, we identified a government-sponsored survey, reported in 2002, that had (1) sampled more than 1,000 adult green-card holders, (2) asked them about their prior immigration status, and (3) found that more than 300 respondents self-reported prior illegal status.<sup>13</sup> From the computer run we requested, we found that of the roughly 300 former illegals, about 1/3 said they were former overstays, with most of the remaining 2/3 reporting prior illegal border crossing.<sup>14</sup>

Second, we obtained data from Operation Tarmac, the 2001–03 sweep of airport employees who had access to sensitive areas. Although Operation Tarmac investigators had collected information on overstaying, they did not systematically record data for overstays versus illegal border crossers. We requested that DHS manually review a sample of case files and identify

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<sup>11</sup>We identified challenges and potential weaknesses in INS's previous estimates of overstays in U.S. General Accounting Office, *Illegal Immigration: INS Overstay Estimation Methods Need Improvement*, GAO/PEMD-95-20 (Washington, D.C.: Sept. 26, 1995). We note that INS's previous estimates were higher than 1/3. INS testified in 1999 that overstays constituted 40 to 50 percent of that population (see Michael D. Cronin, Acting Associate Commissioner, Programs, Immigration and Naturalization Service, Testimony Regarding Nonimmigrant Overstays before the Subcommittee on Immigration and Claims, House Judiciary Committee, U.S. Congress, Washington, D.C., March 18, 1999).

<sup>12</sup>Earlier reports from INS and the Inspector General of the Department of Justice indicated that overstays constituted substantial percentages of groups of illegal residents who legalized their status. See Immigration and Naturalization Service, *Immigration Reform and Control Act: Report of the Legalized Alien Population* (Washington, D.C.: 1992), and U.S. Department of Justice, Office of the Inspector General, *Immigration and Naturalization Service Monitoring of Nonimmigrant Overstays*, report I-97-08 (Washington, D.C.: 1997).

<sup>13</sup>The survey was sponsored by DHS and the National Institute of Child Health and Human Development, in partnership with other federal agencies. The sample was drawn from nearly 150,000 adults who had obtained their green cards in July and August 1996 (see Douglas S. Massey and Nolan Malone, "Pathways to Legal Immigration," *Population Research and Policy Review* 21 (2002): 473–504).

<sup>14</sup>As previously noted, in general, aliens who are present illegally in the United States are prohibited from obtaining green cards by adjusting, while here, to permanent resident alien (legal immigrant) status. There are exceptions; for example, this prohibition was waived for certain aliens from 1994 to 2001 under §245(i) of the Immigration and Nationality Act.

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overstays. DHS reported to us that of 286 sampled cases in which illegal immigrant airport workers (that is, overstays and illegal border crossers) were arrested or scheduled for deportation, 124 workers, or about 40 percent, were overstays.

While both the survey data and the airport data represent rough small-sample checks, they provide some additional support for concluding that overstays are not rare.

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## Unresolved Tracking System Weaknesses Heighten the Overstay Problem

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### I-94 Tracking System Weaknesses Limit Control Options

One weakness in DHS's system for tracking the paper Form I-94—its limited coverage of Mexican and Canadian visitors—was discussed in the section above. In our previous work, we have pointed to at least three other weaknesses in this tracking system:

- **Failure to update the visitor's authorized period of admission or immigration status.** We reported earlier this year that DHS does not “consistently enter change of status data . . . [or] integrate these data with those for entry and departure.”<sup>15</sup> DHS told us that linkage to obtain updated information may occur for an individual, as when a consular official updates information on an earlier period of admission for someone seeking a new visa, but DHS acknowledged that linkage cannot be achieved broadly to yield an accurate list of visitors who overstayed.
- **Lack of reliable address information and inability to locate visitors.** Some visitors do not fill in destination address information on Form I-94 or they do so inadequately. A related issue that we reported in

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<sup>15</sup>U.S. General Accounting Office, *H-1B Foreign Workers: Better Tracking Needed to Help Determine H-1B Program's Effects on U.S. Workforce*, [GAO-03-883](#) (Washington, D.C.: Sept. 10, 2003), p. 5. See also U.S. General Accounting Office, *Immigration Benefits: Several Factors Impede Timeliness of Application Processing*, [GAO-01-488](#) (Washington, D.C.: May 4, 2001).

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2002 is DHS's inability to obtain updated address information during each visitor's stay; such information could be a valuable addition to the arrival, departure, and destination address information that is collected.<sup>16</sup>

- **Missing departure forms.** We reported in 1995 that “airlines are responsible for collecting . . . departure forms when visitors leave [by air] . . . . But for some visitors who may have actually left the United States [there is no] record of the departures.”<sup>17</sup> DHS acknowledges that this is still a concern, that the situation is analogous for cruise lines, and that noncollection is a larger problem for land exits.

Our recent work has also drawn attention to identity fraud, demonstrating how persons presenting fraudulent documents (bearing a name other than their own) to DHS inspectors could enter the United States.<sup>18</sup> Visitors whose fraudulent documents pass inspection could record a name other than their own on their I-94 form.

In our current work, we have identified two further weaknesses in the tracking system. One weakness is the inability to match some departure forms back to corresponding arrival forms. DHS has suggested that when a visitor loses the original departure form, matching is less certain because it can no longer be based on identical numbers printed on the top and bottom halves of the original form. The other weakness is that at land ports (and possibly airports and seaports), the collection of departure forms is vulnerable to manipulation—in other words, visitors could make it appear that they had left when they had not. To illustrate, on bridges where toll collectors accept I-94 departure forms at the Southwestern border, a person departing the United States by land could hand in someone else's I-94 form.

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<sup>16</sup>U.S. General Accounting Office, *Homeland Security: INS Cannot Locate Many Aliens because It Lacks Reliable Address Information*, [GAO-03-188](#) (Washington, D.C.: Nov. 21, 2002).

<sup>17</sup>U.S. General Accounting Office, *Illegal Immigration*, [GAO/PEMD-95-20](#), p. 2. See also U.S. General Accounting Office, *Illegal Aliens: Despite Data Limitations, Current Methods Provide Better Population Estimates*, [GAO/PEMD-93-25](#) (Washington, D.C.: Aug. 5, 1993).

<sup>18</sup>Our investigators have tested DHS inspectors by using counterfeit driver's licenses and fictitious names to enter the United States from Barbados, Canada, Jamaica, and Mexico; DHS did not question the authenticity of the counterfeit documents (see U.S. General Accounting Office, *Security: Counterfeit Identification and Identification Fraud Raise Security Concerns*, [GAO-03-1147T](#) (Washington, D.C.: Sept. 9, 2003).)

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Because of these weaknesses, DHS has no accurate list of overstays to send to consular officials or DHS inspectors. This limits DHS's ability to consider past overstaying when issuing new visas or allowing visitors to reenter.

More generally, the lack of an accurate list limits prevention and enforcement options. For example, accurate data on overstays and other visitors might help define patterns to better differentiate visa applicants with higher overstay risk. And without an accurate list and updated addresses, it is not possible to identify and locate new overstays to remind them of penalties for not departing. Such efforts fall under the category of interior enforcement: As we previously testified, "historically . . . over five times more resources in terms of staff and budget [have been devoted to] border enforcement than . . . [to] interior enforcement."<sup>19</sup> Despite large numbers of overstays, current efforts to deport them are generally limited to (1) criminals and smugglers, (2) employees identified as illegal at critical infrastructure locations, and (3) persons included in special control efforts such as the domestic registration (or "call in" component) of the NSEERS program (the National Security Entry and Exit Registration System).<sup>20</sup> DHS statisticians told us that for fiscal year 2002, the risk of arrest for all overstays was less than 2 percent.<sup>21</sup> For most other overstays (that is, for persons not in the targeted groups), the risk of deportation is considerably lower.

The effect of tracking system weaknesses on overstay data is illustrated by the inaccurate—and, according to DHS, inflated—lists of what it terms "apparent overstays" and "confirmed overstays." For fiscal year 2001 arrivals, the system yielded

- a list of 6.5 million "apparent overstays" for which DHS had no departure record that matched the arrivals and

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<sup>19</sup>U.S. General Accounting Office, *Homeland Security: Challenges to Implementing the Immigration Interior Enforcement Strategy*, GAO-03-660T, statement by Richard M. Stana before the Subcommittee on Immigration, Border Security, and Claims, House Committee on the Judiciary, U.S. Congress (Washington, D.C.: Apr. 10, 2003), p. 1.

<sup>20</sup>NSEERS domestic registration has required selected groups of aliens from a number of countries to register with immigration authorities; for a subset of these countries, special registration at the point of entry is required for arriving visitors.

<sup>21</sup>They calculated this by counting arrests for all legal visitors and overstays, including the targeted groups, and dividing by DHS's estimate of the resident overstay population.

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- an additional list of a half million “confirmed overstays,” or visits that ended after the visitors’ initial periods of admission expired (see appendixes I and II).

However, DHS has no way of knowing how many of the 6.5 million are real cases of overstaying and how many are false (because some of these visitors had, for example, departed or legally changed their status). Even the half million “confirmed overstays” are not all true cases of overstaying, because some visitors may have legally extended their periods of admission.

In the past, we made a number of recommendations that directly or indirectly address some of these system weaknesses, but these recommendations have not been implemented or have been only partially implemented. (Of these, four key recommendations are in appendix III.)

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## DHS Intends Its New Tracking Initiatives to Address System Weaknesses, but Issues Remain

DHS has begun two initiatives intended to remedy some of the weaknesses we have discussed. DHS recently began, as part of NSEERS, an effort to register visitors at points of entry (POE) to the United States, conduct intermittent interviews with registered visitors while they are here, and have government inspectors register departures. But the POE effort does not cover most visitors because it focuses on persons born in only eight countries.<sup>22</sup> Moreover, NSEERS procedures do not involve inspectors’ observing departures—for example, registration occurs not at airport departure gates but at another location at the airport. Also, inspectors do not generally accompany registrants to observe their boarding.<sup>23</sup>

US-VISIT, the U.S. Visitor and Immigrant Status Indicator Technology, is DHS’s new tracking system intended to improve entry-exit data. The first phase of US-VISIT, now being rolled out, uses passenger and crew manifest data, as well as biometrics, to verify foreign visitors’ identities at airports and seaports. DHS plans three additional phases and will link its data to other systems that contain data about foreign nationals. If

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<sup>22</sup>The eight NSEERS POE registration countries are Iran, Iraq, Libya, Pakistan, Saudi Arabia, Sudan, Syria, and Yemen. Seventeen additional countries (listed in appendix II) are included in the NSEERS domestic registration component of this program.

<sup>23</sup>It is also possible for NSEERS registrants to exit without registering, although there are penalties for doing so.

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successfully designed and implemented, US-VISIT could avoid many of the weaknesses associated with the Form I-94 system.

We believe special efforts are needed to ensure US-VISIT's success. DHS concurred with our recent report, pointing to risks and the need for improved management of US-VISIT. For example, we reported that, among other issues, "important aspects defining the [US-VISIT] program's operating environment are not yet decided [and its] facility needs are unclear and challenging."<sup>24</sup> Our recommendations included, among others, that DHS develop acquisition management controls and a risk management plan for US-VISIT, as well as defining performance standards.

We also believe that checking US-VISIT's program design against the weaknesses of the Form I-94 system, outlined here, might help in evaluating the program and ensuring its success.

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## Overstay Issues May Complicate Efforts to Ensure Domestic Security

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### Tracking System Weaknesses Encourage Overstays and Hamper Some Counterterrorism Efforts

Tracking system weaknesses may encourage overstaying on the part of visitors and potential terrorists who legally enter the United States. Once here, terrorists may overstay or use other stratagems—such as exiting and reentering (to obtain a new authorized period of admission) or applying for a change of status—to extend their stay. As shown in table 1, three of the six pilots and apparent leaders were out of status on or before 9/11, two because of short-term overstaying.

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<sup>24</sup>Highlights page in U.S. General Accounting Office, *Homeland Security: Risks Facing Key Border and Transportation Security Program Need to Be Addressed*, [GAO-03-1083](#) (Washington, D.C.: Sept. 19, 2003).

**Table 1: Overstay and Other Immigration Status Data on 9/11 Terrorists**

Hijacker group	Immigration status issue	Entries	Change-of-status applications
6 pilots <sup>a</sup> and apparent leaders	2 prior overstays; <sup>b</sup>	18 total	3
	1 out-of-status student <sup>c</sup>	(1 to 7 entries each)	
13 other hijackers	2 overstays	13 total (1 each)	0
<b>Total = 19 hijackers</b>	<b>4 overstays total; 5 violations (including overstays and the out-of-status student)</b>	<b>31 total (from 1 to 7 entries each)</b>	<b>3 total (0 to 1 each)</b>

Sources: U.S. Department of Homeland Security, Federal Bureau of Investigation, and GAO analysis.

Note: We define an overstay as a legally admitted foreign visitor who remains even 1 day after his or her authorized period of admission expires, if an extension or status change has not been approved.

<sup>a</sup>Pilots or co-pilots. (Three were both pilots, or co-pilots, and apparent leaders.)

<sup>b</sup>The two prior overstays had remained here beyond their authorized period of admission. They accrued days of overstay.

<sup>c</sup>Violated terms of student visa by not attending school.

Additionally, a current overstay recently pled guilty to identity document fraud in connection with the 9/11 hijackers. Two others with a history of overstaying were recently convicted of crimes connected to terrorism (money-laundering and providing material support to terrorists); both had overstayed for long periods.

Terrorists who enter as legal visitors are hidden within the much larger populations of all legal visitors, overstays, and other illegals such as border crossers. Improved tracking could help counterterrorism investigators and prosecutors track them and prosecute them, particularly in cases in which suspicious individuals are placed on watch lists after they enter the country. The director of the Foreign Terrorist Tracking Task Force told us that he considered overstay tracking data helpful. For example, these data—together with additional analysis—can be important in quickly and efficiently determining whether suspected terrorists were in the United States at specific times.

As we reported earlier this year, between “September 11 and November 9, 2001 [that is, over the course of 2 months], . . . INS compiled a list of aliens whose characteristics were similar to those of the hijackers” in types of visa, countries issuing their passports, and dates of entry into the United



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States.<sup>25</sup> While the list of aliens was part of an effort to identify and locate specific persons for investigative interviews, it contained duplicate names and data entry errors. In other words, poor data hampered the government's efforts to obtain information in a national emergency, and investigators turned to private sector information. Reporting earlier that INS data "could not be fully relied on to locate many aliens who were of interest to the United States," we had indicated that the Form I-94 system is relevant, stressing the need for improved change-of-address notification requirements.<sup>26</sup> INS generally concurred with our findings.

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### Overstays' Employment in Sensitive Airport Jobs Illustrates Potential Effects on Domestic Security

DHS has declared that combating fraudulent employment at critical infrastructures, such as airports, is a priority for domestic security.<sup>27</sup> DHS has planned and ongoing efforts to identify illegal workers in key jobs at various infrastructures (for example, airport workers with security badges). These sweeps are thought to reduce the nation's vulnerability to terrorism, because, as experts have told us, (1) security badges issued on the basis of fraudulent IDs constitute security breaches, and (2) overstays and other illegals working in such facilities might be hesitant to report suspicious activities for fear of drawing authorities' attention to themselves or they might be vulnerable to compromise.

Operation Tarmac swept 106 airports and identified 4,271 illegal immigrants who had misused Social Security numbers and identity documents in obtaining airport jobs and security badges.<sup>28</sup> A much smaller number of airport employees had misrepresented their criminal histories in order to obtain their jobs and badges. The illegal immigrant workers with access to secure airport areas were employed by airlines (for example, at Washington Dulles International Airport and Ronald Reagan Washington National Airport, this included American, Atlantic Coast, Delta, Northwest, and United Airlines as well as SwissAir and British Airways) and by a variety of other companies (for example, Federal

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<sup>25</sup>See U.S. General Accounting Office, *Homeland Security: Justice Department's Project to Interview Aliens after September 11, 2001*, [GAO-03-459](#) (Washington, D.C.: Apr. 11, 2003). In that report, we also reviewed other problems with the post-9/11 interviewing initiative.

<sup>26</sup>U.S. General Accounting Office, *Homeland Security: INS Cannot Locate*, [GAO-03-188](#).

<sup>27</sup>After 9/11, DHS shifted its interior enforcement focus to jobs with access to sensitive, critical-infrastructure areas.

<sup>28</sup>Such employees must have a security badge to work in (or escort others into) a secure area.

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Express and Ogden Services). Job descriptions included, among others, aircraft maintenance technician, airline agent, airline cabin service attendant, airplane fueler, baggage handler, cargo operations manager, electrician, janitorial supervisor, member of a cleaning crew, predeparture screener, ramp agent, and skycap.

In the large majority of these cases, identity fraud or counterfeit IDs were involved; without fraud or counterfeit documents, illegal workers would not have been able to obtain the jobs and badges allowing them access to secure areas.<sup>29</sup>

As we discussed earlier in this testimony, when we obtained data on the specific immigration status of workers who were arrested or scheduled for deportation at 14 Operation Tarmac airports, we found that a substantial number were overstays. A DHS official told us that Operation Tarmac is likely not to have identified all illegal aliens working in secure areas of airports.

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## Conclusion

Weaknesses in DHS's current overstay tracking system and the magnitude of the overstay problem make it more difficult to ensure domestic security. DHS has recently initiated two efforts to develop improved systems, but challenges remain. Designing and implementing a viable and effective tracking system is a critical component of the nation's domestic security and continues to be a DHS priority. Viewing our results in the context of our nation's layered defense, we believe that improvements in the tracking system must work together with other factors—such as intelligence, investigation, and information-sharing—to help ensure domestic security.

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<sup>29</sup>Efforts to combat domestic identity fraud are part of our nation's layered defense, and we have testified that "identity theft is a major facilitator of international terrorism" (see U.S. General Accounting Office, *Identity Fraud: Prevalence and Links to Alien Illegal Activities*, GAO-02-830T (Washington, D.C.: June 25, 2002), p. 9).

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Mr. Chairman, this concludes my statement. I would be happy to respond to any questions that you or other members of the Committee may have.

For information regarding this testimony, please contact Nancy R. Kingsbury, Managing Director, Applied Research and Methods, on 202-512-2700. Individuals who made key contributions to this testimony are Donna Heivilin, Judy Droitcour, Daniel Rodriguez, and Eric M. Larson.

# Appendix I: I-94 Data: Number of Foreign Visitor Arrivals by Air, Sea, and Land and “Overstay Cases,” Fiscal Year 2001

Mode of arrival	Annual arrivals <sup>a</sup>	Annual “overstay cases” (a mixture of real and false cases)		
		“Apparent”: nondepartures <sup>b</sup>	“Confirmed”: late departures <sup>c</sup>	Total “overstay cases”
Air and sea	29,688,000	4,349,000	212,000	4,561,000
Land	3,109,000	2,217,000	231,000	2,448,000
All modes	32,799,000	6,566,000	443,000	7,010,000

Sources: U.S. Department of Homeland Security, Office of Immigration Statistics, and GAO analysis.

Note: Includes visitors’ arrivals October 2000 through September 2001 and their departures through January and February 2002. Arrival data represent arrivals rather than the number of visitors who arrived; that is, the data do not correct for multiple entries, and possibly multiple exits, by the same person. Figures may not sum because of rounding and because the “all modes” category includes some visits for which the mode of arrival is not known.

<sup>a</sup>Excludes many Mexicans and Canadians who, visiting for business and pleasure, are exempt from Form I-94 procedures.

<sup>b</sup>Includes cases in which no departure form could be matched to the arrival form (including some departing visitors who had lost their departure forms and filled out another form that could not be matched to their arrival form).

<sup>c</sup>Includes some departing visitors who had extended their stay or adjusted their status.

# Appendix II: I-94 Data: “Overstay Cases” (A Mix of Real and False Cases) by Mode of Arrival and Citizenship, Fiscal Year 2001

Citizenship group	“Apparent” nondepartures <sup>a</sup> for visitors who arrived by			“Confirmed” late departures <sup>b</sup> for visitors who arrived by			Total “overstay cases” for visitors who arrived by		
	Air and sea	Land	All modes	Air and sea	Land	All modes	Air and sea	Land	All modes
Mexico <sup>c</sup>	446,000	1,825,000	2,270,000	18,000	222,000	240,000	463,000	2,046,000	2,510,000
Canada <sup>c</sup>	45,000	41,000	86,000	1,000	2,000	3,000	46,000	43,000	89,000
Countries in visa waiver program <sup>d</sup>	1,963,000	207,000	2,171,000	62,000	4,000	66,000	2,025,000	210,000	2,236,000
Countries subsequently listed in the NSEERS domestic registration program <sup>e</sup>	103,000	12,000	115,000	7,000	—	8,000	110,000	13,000	123,000
Rest of world	1,793,000	132,000	1,924,000	123,000	4,000	128,000	1,916,000	136,000	2,052,000
<b>Total</b>	<b>4,349,000</b>	<b>2,217,000</b>	<b>6,566,000</b>	<b>212,000</b>	<b>231,000</b>	<b>443,000</b>	<b>4,561,000</b>	<b>2,448,000</b>	<b>7,010,000</b>

Sources: U.S. Department of Homeland Security, Office of Immigration Statistics, and GAO analysis.

Note: Includes visitors’ arrivals October 2000 through September 2001 and their departures through January and February 2002. Arrival data represent arrivals rather than the number of visitors who arrived; that is, the data do not correct for multiple entries, and possibly multiple exits, by the same person. Figures may not sum because of rounding and because the “all modes” category includes some visits for which the mode of arrival is not known.

<sup>a</sup>Includes cases in which no departure form could be matched to the arrival form (including some departing visitors who had lost their departure forms and filled out another form that could not be matched to their arrival form).

<sup>b</sup>Includes some departing visitors who had extended their stay or adjusted their status.

<sup>c</sup>Excludes many Mexicans or Canadians who, visiting for business and pleasure, are exempt from Form I-94 procedures.

<sup>d</sup>Most, but not all, visitors from Permanent Visa Waiver countries enter under this program. Visa waiver countries in this tally are Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and United Kingdom. (Excludes Argentina and Uruguay, which were visa waiver countries in fiscal year 2001.)

<sup>e</sup>The 25 countries in the NSEERS domestic registration program include (1) 8 countries also subject to point-of-entry (POE) registration (Iran, Iraq, Libya, Pakistan, Saudi Arabia, Sudan, Syria, and Yemen) and (2) 17 other countries (Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Jordan, Kuwait, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, and United Arab Emirates). The 123,000 total “overstay cases” (all modes of arrival) from these countries in fiscal year 2001 include approximately 49,000 cases from the countries subject to POE registration and approximately 73,000 cases from the other countries, excluding North Korea. The data exclude North Korea from the NSEERS countries tally because DHS did not provide information separately for North and South Korea.

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# Appendix III: Four Prior Recommendations to INS/DHS Related to Overstay Tracking, Data, or Estimates

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1. We recommended that to improve the collection of departure forms, the Commissioner of the Immigration and Naturalization Service should ensure that INS examine the quality control of the Nonimmigrant Information System database and determine why departure forms are not being recorded. For example, this could involve examining a sample of the passenger manifest lists of flights with foreign destinations to determine the extent of airline compliance and possibly developing penalties on airlines for noncompliance. Discovery of the incidence of various causes of departure loss could allow more precise estimation of their occurrence and development of possible remedies. (U.S. General Accounting Office, *Illegal Aliens: Despite Data Limitations, Current Methods Provide Better Population Estimates*, [GAO/PEMD-93-25](#) (Washington, D.C.: Aug. 5, 1993).)

INS agreed in principle with our recommendation to study why departure forms are not being collected and subsequently initiated a pilot project that was criticized by the Department of Justice Inspector General and then discontinued. DHS has not told us of any further efforts to study or determine why departure forms are not being collected.

2. We recommended that the Commissioner of INS should have new overstay estimates prepared for air arrivals from all countries, using improved estimation procedures such as those discussed in this report, including, as appropriate, the potential improvements suggested by INS or by reviewers of this report. (U.S. General Accounting Office, *Illegal Immigration: INS Overstay Estimation Methods Need Improvement*, [GAO/PEMD-95-20](#) (Washington, D.C.: Sept. 26, 1995).)

INS initially concurred and produced revised estimates as part of its comments on our report. However, in our response to INS's comments, we described the new estimates as a "first step" and identified concerns about INS's methodological procedures that we said needed further study. DHS told us that it has not further studied making overstay estimates by air arrivals. Valid estimation of overstays is extremely difficult, given current tracking system weaknesses.

3. We recommended that to promote compliance with the change of address notification requirements through publicity and enforcement and to improve the reliability of its alien address data, the Attorney General should direct the INS Commissioner to identify and implement an effective means to publicize the change of address notification requirement nationwide. INS should make sure that, as part of its publicity effort, aliens are provided with information on how to

comply with this requirement, including where information may be available and the location of change of address forms. (U.S. General Accounting Office, *Homeland Security: INS Cannot Locate Many Aliens because It Lacks Reliable Address Information*, [GAO-03-188](#) (Washington, D.C.: Nov. 21, 2002).)

INS/DHS concurred with this recommendation and has identified it as a long-term strategy that will require 2 years to fully implement. It has been less than a year since we made this recommendation, and thus there has not been sufficient time for DHS to implement it fully or for us to review that implementation.

4. We recommended that to provide better information on H-1B workers and their status changes, the Secretary of DHS take actions to ensure that information on prior visa status and occupations for permanent residents and other employment-related visa holders is consistently entered into current tracking systems and that such information become integrated with entry and departure information when planned tracking systems are complete. (U.S. General Accounting Office, *H-1B Foreign Workers: Better Tracking Needed to Help Determine H-1B Program's Effects on U.S. Workforce*, [GAO-03-883](#) (Washington, D.C.: Sept. 10, 2003).)

DHS concurred with this recommendation, made just a month ago. Sufficient time has not elapsed for DHS to implement this recommendation.

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