VISA REVOCATIONS: CATCHING THE TERRORISTS AMONG US

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS AND INTERNATIONAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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VISA REVOCATIONS: CATCHING THE TERRORISTS AMONG US

WEDNESDAY, JUNE 18, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS AND INTERNATIONAL RELATIONS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 12:17 p.m., in room 2154, Rayburn House Office Building, Hon. Christopher Shays (chairman of the subcommittee) presiding.

Present: Representatives Shays, Janklow, Kucinich, Maloney, Sanchez, and Bell.

Staff present: Lawrence Halloran, staff director and counsel; J. Vincent Chase, chief investigator; R. Nicholas Palarino, senior policy advisor; Thomas Costa and Kristine McElroy, professional staff members; Robert A. Briggs, clerk; Chris Skaluba, fellow; David Rapallo, minority counsel; Earley Green, minority chief clerk; and Cecelia Morton, minority office manager.

Mr. SHAYS. Good morning. A quorum being present, the Subcommittee on National Security, Emergency Threats and International Relations hearing entitled, "Visa Revocations: Catching the Terrorists Among Us" is called to order.

We are a welcoming Nation. But those from around the world who would visit the United States must ask permission to come here. They apply for a visa. When they do, we have the sovereign right, and the sworn duty, to deny entry to anyone who might pose a threat to our security. Today we ask: If a visa is issued erroneously, or before disqualifying information on possible terrorist connections is obtained, what happens then?

The answer: Too little. Revocation of a visa remains a trifurcated bureaucratic shuffle with little imperative for corrective action. The Departments of State, Homeland Security, referred to as DHS, and Justice bring disparate practices, informal customs, and clashing cultures to what should be a seamless process. As a result, one available screen against potentially violent invaders remains dangerously porous, leaving Americans avoidably vulnerable to terrorists in our midst.

In an earlier report on visa screening as an antiterrorism tool, the General Accounting Office [GAO], found some aliens, whose visas had been revoked on terrorism grounds, might have entered the United States anyway. So the subcommittee, joined by Senator Charles Grassley of Iowa, asked GAO to look more closely at the

strengths and weaknesses of the post-September 11th visa revocation process.

The GAO findings released today describe limited progress and systematic problems. While law enforcement and intelligence data is being forwarded to the State Department's electronic watch list more routinely, the Department often shares information on visa revocations slowly and inconsistently, if at all.

DHS immigration officials may not know they are admitting someone on a revoked visa. The FBI has no legal or operational incentive to pursue aliens on the basis of a revoked visa alone. It is not even considered a counter-terrorism matter.

The legal, procedural, and technical relics of a simpler age hamper those involved in issuing visas, controlling entry to the United States, and monitoring foreigners among us. A reason good enough to deny applicants' entry into the United States is not sufficient cause to remove them once they are here. Even when notifications are timely, visa revocation actions are faxed or cabled, leading to downstream errors and misinterpretation. Suspicions about terrorist connections are not always detailed in the revocation notice, making it difficult to pursue removal under immigration laws.

So what is the product of this disjointed approach to visa revocations? GAO concludes 30 or more people who should not have been admitted to the United States due to terrorism concerns may still be among us, undetected and undeterred.

Immigration screens have to be as strong as the global enemy they are meant to catch. Twenty-one months after the September 11th attacks, revocation of a visa has to be more than a paper process, a "file and forget" exercise. All the September 11 terrorists had visas. If the next Al Qaeda cell manages to get in, they should not breach our shores carrying revoked entry documents. To be effective as an antiterrorism tool, visa revocations have to be timely, well founded, consistently posted to watch lists, and acted upon by law enforcement officials until the foreigner's status is determined.

Today, the GAO, State Department, DHS representatives, and the FBI will sit as one panel to help us examine the visa revocation process in a detailed and constructive way. We are grateful for their participation, their patriotism, and their dedication to public service. We look forward to their testimony.

[The prepared statement of Hon. Christopher Shays follows:]

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Statement of Rep. Christopher Shays
June 18, 2003

We are a welcoming nation. But those from around the world who would visit the United States must ask permission to come here. They apply for a visa. When they do, we have the sovereign right, and the sworn duty, to deny entry to anyone who might pose a threat to our security. Today we ask: If a visa is issued erroneously, or before disqualifying information on possible terrorist connections is obtained, what happens then?

The answer: too little. Revocation of a visa remains a trifurcated bureaucratic shuffle with little imperative for corrective action. The Departments of State, Homeland Security (DHS) and Justice bring disparate practices, informal customs and clashing cultures to what should be a seamless process. As a result, one available screen against potentially violent invaders remains dangerously porous, leaving Americans avoidably vulnerable to terrorists in our midst.

In an earlier report on visa screening as an antiterrorism tool, the General Accounting Office (GAO) found some aliens, whose visas had been revoked on terrorism grounds, might have entered the U.S. anyway. So the Subcommittee, joined by Senator Charles Grassley of Iowa, asked GAO to look more closely at the strengths and weaknesses of the post-September 11th visa revocation process.

The GAO findings released today describe limited progress and 'stemic problems. While law enforcement and intelligence data is being ›rwarded to the State Department's electronic watch list more routinely, the epartment often shares information on visa revocations slowly and consistently, if at all. DHS immigration officials may not know they are lmitting someone on a revoked visa. The FBI has no legal or operational centive to pursue aliens on the basis of a revoked visa alone. It is not even ›nsidered a counterterrorism matter.

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Today, the GAO, State Department, DHS representatives and the FBI ıll sit as one panel to help us examine the visa revocation process in a ·tailed and constructive way. We are grateful for their participation in this ›aring, and we look forward to their testimony.

Mr. SHAYS. I welcome our witnesses. They are: Jess T. Ford, Director, International Affairs and Trade Division, U.S. General Accounting Office; Catherine Barry, Managing Director, office of Visa Services, Bureau of Consular Affairs, U.S. Department of State; Jayson P. Ahern, Assistant Commissioner, Officer, Office of Field Operations, Bureau of Customs and Border Protection, U.S. Department of Homeland Security; Charles H. DeMore, Interim Assistant Director for Investigations, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security; and Steven C. McCraw, Inspector Deputy Assistant Director of Intelligence, Federal Bureau of Investigation.

At this time, I would ask you to stand and be sworn in. Also, if there is anyone that may need to testify, please stand as well.

[Witnesses sworn.]

Mr. SHAYS. All witnesses have responded in the affirmative.

Mrs. Maloney, do you have any statement?

Mrs. MALONEY. Very briefly, Mr. Chairman.

I really want to thank you, Mr. Chairman, for having this incredibly important hearing. Nearly 2 years ago we faced the worst attack against our homeland in the history of this Nation. The tragic events of September 11th and the city I represent, once again put the inadequacies of the visa issuing and tracking system into the spotlight.

I must say that we all know that the hijackers who flew those planes into the World Trade Center, the Pentagon, and the plane that went down in Pennsylvania, were all legally in the United States with temporary visas despite the immigration laws that specifically prohibit terrorists from being admitted into this country.

When Congress established the new Department of Homeland Security, it attempted to improve the process of issuing visas by giving the DHS the responsibility for approving immigrant petitions and for inspecting everyone who enters the United States. However, we have learned that things have not improved. Information sharing is critical if we are going to have an effective system for determining which visas should be issued, and to whom, and for ensuring that we know for what purpose those individuals have entered the United States.

But if the Customs Service, the INS, the States, and others are all having different systems, it is difficult for me to believe that potential terrorists are not slipping through the cracks. Additionally, we must ensure that foreign students who enroll in American universities complete their course work and do not abuse the system by using student visas as a cover for terrorist activity.

We know that another terrorist attack will occur somewhere in America in the future. While each local community, city, and State may be a target, New York, the area that I represent, and my constituents know first hand the horror and devastation that results when terrorists, who have no regard for human life, are allowed into this country and conduct their training activities unnoticed.

Since September 11th, we have made protecting the homeland a top priority. I believe that one of the most basic things that we can do to prevent another attack is to stop terrorists from entering the

country. Therefore, I deeply thank the chairman for holding this hearing today about this critically important issue. I look forward to the witnesses' testimony.

Thank you.

[The prepared statement of Hon. Carolyn B. Maloney follows:]

Subcommittee on National Security, Emerging Threats, and International Relations
Government Reform Committee

June 18, 2003

ıank you Chairman Shays for holding this important hearing today.

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Mr. SHAYS. I thank the gentlelady.

Mr. Bell, I believe you have a statement you want to put on the record.

Mr. BELL. Thank you, Mr. Chairman.

I, too, would like to thank you for calling this hearing on such an important issue concerning the security of our Nation. In response to the attacks of September 11th, President Bush made commitments to consolidate and integrate the operability of the numerous watch lists that monitor terrorist activity within our borders. However, these commitments made by the Bush administration have gone largely unfulfilled, according to recent GAO testimony before this subcommittee.

GAO has reported that nine Federal agencies still maintain 12 different terrorist watch lists. Transparency between Federal agencies with oversight has not been implemented satisfactorily. If we are to strive for the continued security of ports of entry to our country, there must be an elevated level of communication between these agencies of national oversight.

Additionally, immigrants with visas that have been revoked due to suspicion of terrorist activity must be part of common interdepartmental watch lists, located and removed immediately. It is incumbent upon us, if our national security is to be preserved, to move beyond making commitments. We must take definitive action. Since September 11th, despite heightened standards used in visa applications and screening, background checks remain inconsistent from department-to-department.

Communication between agencies, such as the State Department, consular offices, the Department of Homeland Security, and other agencies that are involved in issuing visas, must be increased if we are to forestall potential terrorist attacks. We must be dedicated to protecting the lives of the American people.

Mr. Chairman, I submit that now is the time. I would hope that today's witnesses can adequately address the concerns facing our national security. Again, thank you for calling this hearing.

Mr. SHAYS. I thank the gentleman.

Let me just say before calling on our witnesses, I see folks standing up. Any students or any staff who want to sit in the last few chairs on either end of what we have up here, can. If you are a student, an intern, or staff, please feel free to sit in the seats at the end there.

I ask unanimous consent that all members of the subcommittee be permitted to place an opening statement in the record and that the record remain open for 3 days for that purpose.

Without objection, so ordered.

I also ask for unanimous consent to insert a statement from Senator Charles Grassley of Iowa. Senator Grassley was a co-requestor of this GAO report under discussion today. He has a statement which will be put in the record.

Without objection, so ordered.

[The prepared statement of Hon. Charles E. Grassley follows:]

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Statement of Sen. Chuck Grassley, of Iowa
Subcommittee on National Security, Emerging Threats, and International Relations
of the Committee on Government Reform
"Visa Revocations: Catching the Terrorists Among Us"
Wednesday, June 18, 2003

Mr. Chairman, first let me thank you for holding this important oversight hearing in the House Government Reform Subcommittee on National Security, Emerging Threats and International Relations.

You and I have worked together for many years in oversight and government reform efforts, including the Congressional Accountability Act and reforming Americorps. I hope we can continue to do so. I greatly appreciate your leadership and dedication in this area.

I appreciate your interest in the important issue of border security and visa revocations. I am also glad we could join together in requesting the General Accounting Office investigation that is being released today.

If the terrorist attacks of September 11 taught us anything, it's that border security is crucial to protecting the homeland, and that our border security has serious problems. Nineteen terrorists exploited lax immigration policies, inconsistent enforcement and bureaucratic screw-ups to slip into the country, plot the attack and murder thousands of innocent people.

This cannot happen again.

Unfortunately, the words of government agencies don't always match their actions, and our safety suffers as a result. Our government has created an entirely new agency, the Department of Homeland Security, to address border security. The lead counter-terrorism agency, the FBI, is reorganizing to prevent attacks and detain terrorists before they strike. The State Department mans our first line of defense, overseas consular posts.

One aspect of border security that needs drastic improvement is the visa revocation process, especially for visas revoked on terrorism grounds.

The General Accounting Office, the investigative arm of Congress, has done important oversight work in this area. Last fall, the GAO issued a report that showed 105 persons had entered

the country after the State Department had revoked their visas on terrorism grounds. This was very alarming, but you wouldn't know it from the response – or lack of response – of these agencies.

They made a lot of excuses, and they only tracked these people down because Congress embarrassed them publicly. But even with the few they found, they decided not to take any action because of a legal loophole and a passive attitude about security.

After that report, Mr. Chairman, you and I asked the GAO to follow-up on this problem by examining how the State Department, Department of Homeland Security and FBI handled visas revoked on terrorism grounds. As we will hear today, the GAO found alarming problems.

The visa revocation process suffers from systemic weaknesses, and all three agencies lack policies and procedures for handling this issue. Even more chilling, the GAO found that a number of persons – around 30, and probably more – entered the country after their visas were revoked on terrorism grounds. Alarmingly, little to no effort has been made to find them or assess how much of a threat they pose.

Bureaucrats at these agencies were either sitting on their hands or doing the bare minimum. They failed to follow up on a serious threat, and that borders on negligence. I've got to question whether they were living up to the duties and responsibilities of their office. They also were not sharing information, or not sharing in a timely manner, between agencies and within agencies. It couldn't get much worse, and some of the mistakes defy belief.

We're also at risk thanks to legal loophole that has not yet been fixed. If an alien makes it into the United States before the visa is revoked on terrorism grounds, they're safe at home plate. State Department policy prevents the Department of Homeland Security from deporting the person. Amazingly, the State Department's response to GAO shows that they don't want this policy to change.

It is unconscionable that aliens can be deported for shoplifting or stalking, but cannot be deported when their visa has been revoked on grounds of terrorism. This loophole must be fixed now, either by the agencies or by Congress.

As shocking as all of this is, it's also par for the course. Sometimes border security seems more about lip service than action. Since the attacks of September 11th, I've focused my oversight on border security, and I don't like what I've found.

In December, I released a report by the State Department Inspector General that visa issuance policies had not been overhauled as needed since the terrorist attacks, and they remained inconsistent and flawed around the globe.

The report also found that visa issuing posts make up their own rules about waiving an interview, with little regard for security. The report also found that Consular Affairs use of foreign travel agencies to help process visa applications is haphazard at best and reckless at worst. The report also shows that document fraud is a serious problem, and fraud detection efforts are not coordinated.

I chaired a Finance Committee hearing in January about border security problems that remain in place. The GAO's Office of Special Investigations penetrated several ports of entry with 100 percent success using very basic fake identity documents. Customs and INS just made excuses.

The hearing also examined our border vulnerabilities in public lands controlled by the Interior Department, which is responsible for more than one-third of the Southwest border. A special agent with the National Park Service testified about the dangers of patrolling the border, including the murder last year of Ranger Chris Eggle. We viewed a infrared tape of hundreds of aliens sneaking across the border at night, streaming through campsites. Some of them wore large backpacks full of marijuana, and at least one alien clearly was armed. The Inspector General at the Interior Department testified about the slow pace of law enforcement reforms in the Park Service.

In April, Sen. Carl Levin and I released a GAO report that found there was still no consolidated watch list for the federal government, even a year and a half after the attacks of September 11th. Information sharing was lacking and inefficient between federal agencies, while state and local law enforcement were operating half-blind.

The pattern is becoming clear. If there has been improvement in border security, it hasn't been much. We're still at risk.

The State Department, Homeland Security and the FBI need to pay attention to this oversight and fix the problems, instead of making excuses and seeing how many angels can dance on the head of a pin.

But there is one solution that's not in any of these reports. And that's changing the culture and attitudes in these agencies. No policy or procedure in the world will protect us if our border, law enforcement and intelligence agencies are afflicted with the terrible combination of complacency and arrogance.

The only way I know how to change the bureaucratic culture is to hold them accountable, even if it means some heads roll. And we have to keep shining a light on the problems until these agencies fix them. I will keep doing that, Mr. Chairman, and that's what we're doing today.

I thank you for it. It's so very important.

Mr. SHAYS. I thank our witnesses for their patience. We had votes, and that really interrupted us. All witnesses' statements will be included in the record in their entirety. My request is that you be as close to 5-minutes as possible. If necessary, we will set the clock for another 5 minutes. Following the testimony, I believe we will have a healthy discussion.

We want to determine what the problem is, what the solution is, and then get on with our lives.

Mr. Ford.

STATEMENT OF JESS T. FORD, DIRECTOR, INTERNATIONAL AFFAIRS AND TRADE DIVISION, U.S. GENERAL ACCOUNTING OFFICE; CATHERINE BARRY, MANAGING DIRECTOR, OFFICE OF VISA SERVICES, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE; JAYSON P. AHERN, ASSISTANT COMMISSIONER, OFFICE OF FIELD OPERATIONS, BUREAU OF CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY; CHARLES H. DEMORE, INTERIM ASSISTANT DIRECTOR FOR INVESTIGATIONS, BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY; AND STEVEN C. MCCRAW, INSPECTOR DEPUTY ASSISTANT DIRECTOR OF INTELLIGENCE, FEDERAL BUREAU OF INVESTIGATION

Mr. FORD. Thank you, Mr. Chairman, and members of the subcommittee. I am pleased to be here to discuss our report, which we are issuing today, on the need for new policies and procedures to fill gaps in the visa revocation process. Our report calls for new policies and procedures to ensure that when the State Department revokes a visa because of terrorist concerns, homeland security and law enforcement agencies that protect our country are promptly notified of this information, and take appropriate action.

Since the September 11th attacks, the State Department's Bureau of Consular Affairs has been receiving an increased volume of information from the intelligence community, law enforcement agencies, and other sources on suspected terrorists. In some cases, the Department decided to revoke visas of certain individuals when it received potentially derogatory information on them after issuing the visas. This issue was raised in our October 2002 report which was referred to earlier.

At your request, Mr. Chairman, and that of Senator Grassley, we evaluated the effectiveness of the visa revocation process and how it is being used as an antiterrorism tool. Our work focused on all 240 of the State Department's visa revocations on suspected terrorist grounds from September 11, 2001, through December 31, 2002.

Our analysis shows that the visa revocation process could be used more aggressively to prevent suspected terrorists from entering the country, and to alert homeland security and law enforcement agencies that individuals who entered before their visas were revoked, might be security risks. However, we found that in practice the process broke down when information on visa revocations was not shared between the State Department and appropriate immigration and law enforcement offices.

It broke down even further when individuals in question had already entered the United States prior to revocation. INS and the

FBI were not routinely taking actions to investigate, locate, or resolve the cases of individuals who remained in the United States after their visas were revoked. Depending on the results of these investigations, the cases could be resolved by clearing persons who were wrongly suspected of terrorism, removing suspected terrorists from the country, or prosecuting suspected terrorists of criminal charges.

In our review of 240 visa revocations, we found numerous cases where notification of the revocation did not reach the appropriate units within the INS or the FBI and cases where lookouts were not posted to the agency watch list of suspected terrorists. We also found evidence that individuals whose visas were revoked because of terrorist concerns entered the United States and may still remain in the country.

Additionally, the INS and the FBI were not routinely taking actions to investigate, locate, and resolve these cases. I would like to expand on these weaknesses and the process, and then comment on the U.S. Government's lack of a specific policy on visa revocations.

Mr. Chairman, we have prepared two charts that are on my right. The first chart depicts the flow of information between the State Department's Bureau of Consular Affairs, its overseas post, and the INS Inspection Unit, which is now part of DHS, the INS National Security Unit, which is now part of DHS, and the FBI and its component organizations.

As shown in the first chart, the top box shows the extent of communication on visa revocations between the State Department's Bureau of Consular Affairs and State's overseas consular posts. We found that State had not consistently followed its informal policy of entering a lookout into its Class Lookout System at the time of revocation. Without a lookout, it is possible that a new visa could be issued without additional security screening.

We reviewed class records on all 240 individuals whose visas were revoked, and found that the State Department did not post lookouts within a 2-week period on 64 of these individuals.

The second box depicts information flow on revocations between the State Department and the INS Inspection Unit. The INS Inspection Unit is the unit that posts the information on the INS lookout system, which goes to the border agents at ports of entry. It is supposed to alert the border agents to prevent potential terrorists from entering the United States.

Officials from this Unit told us that they had not received any notification of revocations from the State Department in 43 of the 240 cases. That is listed on the first bullet on the second chart. In another 47 cases, the Unit did not receive information on the revocation on a timely basis. On average, in these 47 cases, it took 12 days for the revocations to reach the Unit.

On a positive side, when notifications were received, INS agents were able to stop 14 individuals from entering the country. However, once persons enter the United States and have their visas revoked, INS border agents are not able to take action. We found 30 cases where persons had entered the country and may still be here, even though their visas had been revoked. Neither the INS's National Security Unit, which is responsible for investigating these cases, nor the FBI routinely investigated these 30 cases. A key rea-

son was the weakness in the information flow between the State Department, the INS, and the FBI, and within units of each of those agencies.

This is depicted in the third box on the first chart which shows the information that is supposed to flow from the State Department to the FBI units and to the Investigative Unit of the INS. INS officials also told us that they generally do not investigate these cases because it would be challenging to remove these individuals unless they were in violation of their immigration status, even if they could locate them. As a consequence, in most cases the INS and the FBI did not investigate the whereabouts of the individuals who entered the United States and had their visas revoked.

We believe that the weaknesses that I have just outlined are the result of the U.S. Government's limited policy guidance on the visa revocation process. Our analysis indicates that the U.S. Government has no specific policy on the use of visa revocations as an antiterrorism tool and no written procedures to guide State in notifying the relevant agencies of visa revocation on terrorist grounds.

Moreover, neither the INS nor the FBI had specific policies or procedures that covered investigating, locating, and taking appropriate action in cases where the visa holder had already entered the country.

To remedy these systemic weaknesses in the visa revocation process, we are recommending that the Secretary of Homeland Security, who is now responsible for issuing regulations and administering and enforcing provisions of U.S. immigration law, in conjunction with the Department of State and the Attorney General, develop specific policies and procedures for the interagency visa revocation process, to ensure that the notification of visa revocations for suspected terrorists and relevant supporting information are promptly submitted from the State Department to Immigration and law enforcement agencies, and that their respective inspection and investigative units receive this information on a timely basis.

We are also recommending that they develop a specific policy on actions that immigration and law enforcement agencies could take to investigate and locate individuals whose visas have been revoked for terrorism concerns who remain in the United States after revocation. We further recommend that they determine if any of the individuals with visas revoked on terrorist grounds are currently in the United States, and determine whether or not they continue to pose a security threat to the United States.

I might add that the Department of Homeland Security commented on our draft report that they agreed with the thrust of our recommendations and said that they planned to work with the State and Justice Departments to improve this process.

That concludes my statement. I would be happy to answer any questions you may have. I would ask that my testimony be included in its entirety.

Mr. SHAYS. Without objection, so ordered.

[NOTE.—The GAO report entitled, "Border Security, New Policies and Procudures Are Needed to Fill Gaps in the Visa Revocation Process," may be found in subcommittee files.]

[The prepared statement of Mr. Ford follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, House of Representatives

For Release on Delivery
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BORDER SECURITY

New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process

Statement of Jess T. Ford, Director
International Affairs and Trade

GAO-03-908T

June 2003

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Highlights

Highlights of GAO-03-908T, a testimony before the Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, House of Representatives

BORDER SECURITY

New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process

Why GAO Did This Study

The National Strategy for Homeland Security calls for preventing the entry of foreign terrorists into our country and using all legal means to identify; halt; and where appropriate, prosecute or bring immigration or other civil charges against terrorists in the United States. GAO reported in October 2002 that the Department of State had revoked visas of certain persons after it learned they might be suspected terrorists, raising concerns that some of these individuals may have entered the United States before or after State's action. Congressional requesters asked GAO to (1) assess the effectiveness of the visa revocation process and (2) identify the policies and procedures of State, the Immigration and Naturalization Service (INS), and the Federal Bureau of Investigation (FBI) that govern their respective actions in the process.

What GAO Recommends

GAO makes recommendations to the Department of Homeland Security, in conjunction with the Departments of State and Justice, to develop specific policies and procedures for the interagency visa revocation process to ensure that when State revokes a visa because of terrorism concerns, the appropriate units within State, INS, and the FBI are notified immediately and that proper actions are taken.

www.gao.gov/cgi-bin/getrpt?GAO-03-908T.

To view the full product, click on the link above. For more information, contact Jess T. Ford at (202) 512-4128 or fordj@gao.gov.

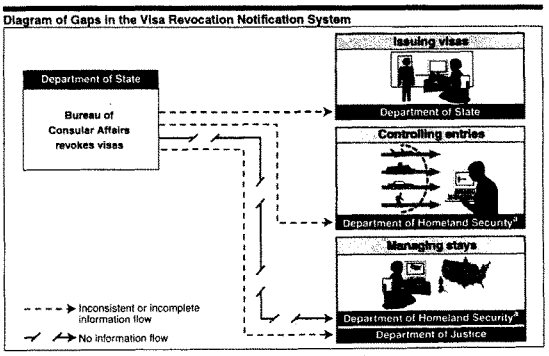
What GAO Found

Our analysis shows that the visa revocation process was not being fully utilized as an antiterrorism tool. The visa revocation process broke down when information on individuals with revoked visas was not shared between State and appropriate immigration and law enforcement offices. It broke down even further when individuals had already entered the United States prior to revocation. INS and the FBI were not routinely taking actions to investigate, locate, or resolve the cases of individuals who remained in the United States after their visas were revoked. In our review of 240 visa revocations, we found that

- appropriate units within INS and the FBI did not always receive notifications of all the revocations;
- names were not consistently posted to the agencies' watch lists of suspected terrorists;
- 30 individuals whose visas were revoked on terrorism grounds had entered the United States and may still remain; and
- INS and the FBI were not routinely taking actions to investigate, locate, or resolve the cases of individuals who remained in the United States after their visas were revoked.

These weaknesses resulted from the U.S. government's limited policy guidance on the process. None of the agencies have specific, written policies on using the visa revocation process as an antiterrorism tool.

Diagram of Gaps in the Visa Revocation Notification System



Sources: GAO and Art Explosion.

[a]On March 1, 2003, INS's various functions transferred to the Department of Homeland Security.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here to discuss the report[1] we are issuing today on the need for new policies and procedures to fill gaps in the visa revocation process. As you are aware, Mr. Chairman, in the National Strategy for Homeland Security[2] the President said that the U.S. government has no more important mission than protecting the homeland from future terrorist attacks. Our report calls for new policies and procedures to ensure that when the Department of State revokes a visa because of terrorism concerns, homeland security and law enforcement agencies that protect our country are promptly notified of this information and take appropriate action. Since the September 11 attacks, State's Bureau of Consular Affairs has been receiving an increased volume of information from the intelligence community, law enforcement agencies, and other sources on suspected terrorists. In some cases, the department decided to revoke visas of certain individuals when it received potentially derogatory information on them after issuing the visas. This issue was raised in our October 2002 report on strengthening the visa process as an antiterrorism tool.[3] In that report, we found that the State Department had revoked the visas of certain individuals after learning that they might be suspected terrorists, raising concerns that some of these people may have entered the United States before or after their visas were revoked.

At your request, Mr. Chairman, and that of Senator Grassley, we evaluated how the visa revocation process is being used as an antiterrorism tool. We (1) assessed the effectiveness of the visa revocation process, specifically (a) the steps State took to notify appropriate units within the Immigration and Naturalization Service (INS),[4] which is now part of the Department of

[1]U.S. General Accounting Office, *Border Security: New Policies and Procedures Needed to Fill Gaps in the Visa Revocation Process* (Washington, D.C.: June 18, 2003).

[2]Office of Homeland Security, *National Strategy for Homeland Security* (Washington, D.C.: July 2002).

[3]U.S. General Accounting Office, *Border Security: Visa Process Should Be Strengthened as an Antiterrorism Tool*, GAO-03-132NI (Washington, D.C.: Oct. 21, 2002).

[4]On March 1, 2003, INS became part of three units within the Department of Homeland Security. INS inspection functions transferred to the Bureau of Customs and Border Protection; its investigative and enforcement functions transferred to the Bureau of Immigration and Customs Enforcement; and its immigration services function became part of the Bureau of Citizenship and Immigration Services. Because our work focused on visa revocation cases that took place before the March 1 reorganization, our report refers to the U.S. government's immigration agency as INS.

Homeland Security, and the Federal Bureau of Investigation (FBI) of revocations and the procedures used by the three agencies to post lookouts on these revocations to their terrorist watch lists; [5] (b) whether any of the individuals whose visas had been revoked were able to enter the United States before or after the revocation; and (c) the actions taken by INS and the FBI to investigate; locate; and, where appropriate, clear, remove, or prosecute the individuals who did enter the United States and may still remain here after their visas have been revoked; and (2) determined the policies and procedures of the State Department, INS, and the FBI that govern their respective actions in the visa revocation process. Our work focused on all 240 of State's visa revocations on terrorism grounds from September 11, 2001, through December 31, 2002.

Summary

Our analysis shows that the visa revocation process is not being fully utilized as an antiterrorism tool. The visa revocation process could be more aggressively used to prevent suspected terrorists from entering the country and to alert homeland security and law enforcement agencies that individuals who entered before their visas were revoked might be security risks. However, we found that, in practice, the process broke down when information on visa revocations was not shared between State and appropriate immigration and law enforcement offices. It broke down even further when the individuals in question had already entered the United States prior to revocation. INS and the FBI were not routinely taking actions to investigate,[6] locate, or resolve the cases of individuals who remained in the United States after their visas were revoked. Depending on the results of the investigations, the cases could be resolved by clearing persons who were wrongly suspected of terrorism, removing suspected terrorists from the country, or prosecuting suspected terrorists on criminal charges.

[5]These watch lists are automated databases that contain information about individuals who are known or suspected terrorists so that these individuals can be prevented from entering the country, apprehended while in the country, or apprehended as they attempt to exit the country. Specific entries on watch lists are sometimes referred to as "lookouts."

[6]*The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations* provide for graduated levels of investigative activity by the FBI, allowing the bureau to act well in advance of the commission of planned terrorist acts or other federal crimes. The three levels of investigative activity defined in the guidelines are (1) the prompt and extremely limited checking of initial leads; (2) preliminary inquiries; and (3) full investigations. In this testimony, we are not prescribing which level of investigative activity is appropriate for persons with revoked visas who may be in the United States.

In our review of the 240 visa revocations, we found numerous cases where notification of the revocation did not reach appropriate units within INS and the FBI and cases where lookouts were not posted to the agencies' watch lists of suspected terrorists. We also found evidence that 30 individuals whose visas were revoked because of terrorism concerns entered the United States and may still remain in the country.[7] Additionally, INS and the FBI were not routinely taking actions to investigate, locate, or resolve the cases of individuals who remained in the United States after their visas were revoked. I would like to expand on these weaknesses in the process, and then comment on the U.S. government's lack of a specific policy on visa revocations. Finally, I will outline the recommendations we have developed to strengthen the visa revocation process as an antiterrorism tool. In general, we recommend the development of specific policies and procedures to ensure that persons whose visas have been revoked because of potential terrorism concerns be denied entry to the United States and those who may already be in the United States be investigated to determine if they pose a security threat.

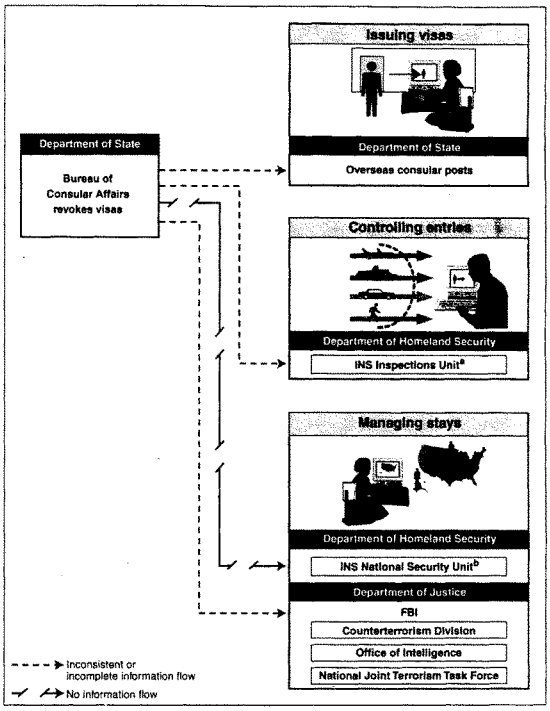
Weaknesses in Notification and Watch List Procedures

In our review of the 240 visa revocations, we found examples where information on visa revocations did not flow between the State Department and appropriate units overseas and within INS and the FBI. State Department officials from the Visa Office told us that when they revoke a visa in Washington, they are supposed to take the following steps: (1) notify consular officers at all overseas posts that the individual is a suspected terrorist by entering a lookout on the person into State's watch list, the Consular Lookout and Support System, known as CLASS; (2) notify the INS Lookout Unit via a faxed copy of the revocation certificate so that the unit can enter the individual into its watch list and notify officials at ports of entry; and (3) notify the issuing post via cable so that the post can attempt to contact the individual to physically cancel his visa. Information-only copies of these cables are also sent to INS's and FBI's main communications enters. State officials told us they rely on INS and FBI internal distribution mechanisms to ensure that these cables are routed to appropriate units within the agencies.

[7]This number is based on our analysis of data we received from INS as of May 19, 2003. On May 20 and 21, the INS and FBI, respectively, provided additional information related to this matter. Because of the nature and volume of this data, we were not able to fully analyze it in time for this testimony. The data could show that the number of persons is higher or lower than 30.

Figure 1 demonstrates gaps that we identified in the flow of information from State to INS and the FBI, and within these agencies, as well as the resulting inconsistencies in the posting of lookouts to the agencies' respective watch lists.

Figure 1: Diagram of Gaps in the Visa Revocation Notification System and Watch List Procedures



Sources: GAO and Art Explosion.

[a]Now within the Bureau of Customs and Border Protection.

[b]Now within the Bureau of Immigration and Customs Enforcement.

The top arrow in the diagram shows the extent of communication on visa revocations between the State Department's Bureau of Consular Affairs and State's overseas consular posts. We found that State had not consistently followed its informal policy of entering a lookout into its CLASS lookout system at the time of the revocation. State officials said that they post lookouts on individuals with revoked visas in CLASS so that, if the individual attempts to get a new visa, consular officers at overseas posts will know that the applicant has had a previous visa revoked and that a security advisory opinion on the individual is required before issuing a new visa. Without a lookout, it is possible that a new visa could be issued without additional security screening. We reviewed CLASS records on all 240 individuals whose visas were revoked and found that the State Department did not post lookouts within a 2-week period of the revocation on 64 of these individuals.

The second arrow depicts the information flow on revocations between State and the INS Lookout Unit, which is the inspections unit that posts lookouts on INS's watch list to prevent terrorists (and other inadmissible aliens) from entering the United States. Officials from the INS Lookout Unit told us they had not received any notice of the revocations from State in 43 of the 240 cases. In another 47 cases, the INS Lookout Unit received the revocation notice only via a cable; however, these cables took, on average, 12 days to reach the Lookout Unit, although in one case it took 29 days. An official from the INS communications center told us that, because State's cables were marked "information only," they were routed through the Inspections division first, which was then supposed to forward them to the Lookout Unit. He told us that if the cables had been marked as "action" or "urgent," they would have been sent immediately to the Lookout Unit. In cases where the INS Lookout Unit could document that it received a notification, it generally posted information on these revocations in its lookout database within one day of receiving the notice. When it did not receive notification, it could not post information on these individuals in its lookout database, precluding INS inspectors at ports of entry from knowing that these individuals had had their visas revoked.

The third arrow on the diagram shows the communication between State and INS's National Security Unit that is responsible for investigations. This broken arrow shows that the State Department did not send copies of the faxed revocation certificates or cables to the unit. Further, in cases where the INS Lookout Unit received the revocation notification from State, INS Lookout Unit officials said that they did not routinely check to see whether these individuals had already entered the United States or notify investigators in the National Security Unit of the visa revocations. Without

this notification, the National Security Unit would have no independent basis to begin an investigation. In May 2003, an official from the Lookout Unit said that her unit recently established a procedure in which, upon receiving notification of a revocation, she will query the Interagency Border Inspection System to determine if the individual recently entered the country. She will then give this information to investigators in the National Security Unit, which is now part of the Bureau of Immigration and Customs Enforcement.

The bottom arrow on the diagram shows the information flow on visa revocations from State to the FBI's Counterterrorism units. We found that that these units did not consistently receive information on visa revocations. FBI officials said that the agency's main communications center received the notifications but the officials could not confirm if the notifications were then distributed internally to the appropriate investigative units at the FBI or to the agency's watch list unit, known as the Terrorist Watch and Warning Unit. The Department of Justice said that to add a person to its watch list,[8] additional information must be provided to the FBI, such as the person's full name, complete date of birth, physical descriptors, and watch list-specific classification information. The revocation notifications did not include most of this information.

Individuals with Revoked Visas May Be in the United States

Our analysis shows that thirty individuals with revoked visas have entered the United States and may still remain in the country. Twenty-nine of these individuals entered before State revoked their visas. An additional person who may still be in the country entered after his visa was revoked. INS inspectors allowed at least three other people to enter the country even though their visas had already been revoked, largely due to breakdowns in the notification system. These three people have left the country.

Despite these problems, we noted cases where the visa revocation process prevented possible terrorists from entering the country or cleared individuals whose visas had been revoked. For example, INS inspectors successfully prevented at least 14 of the 240 individuals from entering the country because the INS watch list included information on the revocation action or had other lookouts on them. In addition, State records showed that a small number of people reapplied for a new visa after the

[8]This watch list, known as the Violent Gang and Terrorist Organization File, is accessed by local and state law enforcement officials via the National Crime Information Center.

revocation. State used the visa issuance process to fully screen these individuals and determined that they did not pose a security threat.

INS and the FBI Did Not Routinely Take Action on Individuals with Revoked Visas Who Had Entered the United States

The INS and the FBI did not routinely attempt to investigate or locate any of the individuals whose visas were revoked and who may be in the country.

Due to congressional interest in specific cases, INS investigators located four of the persons in the United States but did not attempt to locate other revoked visa holders who may have entered the country. INS officials told us that they generally do not investigate these cases because it would be challenging to remove these individuals unless they were in violation of their immigration status even if the agency could locate them. A visa revocation by itself is not a stated grounds for removal under the Immigration and Nationality Act (INA). Investigators from INS's National Security Unit said they could investigate individuals to determine if they were violating the terms of their admission, for example by overstaying the amount of time they were granted to remain in the United States, but they believed that under the INA, the visa revocation itself does not affect the alien's legal status in the United States—even though the revocation was for terrorism reasons. They and other Homeland Security officials raised a number of legal issues associated with removing an individual from the country after the person's visa has been revoked. Our report discusses these issues in detail.

FBI officials told us that they did not routinely attempt to investigate and locate individuals with revoked visas who may have entered the United States. They said that State's method of notifying them did not clearly indicate that visas had been revoked because the visa holder may pose terrorism concerns. Further, the notifications were sent as "information only" and did not request specific follow-up action by the FBI. Moreover, State did not attempt to make other contact with the FBI that would indicate any urgency in the matter.

Systemic Weaknesses Were the Result of Limited Guidance on Visa Revocation Process

The weaknesses I have outlined above resulted from the U.S. government's limited policy guidance on the visa revocation process. Our analysis indicates that the U.S. government has no specific policy on the use of visa revocations as an antiterrorism tool and no written procedures to guide State in notifying the relevant agencies of visa revocations on terrorism grounds. State and INS have written procedures that guide some types of visa revocations; however, neither they nor the FBI has written internal procedures for notifying their appropriate personnel to take specific actions on visas revoked by State Department headquarters officials, as was the case for all the revoked visas covered in our review. While State and INS officials told us they use the visa revocation process to prevent suspected terrorists from entering the United States, neither they nor FBI officials had policies or procedures that covered investigating, locating, and taking appropriate action in cases where the visa holder had already entered the country.

In conclusion, Mr. Chairman, the visa process could be an important tool to keep potential terrorists from entering the United States. Ideally, information on suspected terrorists would reach the State Department before it decides to issue a visa. However, there will always be some cases when the information arrives too late and State has already issued a visa. Revoking a visa can mitigate this problem, but only if State promptly notifies appropriate border control and law enforcement agencies and if these agencies act quickly to (1) notify border control agents and immigration inspectors to deny entry to persons with a revoked visa, and (2) investigate persons with revoked visas who have entered the country. Currently there are major gaps in the notification and investigation processes. One reason for this is that there are no specific written policies and procedures on how notification of a visa revocation should take place and what agencies should do when they are notified. As a result, there is heightened risk that suspected terrorists could enter the country with a revoked visa or be allowed to remain after their visa is revoked without undergoing investigation or monitoring.

State has emphasized that it revoked the visas as a precautionary measure and that the 240 persons are not necessarily terrorists or suspected terrorists. State cited the uncertain nature of the information it receives from the intelligence and law enforcement communities on which it must base its decision to revoke an individual's visa. We recognize that the visas were revoked as a precautionary measure and that the persons whose visas were revoked may not be terrorists. However, the State Department determined that there was enough derogatory information to revoke visas for these persons because of terrorism concerns. Our recommendations,

which are discussed below, are designed to ensure that persons whose visas have been revoked because of potential terrorism concerns be denied entry to the United States and those who may already be in the United States be investigated to determine if they pose a security threat.

To remedy the systemic weaknesses in the visa revocation process, we are recommending that the Secretary of Homeland Security, who is now responsible for issuing regulations and administering and enforcing provisions of U.S. immigration law relating to visa issuance, work in conjunction with the Secretary of State and the Attorney General to:

- develop specific policies and procedures for the interagency visa revocation process to ensure that notification of visa revocations for suspected terrorists and relevant supporting information are transmitted from State to immigration and law enforcement agencies, and their respective inspection and investigation units, in a timely manner;
- develop a specific policy on actions that immigration and law enforcement agencies should take to investigate and locate individuals whose visas have been revoked for terrorism concerns and who remain in the United States after revocation; and
- determine if any persons with visas revoked on terrorism grounds are in the United States and, if so, whether they pose a security threat.

In commenting on our report, Homeland Security agreed that the visa revocation process should be strengthened as an antiterrorism tool. State and Justice did not comment on our recommendations.

I would be happy to answer any questions you or other members of the subcommittee may have.

Contacts and Acknowledgments

For future contacts regarding this testimony, please call Jess Ford or John Brummet at (202) 512-4128. Individuals making key contributions to this testimony included Judy McCloskey, Kate Brentzel, Mary Moutsos, and Janey Cohen.

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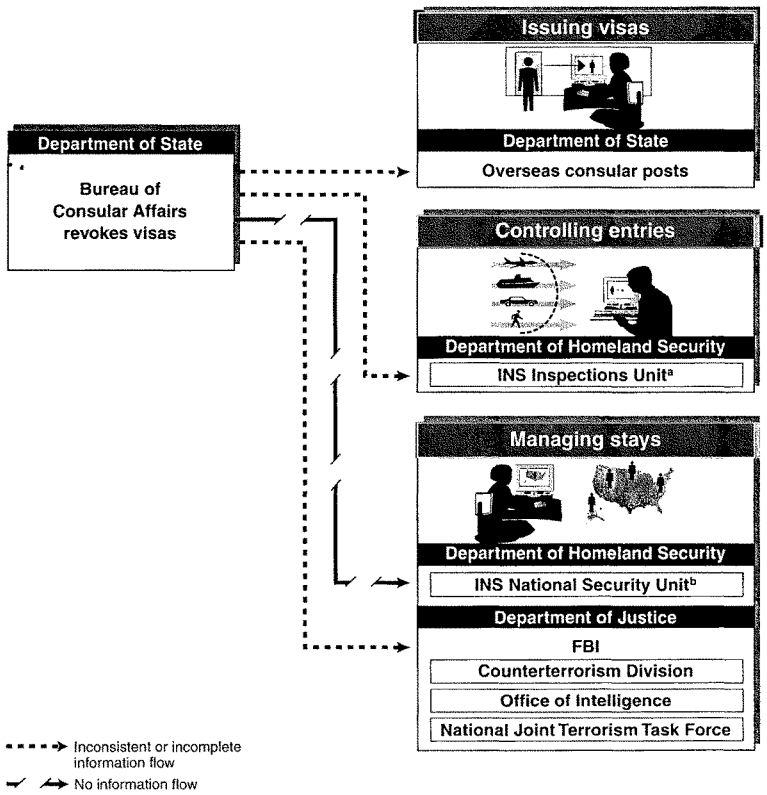
Diagram of Gaps in the Visa Revocation Notification System



Sources: GAO and Art Explosion.

[a] Now within the Bureau of Customs and Border Protection.
[b] Now within the Bureau of Immigration and Customs Enforcement.

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240 Visas Revoked on Terrorism Concerns From 09/11/01 to 12/31/02

- 43 cases where appropriate immigration officials did not receive notification
- 47 cases where appropriate immigration officials did not receive timely notification
- 14 cases where person was stopped at the border
- 30 cases where person with revoked visa may still be in the country
- Little or no follow-up on the 30 cases

Mr. SHAYS. Thank you, Mr. Ford.

Ms. Barry.

Ms. BARRY. Thank you, Mr. Chairman. Good morning, and good morning to the members of the subcommittee. I appreciate the opportunity to testify today on the subject of visa revocations and how they fit into our overall strategy of strengthening the visa process as an antiterrorism tool.

It cannot be stated too often that border security is a multi-agency mission that requires information sharing, cooperation, continuous analysis, and procedural review so that we stay ahead of the people who seek to enter the United States to do harm to Americans or our foreign visitors.

Since September 11th, and helped by legislation that required data sharing among Federal agencies, the State Department's visa officers abroad have access to a data base more than double the size of what they could consult prior to that date. We receive extensive records from the FBI and other Federal law enforcement agencies through our Consular Lookout and Support System [CLASS]. The TIPOFF program managed by the Bureau of Intelligence and Research at State, provides highly classified intelligence agency information on terrorist threats.

Both of these systems are at the fingertips of consular officers who adjudicate visa applications abroad. Both are available to DHS inspectors at ports of entry. Nonetheless, visa information comes to us in a variety of forms and is not always available when an applicant presents himself. We use visa revocations to ensure that already issued visas take advantage of this information.

There are two forms of revocations. The first category of revocation is pretty straightforward. We obtain information that clearly relates to an individual holding a validly issued U.S. visa, that demonstrates that individual to be ineligible under one or more provisions of the Immigration and Nationality Act. The visa is revoked, and the lookout entry is made. Both can be done by a consular officer abroad, and the matter ends there if the applicant is overseas.

Many of our revocations fall into the latter category of being "prudential." We receive information about a person who may or may not be the person to whom a U.S. visa was issued, telling us something that may or may not render that person ineligible for the visa they received.

Since the information, when provided about known or suspected terrorists, is serious and if true can endanger our security, we take the necessary precaution of revoking the visa prudentially. This sort of information about possible terrorists almost always comes to us from TIPOFF and originates with U.S. intelligence agencies. It is often vague and ambiguous, and identifies people with common names often without other biographic information such as birthdates and places of birth that could be used for corroboration.

When we revoke a visa prudentially, we want to see the applicant again so that we can elicit further information that either confirms the ineligibility and leads to a firm visa refusal, or discounts it and clears the applicant for solid visa issuance.

We recognize that the inspector from DHS at the port of entry is not in the best position to have the time or resources to inter-

view someone in light of new and normally partial information that derives from intelligence sources. The DHS officer can deny admission to the United States to that individual based on the revoked visa. The consular officer will then review the case overseas, and readjudicated it in consultation with appropriate U.S. Government agencies.

A second scenario concerns the admission of an alien to the United States before a visa was revoked. Such a case must then be handled by DHS immigration officers. Prior to the creation of DHS, we alerted the INS Lookout Unit about a prudential revocation. The INS, of course, has the most pertinent information as to whether the alien was in the United States. We now work most directly with the Lookout Unit in the Bureau of Customs and Border Protection of DHS. The system we have in place shares information quickly and reliably.

The visa office checked visas revoked from January 1st of this year to May 31st, revoked by the Deputy Assistant Secretary of State on a prudential basis, and found that all are properly in the lookout system with the correct revocation code. Last year, and in years past, we entered such revocations into CLASS into what are known as "quasi-refusal codes." We sent the revocation certificate to INS by fax when we revoked a visa, and sent a cable to that agency and the FBI as a secondary means of notifying them of this action.

The language of the revocation certification which informs the alien and other relevant U.S. Government agencies that the visa is no longer valid, was written in consultation with the then-INS and the Department of Justice. Last summer we became aware of the fact that port-of-entry inspectors did not have access to the quasi-refusal for a suspected terrorist.

Recognizing this vulnerability, we created the revocation code that we now enter into CLASS which does transfer information automatically in virtual real time to DHS via the IBIS system. Such an entry immediately allows a port-of-entry inspector to know that a visa presented for admission has been revoked. Unfortunately, the change in procedure was not communicated effectively within the Visa Office to all pertinent parties until December of last year when we began using this revocation code in all cases.

This gap only affected prudential revocations since the revocation based on a known visa ineligibility would be accompanied by a CLASS entry based on the underlying ground for the visa refusal, and would be available via IBIS in any event. Nonetheless, it was a gap that perhaps represented a carry over from the previous informal system of communication that we regret, but which we have now corrected.

The use of the revocation coding class not only promptly notifies other of the potential need for action if the subject of the revocation attempts to or has already entered the United States, but also allows for transparency in our data collection and auditing. We can now review revocation data, and know the numbers of revocations and the reasons they were revoked. Our partnership with DHS in this area has been greatly improved by these system changes, and the previous informal system is now a thing of the past.

Finally, let me discuss the specific cases that were reviewed by the GAO and led to the report that we are here to discuss. While they were not free from the improvised nature of our old procedures, I believe they demonstrate how cautiously we proceed when there is the slightest risk of a terrorist connection to a visa applicant.

First is the 105 cases that the GAO first identified in their October report. Much newspaper ink has been spilled, exaggeratedly claiming that the subjects of these revocations are suspected terrorists. In fact, all of these subjects have since been cleared by the FBI and some have been reissued visas. Some of the affected people were turned away at U.S. ports of entry and some were able to enter the United States in spite of the revocation.

To date, we have received no information from law enforcement indicating that any of these applicants was ever a terrorist or a threat to U.S. national security. None of their names ever applied in CLASS, as eligible on terrorism, or any other ground of refusal. In fact, the incident was entirely due to the difficulty we experienced when first instituting the "Visas Condor" interagency screening program for visa applicants. The workload stressed the resources of participating agencies for several months last year.

The remaining 135 revocations were based on information that we learned via TIPOFF entries from the intelligence community. Whenever we receive new TIPOFF entries, we run the names against our data base of issued visas to ensure that we have not previously approved a visa to someone who should not be allowed to enter the United States. We revoke any such visas prudentially to stop the applicant from traveling to the United States and to allow for resolution of the case in any subsequent application.

These cases, since they refer back to specific information about known or suspected terrorists, are potentially very serious, but they are complicated by the same vagueness about identity and ineligibility that accompany the use of incomplete information. Our practice is to revoke the visa if there appears to be a link between the intelligence report and the visa holder.

Today, modern computerized systems give us the chance to apply even partial knowledge to our advantage by allowing us to review historical data on issued visas. We continue to refine our procedures, and to enhance data share concerning data on lookouts and visa holders with other Federal agencies.

The tragedy of September 11th strengthened the resolve of the Department of State to take every step within our authority to safeguard our borders and spurred us to think through improvements in our procedures for visa work. We work cooperatively every day with DHS and the FBI on numerous border security programs and have mutually improved many of these programs.

We remain vigilant in looking for further enhancements and have redoubled our efforts to improve the performance of consulate officers overseas and headquarters staff in meeting our primary goal of secured borders and open doors.

Thank you very much. I would be happy to take your questions as appropriate. I would ask that my testimony be included in its entirety.

Mr. SHAYS. Without objection, so ordered.

[The prepared statement of Ms. Barry follows:]

House Committee on Government Reform
Subcommittee on National Security, Emerging Threats, and International Relations
Hearing: Catching the Terrorists Among Us
June 18, 2003
Testimony of Catherine Barry, Acting Deputy Assistant Secretary of State
For Visa Services

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to testify today on the subject of visa revocations and how they fit into our overall strategy of strengthening the visa process as an anti-terrorism tool. The GAO has devoted substantial attention to this theme, starting with their report of the same name in October of last year (GAO-03-132NI) and continuing with the report we are now considering. While we at the State Department do not agree with every conclusion reached in these reports we have nonetheless found both to be perceptive analyses of the issue and have used them in fashioning our own plans for improving our visa screening abroad. It cannot be stated too often that border security is a multi-agency mission that requires information sharing, cooperation, and continuous analysis and procedural review so that we stay ahead of the people who would seek to enter the United States to do harm to Americans or our foreign visitors.

Discovering a terrorist or criminal who is making every effort not to be discovered from among a sea of legitimate visa applicants requires knowledge, interviewing skill, good judgment, and solid information to bring everything the US government knows to bear on the application before we allow the person access to our country. While it is always satisfying to crack a tough puzzle, we want to make it as easy as possible for our officers to screen out threats and nothing is so vital in this task as good, specific, and solidly grounded information identifying people who are ineligible for US visas. Since September 11, and helped by legislation that requires data sharing among federal agencies, the State Department's visa officers abroad have access to a database more than double the size of what they could consult prior to that date. We receive extensive records from the FBI and other federal law enforcement agencies through our Consular Lookout and Support System (CLASS). The TIPOFF program, managed by the Bureau of Intelligence and Research at State, provides highly classified intelligence agency information on terrorist threats. Both of these systems are at the fingertips of consular officers who adjudicate visa applications abroad and both are available to DHS inspectors at our Ports of Entry.

While our aim is obviously to make finding an ineligible traveler quickly and unambiguously when he or she applies for a visa, the nature of the terrorist threat is such that we inevitably collect partial, incomplete, and sometimes erroneous data in our search for these identities. It is here that we count on the skill, knowledge, and judgment of the consular officer to compare the applicant before him or her with the information that might relate to that applicant. It is not an easy job, nor is it necessarily quick when confronted with serious derogatory information on common names without complete biographic markers that allow for swift resolution. We err on the side of caution,

carefully examining such cases to ensure that the applicant is not the person on whom we have a file that would lead to a visa refusal, always waiting for a response from other federal agencies where a Washington based security review is required.

Information is neither static nor always available in a timely fashion. Officers will learn of facts which, had they been known about a visa applicant when they applied, would have led to a refusal. They will also be apprised of information that, had it been provided when a particular visa applicant came before them, would have led to a line or lines of inquiry that would have been explored to the officer's satisfaction before a visa would have been issued. I have here more or less defined the two categories of visa revocations: for ineligibility and for prudential reasons. Revocation is the State Department's way of taking action when relevant derogatory information becomes available after a visa was issued.

The first category of revocation is pretty straightforward: we obtain information that clearly relates to an individual holding a validly issued US visa that demonstrates that individual to be ineligible under one or more provisions of the Immigration and Nationality Act (INA). The visa is revoked – it can be done by a consular officer abroad – and the matter ends there if the applicant is overseas. Unfortunately, most of our revocations fall into the latter category of being "prudential". We receive information about a person who may or may not be the person to whom a US visa was issued, telling us something that may or may not render that person ineligible for the visa they received. Since the information – when provided about known or suspected terrorists -- is serious and, if true, could endanger our security, we take the necessary precaution of revoking the visa prudentially. Such "prudential revocations" may only be made in Washington by the Secretary of State, or an official to whom the Secretary has delegated this authority (in practice, the Deputy Assistant Secretary of State for Visa Services). This sort of information about possible terrorists almost always comes to us from TIPOFF and originates with US intelligence agencies. It is often vague and ambiguous and identifies people with common names, often without other biographic information such as birth dates and places of birth that can be used for corroboration.

When we revoke a visa prudentially, we want to see the applicant again so that we can elicit further information that either confirms the ineligibility and leads to a firm visa refusal, or discounts it and clears the applicant for a solid issuance. We recognize that the inspector from DHS is not in the best position to have either the time or resources to interview someone in light of new and normally partial information that derives from intelligence sources. The DHS officer can deny admission to the US to that individual based on the revoked visa. The consular officer will then review the case overseas and re-adjudicate it in consultation with appropriate USG agencies. If the alien has already been admitted to the US, the case can only be handled further by immigration officers.

A second scenario concerns the admission of an alien to the US before a visa was revoked. Such a case must then be handled by DHS immigration officers. In the past, by alerting the former INS lookout unit about a visa revocation, we were alerting the INS,

which would have had the most pertinent information as to whether the alien was in the US.

The system now takes into account the creation of the Department of Homeland Security. Our partner remains the lookout unit that is now part of the Bureau of Customs and Border Protection. We provide that office alerts on visa revocations by making a CLASS entry. We send a copy of the certificate of revocation and a copy of the cable to the appropriate overseas post. We now send a copy of the cable to the Bureau of Immigration and Customs Enforcement to facilitate the internal deliberations within DHS as to how to proceed in a specific case. The FBI also receives copies of the cables that report visa revocations to facilitate communication between DHS and the FBI on enforcement issues.

The system we now have in place shares this information quickly and reliably. The Visa Office checked visas revoked from January 1, 2003 to May 31, 2003 by the Deputy Assistant Secretary of State on a prudential basis and found that all are properly in the lookout system with the correct revocation code.

Last year and in years past we entered such revocations into CLASS through what are known as "quasi refusal" codes, which do not transfer over IBIS to POE inspectors. We sent the revocation certificate to INS (now DHS) by fax when we revoked a visa and sent a cable to that agency and the FBI as a secondary means of notifying them of this action. The language of the revocation certificate, which informs the alien and other relevant USG agencies that the visa is no longer valid, was written in consultation with the (then) INS and the Department of Justice. While we sought to send such a fax the same day as the revocation action, we did not always succeed in doing so. Sending a fax, moreover, did not automatically ensure that a POE inspector had immediate access to that information. Recognizing this vulnerability last summer, we created a revocation code that we now enter into CLASS, which transfers this information automatically to our sister agencies of DHS and DOJ via the Inter-Agency Border Inspection System (IBIS). Such an entry immediately allows a POE inspector to know that a visa presented for admission has been revoked. It likewise allows the FBI to know that there was information about a particular visa applicant that led us to revoke the visa. Unfortunately, the change in procedure was not communicated effectively within the Visa Office until December of last year, when it then became standard operating procedure in the Visa Office.

This gap only affected prudential revocations, since a revocation based on a known visa ineligibility would be accompanied by a CLASS entry based on the underlying ground for the visa refusal and would be available via IBIS anyway. Nonetheless, it was a gap that perhaps represented a carryover from the previous informal system of communication that we regret but which we have now corrected. Use of a revocation code in CLASS not only promptly notifies other concerned agencies of the potential need for action (if the subject of the revocation attempts to or has already entered the US), but allows for transparency in our data collection and auditing. We can now review revocation data and know the numbers of revocations and the reasons they

were revoked. Our partnership with DHS and the FBI in this area has been greatly improved by these system changes, and the previous informal system is now a thing of the past.

Finally, let me discuss the specific cases that were reviewed by the GAO and led to the report we are here to discuss. While they were not free from the improvised nature of our old procedures, I believe they demonstrate how cautiously we proceed when there is the slightest risk of a terrorist connection to a visa applicant. First the 105 cases that the GAO first identified in their October report. Much newspaper ink has been spilled exaggeratedly claiming that the subjects of these revocations are "suspected terrorists". In fact many of these subjects have since been cleared by the FBI and some have been reissued visas. All were subject to the (then) new "Visas Condor" security check that we instituted in January of 2002 for certain applicants whose background or circumstances met certain criteria suggested by the law enforcement community, which required them to be vetted in Washington, despite not appearing as ineligible for a visa in CLASS. Since we began this program using a "clock" mechanism that allowed us to issue a visa once 30 days had passed with no response from the agencies queried, the cases were issued before we were aware that the FBI wished additional time to process them. All this meant was that the names, as checked (or in most cases similar names), came up in FBI records that might need to be consulted prior to visa issuance. We revoked these visas prudentially, some of the affected people were turned away at US POEs and some were able to enter the US in spite of the revocation, but to date we have received no information from law enforcement indicating that any of these applicants was ever a terrorist or a threat to US national security.

The remaining 135 revocations were based on information that we learned via TIPOFF entries from the intelligence community. Whenever we receive new TIPOFF identities we run the name against our database of issued visas to ensure that we have not approved a visa to someone who should not be allowed to enter the US. We revoke any such visas prudentially to stop the applicant from traveling to the US and to allow for resolution of the case in any subsequent application. These cases, since they refer back to specific information about known or suspected terrorists, are potentially more serious than delayed "Condor" clearances, but they are complicated by the same vagueness about identity and ineligibility that accompany the use of incomplete information. In the past we had little ability to use such information in any effective manner. Today, modern computerized systems give us the chance to apply even partial knowledge to our advantage, and we continue to refine our procedures to do just that, as we have in creating a revocation code that is automatically shared with other federal agencies.

The tragedy of September 11 strengthened the resolve of all the parts of the federal government to take every step in our power tosafeguard our borders, and spurred us to think through improvements in our procedures for visa work. The creation of DHS responded to the need felt in the Administration and Congress for an agency that could coordinate our actions so as to close the gaps in our systems through which the 9/11 hijackers passed. We work every day with DHS and the FBI to do exactly that. I wish I could tell you that we have achieved perfect coordination, but I will tell you that we are trying. I likewise wish I could report that the system we have in place now to ensure that

our visa revocations are known and acted upon by the appropriate federal agencies outside of State were in place last year, but I will tell you that they are in place now. Thank you very much; I will be happy to answer any questions you may have.

Mr. SHAYS. Thank you, Ms. Barry.

Mr. Ahern.

Mr. AHERN. Good afternoon, Mr. Chairman, and members of the subcommittee. It is a privilege to be here before you today to discuss the Bureau of Customs and Border Protection's role in visa revocations. I would like to take this time to outline key parts of my written statement.

As you know, on March 1, 2003, inspectors from the Immigration and Naturalization Service, inspectors from the Animal and Plant Health Inspection Service, as well as inspectors from the U.S. Customs Service and the entire Border Patrol merged to form the Bureau of Customs and Border Protection [BCBP], within the Department of Homeland Security. We are resident within the Border and Transportation Security Directorate.

Now, for the first time in our country's history, all agencies of the U.S. Government with significant border responsibilities have been brought under one roof. The priority mission of BCBP is to prevent terrorists and terrorist weapons from entering the United States.

BCBP's role in the visa revocation process is to prevent holders of revoked visas from gaining entry into the United States. Identifying and preventing the entry of persons ineligible to enter the United States, in this case because they have had their visa revoked is the responsibility of BCBP. BCBP has reviewed the GAO report and its recommendations on the revocation process.

We believe BCBP has a key role in two of the three recommendations. One of those recommendations is that the agency develop specific policies and procedures for the interagency visa revocations process to ensure that notification of visa revocations are transmitted in a timely fashion from the Department of State, to Immigration, now BCBP, and the law enforcement agencies and their respective inspection and investigation units.

The other recommendations is that agencies determine if any persons with revoked visas on terrorism grounds are in the United States and, if so, whether they pose a security threat. BCBP has already begun work with the Department of State and the Bureau of Immigration and Customs Enforcement [BICE], to address the concerns raised by the GAO report.

We have agreed on perfecting procedures that use an electronic interface between the Department of State's Consular Lookout and Support System [CLASS], and our Interagency Border Inspection System [IBIS], so that revocations get into the lookout systems immediately. We have agreed on a procedure for direct notification to BCBP for the Department of State's revocation cables. We have agreed that BCBP will immediately verify if there is a lookout on the subject of a visa revocation.

Further, we will also determine whether the subject of a revocation has entered the United States and, if so, BCBP will immediately provide the information to the investigative arm, BICE. We will continue our discussions with the Department of State and BICE, both from the operational and the technical side, to make sure that these procedures are working. Together we will make sure that the enhancements are in place to ensure timely agency notification so that revocations get into the lookout system.

The electronic interface I just mentioned provides the best solution and a transparent verifiable record of action. In cases where the Department of State cannot physically notate the visa and thus render it invalid for travel, we need a lookout in IBIS to ensure that if the subject arrives at a port of entry here in the United States, the inspector will know that the visa is invalid.

As a redundancy, the Department of State sends revocations by fax or cable to BCBP for entry into the NAILS system, which is the National Automated Immigration Lookout System. NAILS interfaces with IBIS as well. In this way we have backup procedures to ensure that this critical information is available to our frontline BCBP officers.

Protection of the Nation is the highest priority. It is our highest duty. We actively seek improvements in our own practices and work with other agencies to fulfill our mission. We know that our new agency faces great challenges in merging the border agencies to fulfill our mission.

But now that all the Federal inspection services and Border Patrol have been unified within Customs and Border Protection under the Department of Homeland Security, we are in a far better position to meet those challenges and accomplish our goal.

We will be far more effective working together than we were as separate agencies in different departments. Together we will learn all we can from our legacy agencies, and we will bring new innovation to border management. With the continued support of the President, the Department of Homeland Security, and the Congress, BCBP will succeed in meeting the great demands placed upon it. We will play a key role in the Department of Homeland Security by better securing our border against the threat of terrorism.

I will conclude at this point. I would be happy to take any questions later. I would ask that my testimony be included in its entirety.

Mr. SHAYS. Without objection, so ordered.

[The prepared statement of Mr. Ahern follows:]

Statement of Mr. Jayson P. Ahern
Assistant Commissioner, Office of Field Operations
Bureau of Customs and Border Protection
Before the
House Committee on Government Reform, Subcommittee on National Security, Emerging Threats and International Affairs
June 18, 2003

Good morning Mr. Chairman and Members of the Subcommittee. It is a privilege to appear before you today to discuss the Bureau of Customs and Border Protection's role in visa revocations. I would like to briefly discuss the BCBP organization.

As you know, on March 1, 2003, immigration inspectors and the Border Patrol from the Immigration and Naturalization Service (INS), agricultural inspectors from the Animal and Plant Health Inspection Service (APHIS), and customs inspectors from the U.S. Customs Service merged to form the Bureau of Customs and Border Protection – BCBP – within the Border and Transportation Security (BTS) Directorate of the Department of Homeland Security. Now, for the first time in our country's history, all agencies of the United States government with significant border responsibilities have been brought under one roof. With our combined skills and resources, we will be far more effective than we were when we were separate agencies.

Secretary Ridge, Under Secretary Hutchinson, Commissioner Bonner, and I, have established clear, understandable chains of command for all BCBP personnel, and have directed that field operations not be interrupted.

We want to learn from our legacy organizations and at the same time we are looking to bring new innovations to border management. To that end a full-time Transition Management Office has been put in place to help address the challenges that come from the standup of any new organization. That office is staffed with representatives from all the incoming agencies.

The priority mission of BCBP is to prevent terrorists and terrorist weapons from entering the United States. This extraordinarily important priority mission means improving security at our physical borders and ports of entry, but it also means extending our zone of security beyond our physical borders – so that American borders are the last line of defense, not the first line of defense. In sum, the BCBP's missions include apprehending individuals attempting to enter the United States illegally; stemming the flow of illegal drugs and other contraband; protecting our agricultural and economic interests from harmful pests and diseases; protecting American businesses from theft of their intellectual property; and regulating and facilitating international trade, collecting import duties, and enforcing U.S. trade laws. We must perform our all important security mission without stifling the flow of legitimate trade and travel that is so important to our nation's economy.

As the single, unified border agency of the United States, BCBP's mission is vitally important to the protection of America and the American people. In the aftermath of the terrorist attacks of September 11th, numerous initiatives were developed to meet our twin goals of improving security and facilitating the flow of legitimate trade and travel. Our strategy in implementing these initiatives – and accomplishing our twin goals – involves a number of factors, including

(A) improving targeting systems and expanding advance information regarding people and goods;

(B) pushing our "zone of security outward" by partnering with other countries, through our Container Security Initiative (CSI);

(C) pushing our "zone of security outward" by partnering with the private sector under our CTPAT initiative;

(D) deploying advanced inspection technology and equipment;

(E) increasing staffing positions for border security;

(F) working in concert with other agencies;

(G) integrating systems to improve business processes and information sharing.

The BCBP's role in the visa revocation process is to prevent holders of revoked visas from gaining entry to the U.S. Identifying and preventing the entry of persons, be they using fraudulent documents, concealing their true intentions about the purpose of their visit or because they have had their visa revoked is a key responsibility of the BCBP.

A visa is revoked when information is discovered that either renders the bearer ineligible to possess a visa, or casts substantial doubt on the bearer's continuing eligibility to retain the visa. A visa may also be revoked by the Department of State (DOS) without finding the bearer ineligible for a visa, but simply as a prudential matter when the possibility of an ineligibility is recognized. By revoking the visa "prudentially," the bearer is required to reapply for a visa, and have his eligibility formally determined, before he can travel to the United States. The actual visa, once issued to the individual, is usually at large and could be used if inspectors at ports of entry are not aware of the revocation. This critical information is communicated to BCBP inspectors and made available at the port of entry through the Interagency Border Inspection System (IBIS).

The BCBP has reviewed the General Accounting Office's (GAO) report and its recommendations on the visa revocation process. This process is an extremely important element of protecting our country and we take the GAO's recommendations seriously. Of the three recommendations, we find two to be particularly relevant to BCBP. One GAO recommendation of significant relevance to BCBP is to develop specific policies and procedures for the interagency visa revocations process to ensure that notification of visa revocations for suspected terrorists and relevant supporting information is transmitted from DOS to immigration and law enforcement agencies, and their respective inspection and investigation units, in a timely manner. Also of some relevance to BCBP is GAO's recommendation to determine if any persons with revoked visas on terrorism grounds are in the United States, and if so whether they pose a security threat. BCBP provides information regarding the entry of

revoked visa holders into the United States to BICE to assist BICE's investigation of the security risk posed by such individuals

The BCBP has already begun to work with DOS, BCIS and BICE to address concerns raised by the General Accounting Office. Since DHS now has the lead for setting visa policy, BCBP, BICE and BCIS will work together to develop specific policies addressing the visa revocation process. DHS will work closely with DOS to implement these policies. Together, we will make sure the procedures are in place to ensure timely agency notification- so that revocations get into the lookout system.

In cases where the DOS cannot physically notate the visa and thus render it invalid for travel, we need a lookout in the Interagency Border Inspection System (IBIS) to ensure that if the subject arrives at a POE, the inspector will know that the visa is not valid. A special lookout code has been developed for this purpose.

Visa revocations are effectuated by 'Certificates of Revocation', signed by the Deputy Assistant Secretary of State for Visas Services. Under the current practice, such revocations do not become effective until a subject who is in the U.S. departs, nor does a revocation automatically equate to removal grounds under the Immigration and Nationality Act (INA). Nevertheless, notification from the Department of State that it has determined to revoke a visa upon the departure of the individual from the U.S. alerts us to the fact that an individual in the U.S. poses a possible risk. At BCBP, our key concern is visas revoked for national security reasons. Like all revocations, these are transmitted to BCBP in two ways:

- By an automated interface from DOS to the BCBP lookout systems
- By facsimile transmission to the National Lookout Unit, with a cable transmission as a back up

The automated interface consists of DOS' Consular Lookout and Support System (CLASS) connection to the BCBP Interagency Border Inspections System (IBIS) on a real-time basis. As a redundancy, DOS sends revocations by facsimile transmission and by cable to the BCBP for entry into the legacy INS National Automated Immigration Lookout System (NAILS), which interfaces with IBIS as well. In this way, we have back-up procedures to ensure this critical information is available to BCBP Officers.

The BCBP is committed to strengthening the electronic interface, which we believe provides the best solution and a transparent, verifiable record of actions. The BCBP has taken the initiative to work with the DOS to find ways to improve this electronic interface to ensure visa revocation records are placed in the system for access by the BCBP inspector at the port of entry. Again, the BCBP is committed to improving this process; we will continue to work with BICE, BCIS, DOS and other agencies to provide better security for the American public.

Protection of the nation is our highest duty and we actively seek improvements of our own practices and work with other agencies to fulfill our mission. We know that this new agency, BCBP, faces great challenges in merging the border agencies and in fulfilling both our priority and traditional missions. But, now that all the Federal Inspection Services and the Border Patrol have been unified in BCBP, under the Department of Homeland Security, we are in a far better position to meet those challenges and accomplish those goals. We will be far more effective working together, than we were as separate agencies in different departments. We will learn all we can from our legacy agencies and we will bring new innovation to border management.

BCBP is working to successfully meet the challenges we face, and will play a key role in the Department of Homeland Security by better securing our border against the terrorist threat.

Thank you again for this opportunity to testify. I would be happy to answer any of your questions.

Mr. SHAYS. Thank you, Mr. Ahern.

Mr. DeMore.

Mr. DEMORE. Mr. Chairman and members of the subcommittee, thank you for the opportunity today to update you on the Bureau of Immigration and Customs Enforcement's efforts to combat terrorism and to explain our role in the visa revocation process.

No mission of the U.S. Government is more important than protecting the Nation and the American people against future terrorist attacks. This mission is paramount to the responsibilities of the newly created Department of Homeland Security. The work of BICE is an indispensable part of fulfilling that mission.

Knowing who has entered and departed from our country in real time is an important element in enforcing our laws. Equally important is knowing in real time when the Department of State, or another Government agency, has developed information like a visa revocation or other derogatory information about an individual who has entered but not departed.

Since September 11th, the law enforcement community has risen to the challenge of enhancing efficient communication and collaborating appropriately a national security information-gathering, intelligence-sharing investigations. I am pleased to be here today to discuss BICE's role in the investigation of all referred visa revocation matters.

On May 27, 2003, the GAO presented BICE with its draft report. We agree with the GAO finding that the Secretary of Homeland Security should work with the Secretary of State and the Attorney General to strengthen the visa revocation process as an antiterrorism tool, and to establish specific policies and procedures that ensure timely and direct notification of visa revocations to both the Bureau of Customs and Border Protection, as well as to BICE.

BICE considers the timely notification of State Department visa revocations to be an important element in protecting the United States against the entry of inadmissible aliens, including possible terrorists. Currently the State Department provides BICE information on visa revocations to aid in determining how to proceed on a specific case.

The GAO recommendation that is particularly relevant to BICE is the one regarding determining if any persons with revoked visas on terrorism grounds are in the United States and, if so, whether they pose a security risk. The National Security Unit within BICE is responsible for investigating all leads and referrals involving terrorism and national security matters involving cases where an issued visa has been subsequently revoked.

In making these determinations during an issued investigation, BICE coordinates with BCBP to ensure that it has all appropriate information regarding entries into the United States. Pursuant to NSU's standard operating policy, visa revocation cases are investigated and coordinated in the same manner as all other types of national security cases handled by that unit. The NSCU has a clearly defined role to investigate those cases involving aliens who may have entered the country and either had their visa revoked after admission or were admitted despite the revocation of their visa.

BICE's records indicate that during the time period studied in the report, the National Security Unit received information on 10 leads involving visa revocation. In all 10 cases, the National Security Unit conducted full field investigations concluding that there was insufficient evidence under current civil and criminal immigration law to allow BICE to take action against those visa holders who were located.

With the release of the GAO report, we are working with our partners by reviewing additional data to ensure that no other cases have not been appropriately addressed from an investigative standpoint. It is important to note that the information needed to revoke a visa is not necessarily sufficient for BICE to initiate removal proceedings against an alien who has been admitted to the United States and is otherwise maintaining his or her status.

When an alien is admitted to the United States, certain legal rights are attached to that admission. These legal rights require that BICE present clear and convincing evidence to demonstrate before an immigration judge that the alien is a national security threat or is removable on other statutory grounds.

Another factor in prosecuting these revocation cases is the current language used on the revocation certificate when an alien has been admitted to the United States. The language states that the visa revocation takes effect only after the alien departs from the United States. Consequently, the visa remains valid, and the aliens maintains lawful status while in the United States, absent any conduct making him or her subject to removal. We are working with the State Department to determine if a change in this language would improve our ability to remove an alien who has been admitted.

Deterring illegal migration and combating immigration-related crime have never been more critical to our national security. The men and women of BICE are taking this mission with diligence, determined to ensure that no duty is neglected, even as they continue to adjust during this time of transition to the new Department. We look forward to working with other DHS components, the Department of Justice, and the Department of State on strengthening the visa revocation process.

Thank you. I look forward to your questions. I would ask that my testimony be included in its entirety.

Mr. SHAYS. Without objection, so ordered.

[The prepared statement of Mr. DeMore follows:]

U.S. Department of Homeland Security

STATEMENT

OF

CHARLES H. DEMORE

INTERIM ASSISTANT DIRECTOR OF INVESTIGATIONS
FOR
BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT
U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"VISA REVOCATION: CATCHING THE TERRORISTS AMONG US"

BEFORE THE
HOUSE SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS

June 18, 2003
10:00 A.M.
2154 Room Rayburn House Office Building

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, thank you for the opportunity today to update you on the Bureau of Immigration and Customs Enforcement's (BICE) efforts to combat terrorism and to explain our role in the visa revocation process. No mission of the U.S. government is more important than protecting the Nation and the American people against future terrorist attacks. That mission is the paramount responsibility of the newly created Department of Homeland Security (DHS). The work of BICE is an indispensable part of fulfilling this mission.

Knowing who has entered and departed from our country in real time is an important element in enforcing our laws. Equally as important is knowing in real time when Department of State (DOS) or another government agency has developed information, like a visa revocation or other information about an individual who has entered but not departed. Since September 11, the law enforcement community has risen to the challenge of increasing communications and following through in national security information gathering, intelligence sharing, and investigations. I am pleased to be here today to discuss BICE's role in the investigations of all referred visa revocation matters.

INTRODUCTION

As the tragic events of September 11, 2001 illustrate, those intent on destroying America took advantage of our generosity and openness by exploiting any mechanism to gain access to the United States. The nineteen hijackers used our immigration system to enter this country and carry out the deadly attacks of September 11th. These horrific events highlighted vulnerabilities in our immigration system. Also, our experience with prior terrorism cases showed that operatives have used fraudulent identities, visas, and travel documents to gain access to our country and further their operations. Our country needs an effective immigration enforcement process to ensure that any vulnerabilities in our system cannot be exploited by terrorists and other violent criminals.

OVERVIEW

As this is the first time that BICE has had the opportunity to testify before this Subcommittee, I would like to provide a brief overview of our mission. The Homeland Security Act of 2002 abolished the Immigration and Naturalization Service (INS) and the President's Reorganization Plan established BICE. BICE combines the investigative functions of the INS and the U.S. Customs Service with the Federal Protective Service (FPS). In addition, the President's Plan merged the Air and Marine Interdiction Unit and the legacy INS Detention and Removal Program into BICE. The new agency brings together approximately 14,000 employees, including some 5,500 special agents. This makes BICE the second largest investigative team in Federal law enforcement. Only the Federal Bureau of Investigation (FBI) is larger.

BICE investigates immigration violations, migrant and contraband smuggling, human trafficking, money laundering, trade fraud, and export violations. BICE also manages the investigation of immigration document fraud. Controlling the flow of goods and people within our country, verifying the authenticity of identity and travel documents, and

monitoring the legal transfer of funds are functions critical to reducing our vulnerability to terrorist attacks. Meeting BICE's critical responsibilities requires a robust intelligence capability, an air and marine interdiction capability, and an ability to apprehend, detain, prosecute, and remove illegal aliens. Finally, BICE is charged with protecting more than 8,000 Federal facilities nationwide against terrorism, a responsibility carried out by a component part of the Agency, the FPS.

HISTORY

The subject matter of this hearing is about visa revocation and how notice of such revocations have been handled by INS/BICE. The National Security Unit (NSU) within BICE is responsible for investigating all leads and referrals involving terrorism and national security matters, involving cases where an issued visa has been subsequently revoked.

GENERAL ACCOUNTING REPORT

On May 27, 2003 the General Accounting Office (GAO) presented BICE with its draft report GAO-03-798, entitled *Border Security: New Policies and Procedures Needed to Fill in the Visa Revocation Process*. BICE appreciates the review and comments of the GAO. We agree with the GAO finding that the Secretary of Homeland Security should work with the Secretary of State and Attorney General to strengthen the visa revocation process as an antiterrorism tool and establish specific policies and procedures that ensure timely and direct notification of visa revocations to both the Bureau of Customs and Border Protection (BCBP) and BICE. BICE considers the timely notification of DOS visa revocations to be an important element in protecting the United States against the entry of inadmissible aliens, including possible terrorists. Currently, the State Department provides BICE information on visa revocations to aid in determining how to proceed on a specific case. The GAO recommendation that is particularly relevant to BICE is the one regarding determining if any persons with revoked visas on terrorism grounds are in the United States and if so whether they pose a security threat. In making these determinations during an NSU investigation, BICE coordinates with BCBP to ensure that it has all appropriate information regarding entries into the US. In addition to working with BCBP, BICE will continue working with BCIS to obtain information on individuals who may have had their underlying petitions revoked. Since DHS now has the lead for setting visa policy, BCBP, BICE and BCIS will work together to develop specific policies addressing the visa revocation process. DHS will work closely with Department of State to implement these policies. We will continue to work internally to increase the timeliness of the information flow among our bureaus.

Pursuant to NSU standard operating policy, visa revocation cases are investigated and coordinated in the same manner as all other types of cases handled by the unit. The NSU has a clearly defined role: to investigate those cases involving aliens who may have entered the country and either had their visa revoked after admission or were admitted despite the revocation of their visa. The NSU receives a number of national security leads and referrals, including visa revocations. The NSU does not discriminate between

types of national security referrals. BICE's records indicate that during the time period studied in the report the NSU received information on ten leads involving visa revocations. In all 10 cases the NSU followed standard operating procedure for such referrals. The NSU conducted follow-up investigation in all 10 cases, concluding that there was insufficient evidence under current civil and criminal immigration law to allow BICE to take action against the visa holders. Contrary to the draft report's findings, BICE always takes actions to investigate cases referred to the NSU and NSU conducted a full investigation of 100% of the referrals received.

As highlighted in Appendix II of the GAO draft report, the different standards of proof required for revocation and removal proceedings pose significant difficulties in investigating and resolving these matters. In this context, it is important to note that the information needed to revoke a visa is not necessarily sufficient for BICE to initiate removal proceedings against an alien who has been admitted to the United States and is otherwise maintaining his or her status. When an alien is admitted to the U.S., certain legal rights are attached to the admission. These legal rights require that BICE present clear and convincing evidence to demonstrate that the alien is a national security threat or is removable on other statutory grounds before an Immigration Judge.

Another factor in prosecuting these revocation cases is the current language used on the revocation certificate that provides when an alien has been admitted to the United States, the visa revocation takes effect after the alien departs from the United States. Consequently, the visa remains valid and the alien maintains lawful status while in the U.S absent any conduct making him or her subject to removal. We are working with the DOS to determine if a change in this language would improve our ability to remove an alien who has been admitted.

CONCLUSION

Deterring illegal migration and combating immigration-related crime have never been more critical to our national security. The men and women of BICE are tackling this challenging mission with diligence, determined to ensure that no duty is neglected even as they continue to adjust during this time of transition into the new Department. We look forward to working with other DHS components, Department of Justice, and DOS on strengthening the visa revocation process. Thank you. I look forward to your questions.

Mr. SHAYS. Thank you, Mr. DeMore.

Mr. McCraw.

Mr. MCCRAW. Thank you, Mr. Chairman,

First I would like to depart from my written testimony, with your permission, and ask that it be included in its entirety.

Mr. SHAYS. Without objection, so ordered.

Mr. MCCRAW. I would like to publicly thank you, Mr. Chairman, and members of the committee for all the support that you provided the FBI, enabling it, along with its partners, to prevent acts of terrorism. We appreciate all the support that you have provided.

Second, I would like to publicly thank the Department of State and Homeland Security for their support to the FBI and information sharing. It is happening. Frankly, we could not function without it. We are very proud to be partners of theirs in this effort.

I agree with Mr. Ford that the process that he studied was broken. I do not think there is any question about that. Perhaps it is my fault as this study went forward to not bring to GAO's attention that there was a system in place. It has been in place since 2002. It does address all those issues in terms of visa revocations as well as other cables. In fact, there are other parts of the equation, as Congresswoman Maloney pointed out, that when you are trying to stop terrorists from getting into the United States, we have to be concerned about those individuals that come into the United States undetected, even if they did not have a visa revoked, either through Canada, Mexico, or a country that does not require visas.

That system would have been put in place in 2002 back when the Attorney General was tasked to setting up the Foreign Terrorism tracking Task Force, that we could put in place, that would be able to stop individuals like Al Midhar and Nawaf Al Hamzi from coming into the United States, two of the hijackers of September 11?

That starts with working with State Department information, recognizing that TIPOFF, for the intelligence community and for the State Department, is the single point of an indexing system in terms of individuals who have been linked to terrorism. The other system is VGTOF and the FBI's NCIC files.

That information has been provided since 2002 to the Foreign Terrorism Tracking Track Force. When any one of those individuals who has been linked or identified to terrorism tries to enter the United States, clearly as Homeland Security pointed out today, they have NAILS, IBIS, and other systems in place at the points of entry.

There is also a fail safe system working behind the scenes. When they do enter the United States, the system allows the exploitation of data that is available out there, including the INS data, for example, to identify when they come into the United States at any given time, no matter whether they came in on a visa, whether the visa was revoked, or otherwise.

In this situation, of the 240, 105 of those revoked as a result of delays. I believe those were delays in the FBI in terms of doing background checks. All of those individuals were cleared. Out of the 240, there was another 145, 47 of whom who placed in the TIPOFF data base, which means that there had been a determination by the intelligence community that in some way, shape, or form,

these individuals were linked, associated, or had relationships with terrorism.

All 47 of those individuals went through this particular process. Out of that 47, 8 of those individuals were determined to have been in the United States at some point in time. In fact, four of those individuals were pre-September 11 and the other ones were pre setting up this particular system which went into effect in January 2002.

I would submit to you, Mr. Chairman, and members of the committee, that there is a system in place. Thankfully, the system is in place primarily because of the support of Congress in terms of funding, and something that was recognized early on that we have to do something to put in place to stop these individuals before they get into the United States.

Once they do get into the United States undetected, how do we know? How can we do that so that we can prevent other like situations. Granted, it does not take into account every gap that exists, but clearly it was a glaring gap. It has been filled, I am proud to point out.

Although redundant, it is important that we have all processes working effectively. Certainly we in the FBI are glad to take suggestions from GAO and others to do anything we can to improve our capabilities and our ability to do the job. We welcome any constructive criticism.

Thank you, Mr. Chairman.

[The prepared statement of Mr. McCraw follows:]

STATEMENT OF
ASSISTANT DIRECTOR STEVEN C. McCRAW
FEDERAL BUREAU OF INVESTIGATION
OFFICE OF INTELLIGENCE

BEFORE THE
COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS,
AND INTERNATIONAL RELATIONS
JUNE 18, 2003

Good morning Mr. Chairman and members of the Subcommittee. On behalf of the Federal Bureau of Investigation, I would like to express my gratitude for affording us the opportunity to speak to you on this important topic. My name is Steve McCraw, and I am the Assistant Director of the FBI's Office of Intelligence.

The Subcommittee invited us here today to examine the process of revoking visas and locating those who may have entered the country prior to the revocation of their visa. I will address the issues which pertain to the FBI.

First, I would like to publicly acknowledge the outstanding support the FBI has received from the Department of Homeland Security, particularly the Bureau of Immigration and Customs Enforcement (BICE), from information sharing to the dedication of full-time personnel to the Joint Terrorism Task Forces (JTTF) throughout the U.S. I would also like to publicly thank the Department of State (DOS) for its demonstrated commitment to sharing information.

Although this hearing is focused on the revocation of visas, the underlying issue is information sharing, which we believe is the cornerstone of prevention. To this end, the Director has approved an integrated Information Sharing Plan that constitutes an unprecedented commitment to sharing detailed and relevant information to the widest extent possible, with our law enforcement and

Intelligence Community partners.

The FBI has written procedures in place for notifying the appropriate personnel to take specific actions on all DOS cables concerning visa matters, to include Security Advisory Opinions (SAO) and visa revocations. These procedures include requiring that the cables be uploaded into the FBI's Electronic Case File, thereby becoming available for full text retrieval. This process of uploading incoming cables began during the later part of 1998 as a manual process and was revised in June 2002 to allow for the automatic uploading of the cables in an efficient manner. The cables are also printed and routed to the appropriate investigative divisions. Furthermore, information from the cable is parsed and placed in a server for transfer to the FBI's National Name Check Program. Parsed information is run against the FBI Universal Indices. The searches seek all instances of the individual's name and approximate date of birth, whether a main file name or reference. By way of explanation, a main file name is that of an individual who is the subject of an FBI investigation, whereas a reference is someone whose name appears in an FBI investigation. References may be associates, witnesses, co-conspirators, or victims whose name has been indexed for later retrieval. The names are searched in a multitude of combinations, switching the order of first, last, middle names, as well as combinations with just the first and last, first and middle, and so on. It also searches different phonetic spelling variations of the names, especially important considering that many names in our indices have been transliterated from a language other than English. If there is a match with a name in a FBI record, it is designated as a "hit", meaning that the system has identified a possible match with the name being checked, but then a person must research the file or files to determine if derogatory information exists. Less than 1% of the requests are identified with an individual with possible derogatory information. These requests are

forwarded to the appropriate FBI investigative division for further analysis. If the investigative division determines there is no objection to the visa request, the request is returned to the name check dissemination desk for forwarding to the DOS. If there is an FBI objection to the visa request, the investigative division will prepare a written SAO and forwards it to the DOS. In reviewing these visa requests, the FBI has identified individuals attempting to enter the United States who are of serious concern to the FBI.

On May 27, 2003, the General Accounting Office (GAO) provided the FBI a copy of its draft report "Border Security: New Policies and Procedures Needed to Fill Gaps in the Visa Revocation Process" (320172/GAO-03-798). We have reviewed the draft report and believe that the report does not fully explain the system the FBI has in place to track known or suspected terrorists who enter the United States whether or not they have a visa. The FBI has a comprehensive process that leverages the unique capabilities of the Foreign Terrorists Tracking Task Force (FTTTF) to address all individuals identified by DOS and the Intelligence Community as associated with terrorism, including those whose visas have been revoked.

As you are aware, in October of 2001, the President directed the Attorney General to create the FTTTF, whose primary objective is to bar terrorists from entering the United States and to track down those who do enter the country. On a regular basis, the FTTTF supports the FBI's Counterterrorism investigations, the National Joint Terrorism Task Force (NJTTF), the 66 JTTFs nationwide, as well as BICE and FBI field offices in locating known or suspected terrorists and their supporters. To do so, the FTTTF utilizes public and proprietary data sources in order to find an " electronic footprint" of known or suspected terrorists.

It is important to note that a visa revocation alone is not a reliable indication that an individual is associated with terrorism. For example, 105 of the 240 revoked visas contained in the GAO report were done so for no other reason than delays in reviewing files for derogatory information. Subsequently, the files were reviewed and no information was found that would have prevented the individuals from legally entering the United States.

I would like to conclude by saying that the nature of the Terrorist, Foreign Intelligence and Criminal threats facing our nation continues to evolve and so does the FBI. We have made significant strides toward enhancing our operations, both domestically and overseas, and depend upon valuable partnerships with the Law Enforcement and Intelligence Community.

Mr. SHAYS. Thank you, Mr. McCraw.

I thank all of our witnesses. We are going to start out with the Governor and then go to Mrs. Maloney. We will spend 10 minutes per questioner. We are getting very helpful information. I am not certain that the committee has a full sense of where things exist right now, but hopefully before the end of our hearing, we will know.

Mr. Janklow.

Mr. JANKLOW. Thank you very much, Mr. Chairman.

For me, the past is prolog. We really were not very well prepared on September 11, notwithstanding what structures were in place. Since then there has been a huge amount of activity. There is a certain amount of growing pains. My sense is that things get better every day. That is my sense. Are they getting better fast enough to prevent the one magical problem? We do not know.

Ms. Barry, in your written testimony, you say you do not agree with all the conclusions of the GAO. What conclusions do you not agree with in the GAO study?

Ms. BARRY. I think we took from the GAO report the notion that we need to have a liaison with more individuals on this process. We are trying to keep the hand-off very simple and very direct. We always use the INS Lookout Unit for the hand-off. We kept in contact with them as the organization at DHS changed. We have verified with Mr. Ahern that should be our primary partner for this type of activity.

Mr. JANKLOW. Have you read the first page of what the GAO found on their report?

Ms. BARRY. I did at some time.

Mr. JANKLOW. Let me just ask you. "Names were not consistently posted to the agency's watch list of suspected terrorists." Do you agree or disagree with that?

Ms. BARRY. Let me explain that when we were doing visa revocations prior to the creation of the revocation code——

Mr. JANKLOW. I am sorry. This is rude. Let me interrupt you for a second, if I can.

Let me ask you. Let us forget the past for a moment. Today are names consistently posted to an agency's watch list of suspected terrorists?

Ms. BARRY. Sir, there are two issues here. Is someone simply a suspected terrorist? That name is posted to other agencies through the TIPOFF program. If a subject of such an INTEL report seems to be someone who holds an issued visa, then there is the issue of visa revocation. We use one code, and one code only, now to indicate that we have revoked a visa. That code is shared with DHS through the IBIS system.

Mr. JANKLOW. Are names consistently posted to agency watch lists of suspected terrorists? Is that a yes?

Ms. BARRY. Yes, sir; it is a yes.

Mr. JANKLOW. OK. It says, "Individuals whose visas were revoked on terrorism grounds entered the United States and still remain." Now, as I understand it, from your testimony, Mr. DeMore, you indicate in your written testimony that the standards are different for revoking of visas, and—I will say—expelling someone from the country; is that correct?

Mr. DEMORE. That is correct.

Mr. JANKLOW. Is this a statutory problem or a regulatory problem?

Mr. DEMORE. I am not an attorney, sir, but I have discussed it with our attorneys. We believe it could be corrected without statutory changes.

Mr. JANKLOW. It is inconceivable to me that we would revoke a visa of someone because we are concerned about the security of this country. In our words, we keep them out, but once they are here we are going to let them stay here. We are not dealing with that regulation.

Whose agency is this regulation in? Ms. Barry.

Ms. BARRY. Sir, the language of the Certificate of Revocation and the issue that it becomes effective when the person departs the United States, came out of an interagency consultation in 1999 between INS, the State Department, and the Office of Immigration Litigation of the Department of Justice.

Mr. JANKLOW. Has that been reviewed now?

Ms. BARRY. The DHS has asked that it be reviewed. We have started our internal deliberations to do that. We have not yet met with the Department of Justice's Office of Immigration Litigation.

Mr. JANKLOW. How long with that process take?

Ms. BARRY. It should not take long. We are prepared to meet with the other partners on this issue. The Department of Justice, because of litigation issues, has serious equities on this issue.

Mr. SHAYS. Would the gentleman yield?

Mr. JANKLOW. Certainly.

Mr. SHAYS. I do not understand. "Serious equities." What do you mean?

Ms. BARRY. Well, the Office of Immigration Litigation is responsible for taking cases to the immigration courts. So we have to consult them. It has been viewed up until this time that someone who is admitted to the United States and is in status, the controlling issue—and again I caveat this that I am not an attorney—is the admission by the Immigration officer at the port of entry.

The visa itself is only the travel document to allow someone to permit themselves for inspection. So the visa has no legal authority once someone is admitted into the United States by INS, and now DHS.

Mr. SHAYS. I was just asking about the concept of "serious equities." I just do not understand. It is like "State Department Speak." I want to understand you.

Ms. BARRY. The Government's position is going to be defended by the Department of Justice if someone wants to litigate the issue of the visa revocation.

Mr. SHAYS. I thank the gentleman.

Mr. JANKLOW. But, the Department of Justice is your lawyer. They are not your decisionmakers, correct? These litigators are your lawyers, not your decisionmakers?

Ms. BARRY. That is true, sir.

Mr. JANKLOW. You make the findings within your agency, and then it is their job to defend you under the law?

Ms. BARRY. I can only say at this point that in 1999 when this issue was last reviewed, the Department of State consulted the other agencies.

Mr. JANKLOW. Much has happened since 1999. Much process did not work back then. We have a new system in play. Is there no sense of urgency in dealing with this?

Ms. BARRY. There is a sense of urgency, sir. The issue was brought to us fairly recently. I cannot tell you specifically when the issue was brought to us. It has been recent.

Mr. JANKLOW. Thank you.

One of the things that you said, Mr. Ford, was that the State Department was not following its "informal policy." Let me ask you. At this stage of the game, either we have a policy or we do not. One of the problems that citizens have with Government is that they never understand what an "informal policy" is. Is that one that you have that nobody follows, somebody follows, you choose to follow if you feel like it? What is an "informal policy," sir?

Mr. FORD. For us, it is a written policy that——

Mr. JANKLOW. That is ignored.

Mr. FORD. No, in this particular case it was not a written policy.

Mr. JANKLOW. In other words, you have a policy——

Mr. FORD. When we asked what kind of policies they have in writing that describe what their responsibilities are, they did provide some limited information. But there were certain things that were not written down.

For example, the timeliness question. There is not a written policy at the Department of State that says you have to do this within 1 day.

Mr. JANKLOW. That is what I am trying to get at, sir. That being the case, there is no way in the world that the universe of the State Department could ever understand what the policy is and give any uniform application.

Mr. FORD. We would agree with that. That is why we made the recommendations so that could be corrected.

Mr. JANKLOW. Have they disputed that recommendation?

Mr. FORD. State did not comment on our recommendations, so I do not know what their position is on that.

Mr. JANKLOW. I fully understand and appreciate the fact that people slip through the cracks that should not. In State and local governments, pedophiles and child molesters end up as approved foster parents sometimes, notwithstanding all the efforts to try to weed these people out. I can appreciate the difficulty that all of you have in all of your agencies.

Mr. McCraw, I notice you are originally from El Paso. Are you familiar with that multi-agency group that is located on the old military base?

Mr. MCCRAW. Yes, sir, Fort Biggs, at EPIC.

Mr. JANKLOW. How many agencies are involved in that?

Mr. MCCRAW. Every Federal agency outside the intelligence community participates there, including the Department of Defense.

Mr. JANKLOW. And the State of Texas?

Mr. MCCRAW. Yes sir, they do; even more so now. Traditionally they did not when I was with the State Police in Texas. We did not

have a formal membership. They do have a liaison relation with them.

Mr. JANKLOW. Officers in South Dakota, my State, the highway patrol, were able to check individuals coming down the interstate doing any kind of check, and access that data base. Is that data base tied into the data bases of these other agencies that Mr. DeMore, Mr. Ahern, and Ms. Barry's agencies are using?

Mr. MCCRAW. Well, all of our data bases are at EPIC.

Mr. JANKLOW. They are?

Mr. MCCRAW. Yes, sir. The advantage, as you said, just like your highway patrol there, they have a 24/7 watch. You can pick up the phone and call and make those checks.

Mr. JANKLOW. Mr. Ahern, on page 3 of your written testimony, I did not quite follow this. "By revoking the visa prudentially, the bearer is required to reapply for a visa." Then you go on in the next sentence, "The actual visa, once issued to an individual, is usually at large and could be used if inspectors at ports of entry are not aware of the revocation."

But given the fact that you use data bases, that should not happen again; should it? Could someone just walk through a port of entry with a visa without having them checked on the computer quickly?

Mr. AHERN. No, that should not happen at all. Once somebody comes into the United States, they should be entered into the system, the Interagency Border Inspection System, which does then interact with the NAILS system as well as the CLASS system. If there is a lookout in the system, it should be identified. If it is in there for a visa revocation, then that person is referred to secondary inspection for final determination.

Mr. JANKLOW. So what you have here should not be the case any longer; is that correct?

Mr. AHERN. That is correct.

Mr. JANKLOW. Let me ask you all, if I can, in this limited time I have available. Is there any problem with the existing Federal laws that you now feel, given the functions that you are carrying out, all the reorganizations, all the things that are being done? We understand that it is helter-skelter and it gets better every day; is there a statutory problem that your agency might recommend and that Congress should address?

Mr. MCCRAW. I cannot comment on any issues as it relates to statutory issues right now, sir.

Mr. JANKLOW. Because you are not allowed to, or because you do not know of any?

Mr. MCCRAW. Because I am not involved in that particular process, sir.

Mr. JANKLOW. Do any of the rest of you know of any statutory changes that would be helpful in carrying on this mission in making America safer?

Ms. BARRY. Sir, to the best of my knowledge, the Department of State has not asked for any additional statutory changes for the visa function in terms of findings of ineligibility.

Mr. JANKLOW. But asking and needing are two different things. Do you know of any?

Ms. BARRY. I know of no one in the Department of State who is advocating any additional changes.

Mr. JANKLOW. Thank you.

Thank you, Mr. Chairman.

Mr. SHAYS. We will come back.

Mrs. Maloney?.

Mrs. MALONEY. Thank you, Mr. Chairman.

I would like to thank all of the panelists and in particular Mr. McCraw. A number of your agents helped my constituents and others in New York to escape from the World Trade Center. I know you lost an agent there. I want to express the appreciation of New Yorkers for the role that the FBI played in September 11th.

I would like to ask Mr. McCraw who is in charge? Ultimately the FBI, if there is a terrorist on the ground, it is really your responsibility, of course with the help of INS, State, and everyone else, to track them down and to protect the American people. It seems as though a lot is happening, but ultimately if you are not notified that there is a suspected terrorist, who takes ownership? Who is in charge?

Specifically, the report noted that there may be 30 individuals that had their visa status revoked. According to the report, the FBI claimed that they were not notified by State that these people were in the United States. Quoting from the report: "The FBI claimed in other cases that the State Department did not alert them that the person with revoked visas could be possible terrorists."

My question to the FBI is: How do you find out there is a possible terrorist? If all of the agencies are working together, and we have this computer system, who is responsible to notify the FBI? If there is a breakdown in the system, who do we hold accountable that they were not on the watch?

Mr. MCCRAW. First, thank you very much for your kind comments. Second, I think the FBI has to take a leadership role and any individual, whether they can legally be deported or not, has been somehow linked to terrorism, and somehow ended up in the United States.

Mrs. MALONEY. But if you are not notified by State and INS, how can you do that? The report is saying, and the FBI says, they were not notified.

Mr. MCCRAW. The FBI people, including some of my people that commented on that report, were right as it relates to the process that GAO studied. There is no question that process was broken including enough systems in terms internally of the FBI not having a written control as it relates to the revocation of visas.

Fortunately, we saw this back in post-September 11. We saw that the system, especially until the FBI overhauls its information technology system, we are not going to be where we want to be. We put another system in place. Frankly, with working with the State Department and at that time working with the INS, having their data and utilizing the Foreign Terrorism Tracking Task Force, we are alerted anytime any of these individuals that have been linked to terrorism enter the United States.

So I feel confident that we have a system in place that does that. Now, is it the process that I find redundant in terms of what we talked about, and what the GAO study is about? No, that system

certainly is not working. But fortunately we have a system in place that not only takes care of the revocation of visas. I am convinced this will be straightened out. There is no doubt in my mind.

Mrs. MALONEY. So, in other words, if I am hearing you correctly, it is the responsibility of State to notify the FBI. Then it is the FBI's responsibility to go out and check these individuals; is that correct?

Mr. MCCRAW. Yes. We have an obligation. As the Director has said, "No terrorism lead shall go uncovered." If an individual somehow has been linked, or there is some relationship or association, we must go out and find that individual and talk with that individual.

Mrs. MALONEY. But now you are confident that State has given you all of that information? That has been corrected?

Mr. MCCRAW. Yes. What they have done is the TIPOFF data base that Ms. Barry has talked about, which we have agreed is the intelligence community's data base for known or suspected terrorists, and has been provided to the Foreign Terrorism Tracking Task Force since January 2002. We have utilized that, with some DOD technology.

Mrs. MALONEY. Let us get away from technology into what is happening. According to your report and others, two of the terrorists, two of the pilots from September 11, came into the country legally with tourist visas. Then they changed them to student visas. They never went to school. It was a bogus change. I have read other reports where the student visa is often used as a rouse or a blanket under which to hide. It may possibly be the easiest visa to get to come into our country.

I would like to hear what are the safeguards from the universities on these student visas? The student may enroll in some school, but then not go to school. How do they notify you? Do they notify the FBI directly? Do they notify the State Department? If someone has a student visa, and obviously is not in school, how are we checking up on this particular segment?

Mr. MCCRAW. I would have to defer that to Mr. DeMore. I know that they have responsibility for that.

Mr. DEMORE. Under the Student and Exchange Visitor Information System [SEVIS], students apply abroad to get their visa. That data is entered into the system with biographical information and biometric information. When that student makes an entry into the United States through BCBP, they capture that information electronically. It is transferred to the school electronically. When the student arrives at the school, that information is data input by a foreign student advisor. That is notated electronically. If the student does not show up at the school, that information is now transferred electronically to us for enforcement action. So we can literally track the movement from abroad of a student into the country.

Mrs. MALONEY. Once they get to the school, they will notify you they are at the school. Is there a requirement if they then go to classes for a week and then drop out, that the school notifies you? Do you take this information and give it to the FBI? What do you do with it?

In other words, once they go to school, they go for 1 day of classes and then they disappear. Does the school then notify you? Are they required by law to notify you?

Mr. DEMORE. Yes, they are. We would be notified electronically. We would take that information and develop what we call a target folder which is basically running that through intelligence and law enforcement data bases to determine if there is any significant derogatory information. Based on a certain threshold, that information is sent out to the local BICE field offices for investigative followup.

Mrs. MALONEY. I would like to be notified how many students are missing in New York. Some of the schools have told me that they do not notify because the system does not work. I want to know is the system working in all of the schools? Are you being notified?

Mr. DEMORE. I know in the initial systems development there were problems. But we can certainly provide that information for the record.

Mrs. MALONEY. Thank you.

Mr. SHAYS. Without objection, so ordered.

Mrs. MALONEY. It seems to me that if the system is not working, if you could just ask them to type it up on a sheet of paper and mail it in to the FBI, that might be a practical way. We are starting a lot of technical computer systems that may take years to get them working appropriately. It appears that if students come in and they disappear, that information that the FBI or somebody should have to try to locate them.

Mr. DEMORE. I am told that the system is working well now. We will certainly provide you with the post-SEVS numbers of students.

Mrs. MALONEY. The second question I am getting is this. I represent a lot of very important universities, many of whom are international universities. They are saying that it is becoming very difficult to get student visas for legitimate students. I would like to hear your comments on that.

I just know as a Congressmember, it is more difficult to get visas for my constituents or their families—and probably rightfully so as we do these background checks. Could you comment on the comments by the universities that they have not been able to process legitimate students from foreign countries?

Mr. DEMORE. I would defer to my colleague, Ms. Barry.

Ms. BARRY. There is really only one issue that affects students in the post-September 11 world. A student visa applicant has always been under great scrutiny by consular officers overseas. First of all, we have to know that the request to study in the United States is not a ruse for illegal immigration. Even some highly qualified students who would clearly meet the eligibility of a U.S. university for admission, do not have a bona fide intention of showing up and studying.

We also have to be very careful about their ability to finance a U.S. education. We, of course, are concerned that their intentions and the finances and their academic qualifications all come together and we can issue the visa.

In the post-September 11 world, the one additional requirement is that we now have a program for interagency screening for

counter-terrorism purposes, known as "Visas Condor." A number of student cases are now sent back to Washington for further interagency screening. It is a small percentage of the overall numbers of students, but it is an additional requirement for some students.

Mrs. MALONEY. Ms. Barry, you mentioned finances. That is a very important point. We know that many of the terrorists were financed by Al Qaeda, and financed by countries that are not our allies. Is there any connection to the Treasury Department's money laundering financial tracking system on how these students are financed?

It might be appropriate for the Treasury Department's financial unit that is tracking money coming into the United States from foreign sources, foreign banks, or suspected terrorist organizations, to connect up with that unit on the financing. How a student is financed is a very important aspect of the security information for the country.

Ms. BARRY. To the best of my knowledge, we are hooked up to the Treasury information that is now name-retrievable. It is in our lookout system. But it is something that we are very interested in. We look primarily to the family. It is rare when a student comes and says that they are being financed by a third party.

Mrs. MALONEY. But the consulate is very able to find out if, in fact, they are financed by the family, by checking the family background.

Ms. BARRY. Right. We can look at this. In most countries we have very strong cooperative relationships with financial institutions and with law enforcement agencies. We can do what we feel is necessary to resolve a specific case.

We also work in an embassy that frequently has representatives from a number of different agencies. Again, we can look to those experts as well to help us inform our judgments.

Mrs. MALONEY. My time is up. But just to followup, we may be friends and have great diplomatic relations with certain countries, yet those countries finance terrorists in this country. I mention Saudi Arabia. Most of the terrorists from September 11 were citizens of Saudi Arabia. I, for one, would be interested, if the country, even though they are diplomatic allies, of financing either through the government or through not-for-profits or whatever, various student activities or students in this country. I just mention that as one example.

I think the GAO did an excellent report. I was very impressed with it. I would like to ask the chairman if it would be appropriate if the panelists would respond in writing to the recommendations that GAO put forth. They put forth very concrete recommendations.

Mr. SHAYS. Let me say that we are not going to wait to have it done in writing.

With all due respect, I have heard some comments about how the report is not all that accurate. I heard an attempt by a member to say, "Well, where is it not?" We have heard really no specifics.

I feel no sense of urgency on the part of this panel. I have a tremendous amount of pride when I go from country-to-country and visit our State Department employees. I am so proud of them. I am as grateful as I can be for their work. But we are like ships passing in the night here. At least that is the way I feel.

Let me just tell you how I visualize this. Then maybe we could use that as a framework for the questions I want to ask. We have a real concern of terrorist attacks. It is not make-believe. It is for real. It is probable. It is not a question, as far as I view it, of if it will happen, but when, where, and of what magnitude we will face chemical, biological, conventional attacks that are serious, nuclear, or radioactive material. That to me, is a given.

When I attend a hearing like this and I listen to it, that is in the back of my mind. I want to say: Are we awake? Is that something that Government employees also feel? Do I just feel that way having had 50 hearings on this issue over the last 5 years before September 11?

There is nothing surprising about what happened to September 11 in one sense. In another sense, they answered the one question we did not know. There is no red line that they will not cross. They are willing to destroy whatever. There is no sense of proportion. I am a bit concerned, as I think other people are as well.

These attacks can be carried out by American citizens. They can be carried out by people who are here as our guests who are working here. They can be carried out by visitors. They can be carried out by people who got here illegally.

As it turned out, September 11th was done by everyone who, for the most part, were here legally. They had visas. We thought maybe there is a bit of a problem here. All of you felt the same way. We said: Maybe we are issuing visas to people who should not get them. That seems logical. What can we do about it? We even thought we should take it away from the State Department because we were not happy with the job they were doing. Ultimately it was left with the State Department.

We reorganized our Government. There is a new threat, a new strategy. Now we have put Customs and INS and I think have this potentially very helpful Department of Homeland Security.

We asked GAO to look at what is going on. What they have seen is not a very good thing. I was hoping that all of you would say: GAO is right here, they were wrong here. These are the things they were right about when they do the report, but guess what, we have changed things now. And by the way, we are tracking now every 1 of those 30 people. That is what I thought was going to happen. I was going to say: Well, where do we go from here. But all I felt is a bit confused by the responses.

Ms. Barry, I am not even convinced you read the report.

Ms. BARRY. To the best of——

Mr. SHAYS. I am not finished yet. I am not convinced you read the report. You just gave a comment that you do not agree with it. You had an opportunity from this Member to tell us exactly what you did not agree with. You went in a big circle, as far as I was concerned.

The Department of State decides whether or not someone should be allowed to come into the United States, and they issue a visa. Sometimes they issue a visa without all the information. Then when they get more information, they might revoke a visa. Now, in the meantime, someone may have gotten into the United States, or they may not have.

Mr. Ahern, your agency is the one that receives the individual. You are going to have to have information that tells you they have a visa. You do a check and make sure there is not a problem. But if it has been revoked, we want to make sure that you know about it on a timely basis and say, "Sorry, it has been revoked."

I understand there were about 14 where this happened and where you found them. I want to ask you what happened to those 14. Did we look at them and allow them to stay? Did we send them back?

I also understand that once they get through you, we have a problem. It is really easy to deny a visa. You can just basically deny it. You do not have to give a lot of reasons. You can just deny it. You can give a very general reason. But once they are in the country, we play by different rules. We have to substantiate why you are here. They came here legally. They had a visa. They walked in. They are here legally.

So now my mind says: "OK. What is breaking down in the system that would allow them to stay?" I heard people give reasons. But they are not good reasons. I want to know, based on the report, did you track down the 30 people? They are suspected terrorists. Guess what? Maybe none of them are. But they are suspected terrorists.

I want to know: Did we track them down? Did we interview every one of them? How many of the ones that we interviewed did we say should be sent back? I want to know if you did it when the report was written or if you did it afterwards. That is fair enough. If you read the report and said: "My gosh, they have a point here. We had better do something better here." That is acceptable.

By the way, GAO can be wrong. We are going to start with Ms. Barry. What specifically did you agree with and what specifically did you disagree with?

Ms. BARRY. We agree with the procedural problems that were found by the GAO in their report. We address them as follows.

Mr. SHAYS. I do not want to know how you address them. I want to know what you agree and disagree with. That is basically their report, correct?

Ms. BARRY. They also commented on the nature of the 240 visa revocations. We did provide them comments on their characterization of those cases and the basis of a prudential revocation.

With regard to the procedural shortcomings, we agree with the report.

Mr. SHAYS. OK. Let me understand, Mr. Ahern, what you agree with and what you disagree with.

Mr. AHERN. I would like to start with my background. It is with the U.S. Customs Service which on March 1st became part of the Department of Homeland Security. We have adopted this new process. I come to it from a different perspective.

When I read the report, I saw there were some things that needed to be taken care of and put in place. I first started to get engaged with this process 2 weeks ago. What we have looked at is from the Customs and Border Protection's perspective, what we need to do is to shore up the system of input from the Department of State through the CLASS system. We believe that has now been undertaken with the correct code placed in the system.

Then the process is to be set in place, making sure that there is not a single solution to the potential problem. We want to make sure there is zero tolerance here. We want to make sure that there are redundancies in place to make sure that there is not the potential for one individual to come into this country that is not supposed to.

What we have done is to work with the State Department over the last couple of weeks to make sure as far as the correct visa revocation code is in place. That has been taken care of. They are certainly well on the way with that.

Mr. SHAYS. You are telling me solutions right now. Is there is anything in the report you disagree with that you read relating to your area?

Mr. AHERN. From my perspective, I believe that there were some systems in place that were not necessarily as formalized as they should be. I believe we need to formalize those and we need to perfect them more in greater detail.

Mr. SHAYS. But the GAO report does say there are some systems in place. He is not saying there were not systems in place.

Mr. AHERN. I believe there were systems in place. My point is that they need to be perfected more. We need to make sure that we have redundancies in place. My point is that they need to be perfected more. We need to make sure that we have redundancies in place.

Mr. SHAYS. I will ask the question again. Is there anything in the report that you disagree with?

Mr. AHERN. There was some minor editing. We made comments back both from the Bureau as well as the Department. But just minor editing comments.

Mr. SHAYS. Mr. DeMore.

Mr. DEMORE. Yes, sir. We would agree that there appear to be connectivity problems between the respective components.

Mr. SHAYS. What do you call it?

Mr. DEMORE. Connectivity problems in terms of cases reported from State and those received by BCBP. There seem to be discrepancies also in terms of the number of cases that were reported and the number that were received. That seems to be problematic.

What we would disagree with is the statement on page 24 of the report where it says: "National Security Unit investigators said that they generally did not investigate or locate individuals whose visas were revoked for terrorism."

We would strongly disagree with that from the BICE perspective in that we were notified in September that three visas had been revoked for persons who had already entered the United States and an additional seven in December 2002. For each and every one of those cases we immediately developed target folders which means that we ran the available information through the intelligence community, through law enforcement data bases, and through our own internal data bases. We put all of that in the target folder and had it within a week or 10 days to a local field office for investigation.

We fully conducted field investigations on those 10 cases. We found four of the people, interviewed them, determined that they were compliant with the terms of their admission, the visa was considered valid and was not revoked until they departed the coun-

try, so it was considered valid at the time we located them. They were in status. There were no removable grounds. We could take no law enforcement action.

Mr. SHAYS. I am a little unclear on that. You say they were not revoked, but you were notified they were revoked?

Mr. DEMORE. As we have been discussing, the language on the revocation says the visa is revoked if you have not entered the country, and if you have entered the country, it is revoked upon your departure.

Mr. SHAYS. OK. But with all due respect, it was revoked. Legally they have their visa. But you were notified it was revoked, correct?

Mr. DEMORE. No, sir. It is clearly not revoked until they depart the country. In other words, it is the intention of the Department of State to revoke that visa, but if you are in the country, it will not be.

Mr. SHAYS. You were notified it was the intention to revoke it, correct?

Mr. DEMORE. Yes.

Mr. SHAYS. It was the intention of the State Department to revoke it because we feared they might be terrorists.

Mr. DEMORE. Right. You have heard testimony here that the TIPOFF often contains data that is vague and ambiguous and that there's sometimes the slightest of indications.

Mr. SHAYS. I understand that.

Mr. DEMORE. Right. So what we do is that we verify the veracity of the allegation that there is a terrorist nexus. These were run through the FBI. They found none.

Mr. SHAYS. What is the number 30; why do you tell me 7?

Mr. DEMORE. We received 10 from BCBP. We would be most happy to aggressively investigate those other 20 if GAO would provide us that information.

Mr. SHAYS. Let me understand something. There are 20 others that somewhere you do not know about, but the State Department knows about?

Mr. DEMORE. All I can tell you is that we were only referred 10 cases.

Mr. SHAYS. OK. Referred from whom?

Mr. DEMORE. From BCBP, our counterparts in the Department of Homeland Security, Mr. Ahern's shop.

Mr. SHAYS. OK. Let me back up. So how many were you told about?

Mr. AHERN. There were 30 that needed to be reconciled; 10 were referred to BICE. Prior to March 1st, that was one organization. There was not that separation. One of the things that we have been able to determine is there could be a variety of different factors. There could have been an additional visa that was actually issued to the individual and the revocation was not actually removed from the system. They could have actually entered and we just missed it at the border. That is a potential of concern.

Part of what we are formalizing at this point is the referral mechanism now from BCBP to BICE to make sure that those do not fall through the cracks and that they get timely referrals for investigative followup so we can track these individuals down.

Mr. SHAYS. Mr. DeMore, I want to be thoughtful to you, but when you said I could check with GAO, why would you not have just talked with Mr. Ahern?

Mr. DEMORE. Well, sir, we do.

Mr. SHAYS. You read the report. You know there are 30 people. Is there anything in your mind that said, "Gosh, we only did 10. What is this other 20? Why would you not have been prepared to come and tell me what happened to the other 20?

Mr. DEMORE. To my knowledge, they do not exist. Our National Security Unit has worked very closely with the Lookout Unit.

Mr. SHAYS. Are you guys in the same department?

Mr. DEMORE. We are in the same department of Homeland Security.

Mr. SHAYS. With all due respect, that is the point. You are in the same department. We are hoping you guys are going to talk with each other.

Mr. DEMORE. We are talking daily. We are trying to build all the firewalls.

Mr. SHAYS. I guess what I get is the sense that this report did not mean much to any of you. So when you read the report, it did not trigger any questions, and you did not decide to do anything about it. Maybe we are all wasting our time. That is the feeling I get. I do not mean to be disrespectful, but that is the feeling I get.

Let me ask you this, Mr. McCraw. You are going to be able to respond to anything you want to say on your own. I just want to try to understand first where we are.

Mr. MCCRAW. First of all, I want to apologize.

Mr. SHAYS. You do not need to apologize for anything. I just want to know the answer to this question. I want to know what you agree with and disagree with the report. Then what I want to know is: Have you been notified of any of these 30 individuals so you know to look for them, to interview them, and to determine whether they are potential terrorists?

Mr. MCCRAW. First, I do want to apologize for not conveying a sense of urgency. I agree with you. There is no question about it from what I see on a day-to-day basis. There is a sense of urgency. I apologize for not conveying that. The idea that there is 30 known or suspected terrorists running around this country, and we are not doing anything about it is absolutely of concern to any of us right here.

The problem with the GAO report is that is not accurate. They are not linked to terrorism. None of those 30 fall within the 47 that were in TIPOFF. Those 30 are another pool of individuals that either were revoked because of the backlogs in terms of the FBI checks on them, or they were revoked for other reasons.

But even though it said on the cable that came out from State that it was related to terrorism, if you break down the code, in fact they were not related to terrorism. As I indicated earlier in the testimony, out of the 240, there were 47 that we linked to terrorism. None of those 30 were the ones that the GAO report referred to that said somehow they got into the United States. They could not make a determination of whether they had left or not.

So, out of that 47 the question is: Well, what about that 47? Did they get into the United States because they were issued visas? The answer is no. They are not in the United States.

Mr. SHAYS. Let us just talk about the 30.

Incorrectly marked, they still were marked that way. How did we know they were incorrectly marked? Are we now saying they were incorrectly marked now that we have had to back up here and figure out what went on? In other words, they were marked as potential terrorists; is that part correct?

Mr. MCCRAW. That is correct.

Mr. SHAYS. OK. So given that. Should I expect, and should you not expect that the system would have to respect that marking until we know it is incorrect? The problem is that the system did not seem to respect the marking.

Mr. MCCRAW. Yes. And frankly there are so many gaps in that potential system. That is why I spent time in my testimony to talk about the system we put in place in 2002. I can identify several gaps that exist, especially when you depend upon a cable being printed and routed to a particular unit. That is why we spent the time and put this system in place to ensure that we deal with the best data.

The best data in the U.S. Government right now is in the TIPOFF data base as it relates to terrorism from the INTEL community in the State Department. Making sure that we get that data in an electronic format and as you indicated earlier, it is important to have a seamless process. Immediately when these individuals are identified and have entered the United States, or somehow entered the United States undetected, even if the visa was not revoked, we need to know it. Many people come into this country that are valid, or they do not come with visas at all. How do we find those individuals?

The problem with the GAO report is that it did not even discuss that system, which means that it missed the whole point. Yes, there is a system. In fact, it is a model of information sharing dating back to 2002.

Mr. SHAYS. I am going to have Mr. Ford respond. I just want to be clear so that I can go the second round and understand. I want you all to have the opportunity to talk about solutions. By the time we are done I think you will feel satisfied that we have covered everything.

Right now I want to know specifically what was inaccurate in the report, not how all of you responded, but what was inaccurate in the report.

Mr. MCCRAW. First of all, the report was inaccurate because it did not study all the systems that were in place. It focused on a particular construct. I agree, and we have already agreed, that systems needs improvement. But it missed the whole point in terms of a system being in place.

Second, it characterized that 30 individuals were linked to terrorism because upon the fact that the State Department sent cables out that said these were linked to terrorism. The fact is those 30 were not in TIPOFF, which means that those 30, or the 105 for that matter of the 240, were revoked as it related to a bureaucratic delay in the process. The FBI is culpable for that in that regard.

We acknowledged earlier being backlogged in visa backchecks in Visas Condor.

Mr. SHAYS. Let me be more precise here. They were accurate in defining that these had been classified as terrorists. Your point is that the report should have pointed out that they were not and they had been misclassified; is that it?

Mr. MCCRAW. Exactly.

Mr. SHAYS. Anything else?

Mr. MCCRAW. No, sir.

Mr. SHAYS. Mr. Ford, are there any comments that you want to make?

This is a little bit of a painful process. Out of these, we are going to have some good answers.

Mr. FORD. I guess my comment regarding the other systems would be this. When we started this project, we asked the Department of State to provide us with visas that had been revoked for some concern related to terrorism. That is how we got the 240 names. They came from the State Department. We did not generate them ourselves.

We did ask early on in the project for information related to the basis for the 240 names being in the system. We asked the Department of Justice. We asked the CIA. They did not provide us with a response.

Mr. SHAYS. Who? Justice or CIA?

Mr. FORD. Both. If, in fact, all of these people are cleared, that is good news. But I stand by the fact that the 240 names were clearly identified by the Department of State. We went through each and every record, all 240 of them. They were all coded, based on what the State Department gave us and based on some concern related to terrorism.

Whether, in fact, these folks are really terrorists or not, we were not provided with any information by anybody else that indicated that we were wrong.

Mr. SHAYS. Let me ask this. Did the State Department, the DHS, and the FBI provide a formal response in writing? For instance, Mr. McCraw, did your people look at this report and then respond? Are you responding now when you could have responded in writing earlier?

Mr. MCCRAW. Actually, the first time I saw the report was last week when I was notified I was going to testify here today.

Mr. SHAYS. Mr. Ford, did GAO give this report to the FBI so that they could respond?

Mr. FORD. To comment on it?

Mr. SHAYS. Yes.

Mr. FORD. We went through our normal chain through the Department of Justice. We assumed that the FBI got a copy.

Mr. SHAYS. So the point is that you gave this report to the Department of Justice. I would like to think that someone in the Department of Justice said: "This is a serious report." The sense I get is that your Department was not given this report, or you were not given the report?

Mr. MCCRAW. I received the report last week for the first time, Congressman. I sat down and read it. In fact, I know of people in the FBI that met with Mr. Ford and his people. That is why I

apologized early on that it was not pointed out to them that there is a seamless system in process and that, in fact, when you look it, it addressed all these things. We did not provide that back in writing, I know, because I did not get a chance to read the report until the last week.

Mr. SHAYS. I will tell you this. You might want to find out where this seamless relationship. But the purpose of the GAO in doing these reports is that they have an obligation to give it to the departments. The departments have an obligation to comment in writing. If somehow Justice does not think that these serious obligations are not worth commenting on, that blows me away.

Mr. MCCRAW. They certainly are. I personally take responsibility for that, Congressman. I am sorry.

Mr. SHAYS. I do not know how you can personally do it.

Mr. Kucinich, thank you for your patience.

Mr. KUCINICH. Thank you, Mr. Chairman.

Ms. Barry, how many visas are applied for on a yearly basis?

Ms. BARRY. I generally use the figure of 8 million. Prior to September 11 we were up to 10 million a year. For a variety of factors, after September 11 visa demand has gone down. This is non-immigrant visa demand.

Mr. KUCINICH. What is the rate of applications versus those applications that are actually granted?

Ms. BARRY. I believe as a historical figure, approximately one-third of non-immigrant visas worldwide are denied.

Mr. KUCINICH. What is the major reason for denial of a visa?

Ms. BARRY. Most visas are denied under Section 214(b) of the Immigration and Nationality Act which says that we do not find you a bona fide short-term visitor to the United States.

Mr. KUCINICH. Has the rate of denials grown at all?

Ms. BARRY. The rate of denial is fairly steady under that section of law. As I said, as a historical reference overall, it is about one-third of cases that are denied.

Mr. KUCINICH. Are there any countries now where we are tending to deny visa applications more today than we did before September 11?

Ms. BARRY. I do not have any specific information to help me answer that question, sir.

Mr. KUCINICH. Can you get that information to this committee?

Ms. BARRY. Yes.

Mr. SHAYS. Without objection, so ordered.

Mr. KUCINICH. Thank you, Mr. Chairman.

Mr. McCraw, who decides the designation of a terrorist connection? Who makes that decision?

Mr. MCCRAW. Many agencies make that decision.

Mr. KUCINICH. Many agencies?

Mr. MCCRAW. Yes, sir.

Mr. KUCINICH. What are the guidelines for making that designation? How does it appear on an application?

Mr. MCCRAW. First of all, from intelligence community reporting overseas. The U.S. intelligence community identifies individuals through a number of different sources that have been known or linked to particular terrorism, of varying degrees. Some absolutely,

positively, and some that looks like there is a particular relationship to it.

That intelligence is culled and those individuals, along with their biographical data, is agreed by the intelligence community, and goes into the TIPOFF data base.

Mr. KUCINICH. Is there like a committee that meets and says, "Well, this person could be a terrorist, and this person is not?"

Mr. MCCRAW. No, sir; I do not believe so. I believe that those independent agencies submit names as they have identified those particular names.

Mr. KUCINICH. Is this a decision that one person makes? Are there many people who make the decision?

Mr. MCCRAW. I probably should not be testifying for other agencies, but clearly the process is such that there are initiatives underway that I am aware of, where they go through a particular process. There is a set criteria. Those names are extracted.

Mr. KUCINICH. There is an initiative underway, but is there something in place right now?

Mr. MCCRAW. Yes, sir; and has been. I probably should defer to Ms. Barry on this since they are the keepers of that particular data base in terms of how those programs work.

Mr. KUCINICH. Ms. Barry.

Ms. BARRY. Yes, sir. The TIPOFF data base is the responsibility of the Bureau of Intelligence and Research of the Department of State. They receive intelligence, primarily from the CIA and the FBI. There is a staff. Sorry, I cannot tell you offhand how many people are there. They screen that intelligence.

Mr. KUCINICH. Wait. If we could hold off, there. That is a significant question. How big of a staff? How many people are screening these? Who makes the decision whether something is stamped as a terrorist suspect or not?

Ms. BARRY. I am sorry; I do not have all of those details for you. It is a data base that is dedicated only to the question of counterterrorism. The intelligence that is provided to them by the other agencies is provided for that reason.

Mr. KUCINICH. So you do not know the answer to any of the questions?

Ms. BARRY. No, I do not know the answers to those specific questions.

Mr. KUCINICH. Are you interested in finding out the answers?

Ms. BARRY. I would be happy to get them, sir.

Mr. KUCINICH. Where would we get that information?

Ms. BARRY. From the Bureau of Intelligence and Research at the Department of State.

Mr. KUCINICH. Did you have oversight of that in your capacity?

Ms. BARRY. No, I do not. The Bureau of Consular Affairs, of which I am a part, provides funding for the TIPOFF data base.

Mr. KUCINICH. I think it would be very interesting, at least to myself and perhaps of this committee, to first of all, to know how many people are in this capacity, to know what the criteria happens to be for designating someone a suspect, and to know who makes the decision to designate someone, or to not designate someone, and to know if there is any oversight over there in a review capacity? Is that information shared with other agencies, and if

someone says not, does another agency look at it, and if they say yes, does another agency look at it? What are the checks and balances within that system? How many people perhaps have been suspected of being a terrorist who, upon further investigation, were determined not to be?

These are things that would give us some clue as to the kind of work that is actually being done and the connection and cooperation between agencies.

Mr. SHAYS. Without objection, so ordered.

Mr. KUCINICH. Please continue.

Ms. BARRY. The intelligence is screened. This is my perspective as a user of the data base in a consular perspective. Identifying information is gleaned from intelligence. Then the TIPOFF staff makes a lookout entry into the Consular Visa Lookout System, which gives to the best of their ability, based on the intelligence, a name, a date and place of birth, and their nationality.

That, of course, is what consular officers are using in the field. We share the TIPOFF data base with DHS through the IBIS system. They have the benefit of that work as well.

Mr. KUCINICH. With respect to criteria, have you ever had a case where the criteria was applied and then you found out later on through other information that this person was, in fact, not involved in any kind of terrorist activity and did not merit being suspected of terrorism?

Ms. BARRY. Yes, sir. If I could, I will give a kind of an example. An INTEL report says that a particular individual is at a meeting overseas with individuals liked to Al Qaeda, for example. These decisions as to whether or not a specific individual applying for a visa is that same person is made here in Washington. It is not made by an individual consular officer. The underlying intelligence can be very highly classified.

The consular officer will see a lookout entry and will send the case to Washington for further screening. Then the people in Washington at the State Department and other agencies, with the appropriate clearances, can look at that visa case and look at the intelligence, and determine whether or not it is the same person. If it is the same person, then we discuss whether or not the case meets the legal standard for denying the visa. We also consider whether there are other operational interests of another agency in the case. When all of that consultation is done in Washington, the Visa Office will provide the results of that deliberation to the consular officer in the field.

Mr. KUCINICH. Mr. McCraw, can you tell me if you have ever had an example where the FBI ended up causing a decision that was made on the part of the State Department to be overturned with respect to someone who is suspected of having some kind of terrorist ties?

Mr. MCCRAW. Correct me if I am wrong, but if I got the question right, there have been instances clearly where the FBI has received its own intelligence, or intelligence from other agencies, that an individual was linked to terrorism, and on subsequent investigation determined that was not true. That happens. That is why evidence is important, and that is why it is important that any individual suspected of it, that we immediately pursue that particular lead,

when we identify them in the United States, or wherever we identify them in that regard. Clearly the case is that the source could be incredible, or a number of other factors that just look bad at the time. It was very important for the U.S. Government to at least look at that and have it in the lookout system, TIPOFF system, if you will. As we develop additional information, we can investigate that and then exonerate the individual.

Mr. KUCINICH. Thank you.

Mr. Chairman, I just want to thank you for calling this hearing. I think it would be very instructive for this committee to receive information relative to the criteria that are used. It is the criteria that actually establishes what we, as a Government, perceive to be a possible terrorist threat. I think it might give us a valuable view into the base of the decisionmaking in the various agencies.

Mr. SHAYS. Without objection, so ordered.

Mr. KUCINICH. I want to thank each of the witnesses for your service to our country and your willingness to undertake these very serious tasks. Thank you.

Mr. SHAYS. I thank the gentleman.

Before I recognize Mr. Janklow, I just want to ask Mr. Ford.

Were all of the 30 individuals that were marked as potential terrorists from the list of 105?

Mr. FORD. The 30 that are currently in the country? No, that is out of the 240.

Mr. SHAYS. So some are in the 105 and some are not?

Mr. FORD. Yes.

Mr. SHAYS. OK. Mr. McCraw, are you comfortable with your statement that all of these were mismarked?

Mr. MCCRAW. I am comfortable that the 30 he refers to as not reflective of entering the United States is not in the 47 that have actually been identified and linked to terrorism; absolutely. In fact, I rechecked the figures this morning to make sure that we did not miss anything.

Mr. SHAYS. But let me ask you this. You have interviewed all 30 of these individuals?

Mr. MCCRAW. No, we have not. Principally the reason we have not is because the intelligence community had not determined that they were linked to terrorism.

Mr. HALLORAN. The TIPOFF system is the only definitive way to categorize someone as a potential terrorist?

Mr. MCCRAW. Absolutely. As it relates to the Government data base, we found early on that the Government needed to pick one particular data base. Frankly, TIPOFF was working quite well. That needed to be the mechanism and the data. Everyone agreed to put their particular information in there.

Mr. HALLORAN. Mr. Ford, is that your perception of the system as well, that the TIPOFF is the only way to flag someone as a terrorist, or a potential person of concern?

Mr. FORD. I do not know if I can answer that question. I know that for the 240 names that we identified in our report, we were told that these individuals were on that list because they could be suspected terrorists. I do not know the source for the ones that may not have been in TIPOFF. I really cannot answer that.

Mr. MCCRAW. Only 47 of the 240 were actually in TIPOFF. There is another system and it is what the FBI uses to communicate to State and local law enforcement, the NCIC. Prior to the Winter Olympics, the Director ordered that every FBI main subject and some references, when there is a substantial reason to believe they are linked to terrorism, be placed in what they call the VGTOF file. Then the State and local police officers can query NCIC. Once they query them, they can make a determination that this in fact, is under investigation by the FBI. There are specific instructions along with that in terms of what to do or not to do if they come in contact with that individual.

Mr. SHAYS. The breakdown, as we understand it right now, that when the FBI did not provide a background check in time, Ms. Barry, then the State Department labels them as potential terrorists; is that correct?

Ms. BARRY. Yes, sir. In the case of the 105, they had been sent to Washington for interagency screening under the Visas Condor program, which is a counter-terrorism program. At the time the system was in place, the FBI had 30 days to respond. If we heard nothing, we proceeded with visa issuance.

We did proceed with visa issuance in these 105 cases, and subsequent to issuance, got a hit from the FBI. The hit meant that they had something. On a prudential basis, we went ahead and revoked the visas. As they worked the cases further, they ended up clearing all of them.

Mr. SHAYS. So you revoked them. In the revoking of them, did you notify them on a timely basis, or in fact, did it take a period of time for DHS to know that these had been revoked?

Ms. BARRY. At the time that we revoked those 105, our procedures were not reliable. We were using a code in our lookout system, which we subsequently learned did not pass to DHS and the INS.

Mr. SHAYS. So the answer is yes?

Ms. BARRY. Yes.

Mr. SHAYS. But you have dealt with it differently now?

Ms. BARRY. We have dealt with it differently. We created a specific lookout code for revocations. The lookout code actually says, "Revocation." It absolutely goes across the interface to the IBIS system. We double checked all of the calendar year 2003 cases from January 1st to May 31st. We found that they had all transferred the interface to IBIS.

Mr. SHAYS. So Mr. Ahern would get this information immediately?

Ms. BARRY. In virtual real time, approximately 5 minutes.

Mr. SHAYS. Just to finish this link here. Mr. DeMore, how do you interface with Mr. McCraw in terms of the people that they were identifying in their lists as being potential terrorists? Do you identify those same people?

Mr. DEMORE. We work collaboratively with the FBI on the Joint Terrorist Task Forces. We would be working and sharing that information.

Mr. SHAYS. That is not a comfortable answer, I guess just because I do not understand it. After 5 years of listening of how you

work together, it means nothing to me. I was told that before September 11th.

I need to know. Do you get the same list that his organization has? Do you actually seek out these same people? Is that duplicative and you allow the FBI to do it? That is what I need to know.

Mr. DEMORE. My perspective is, and Mr. McCraw can weigh in on this as well, but we fully support the FBI in all of their counterterrorism investigations. Our officers are there working collaboratively with them.

Mr. SHAYS. Who takes the lead?

Mr. DEMORE. The FBI takes the lead.

Mr. SHAYS. OK. So the FBI is in charge. If they ask you to help them, you help them. In other words, they task you to look for these people?

Mr. DEMORE. Our agents work under the supervision of a supervisory FBI agent.

Mr. SHAYS. OK. That makes sense.

Mr. MCCRAW. In fact, we depend upon their expertise daily in what we do. As you recognize just by this hearing, how important this all is. We always depend upon their expertise.

The way the process works right now, and the one that I described earlier, is that when the task goes to the operational division to the JTTF, when they open up the case, more often than not, often the INS agent are assigned that particular lead. That is our SOP. Why? They have the subject matter expertise that we depend to get that done.

Mr. SHAYS. We are going to talk about all the solutions that you have in my next round.

Mr. Janklow.

Mr. JANKLOW. Thank you, Mr. Chairman.

I would like to continue in this area.

Ms. Barry, you have to help me. I do not want to deal with specific numbers, but I have to. On page 23 of the report, it says there were 240 visa revocations reviewed, and 30 were found to have been revoked on terrorism grounds. Are you saying that to revoke a visa for terrorism grounds does not necessarily mean that there is anything involving terrorism?

Ms. BARRY. It means that we are willing and we do revoke if there is a reason to believe that a visa holder is the subject of an INTEL report linked to terrorism.

Mr. JANKLOW. OK. When you say an "INTEL report," are you accessing TIPOFF to make that decision?

Ms. BARRY. Yes, sir. As new entries come into TIPOFF——

Mr. JANKLOW. So the answer is yes.

Ms. BARRY. Yes.

Mr. JANKLOW. OK. Are you also accessing all other available data bases that this country has to keep track of individuals?

Ms. BARRY. No, we continue to try. Seventy percent of the information that is now in our lookout system is from other agencies.

Mr. JANKLOW. What agencies are you not able to access when you make a determination as to whether or not you should revoke a visa for terrorism grounds?

Ms. BARRY. Well, for terrorism, the data base that we know of related to terrorism is primarily TIPOFF. Some terrorist cases

might be in the FBI VGTOF data base. We have access to both. We know of no other data base.

Mr. JANKLOW. So the answer to the question should have been yes.

Ms. BARRY. Yes, sir. We know of no other data base linked to terrorism.

Mr. JANKLOW. OK. Now, what is the National Security Unit?

Mr. DEMORE. The National Security Unit is in the Bureau of Immigration and Customs Enforcement. It is the INS' national security investigative component.

Mr. JANKLOW. All right. There were individuals that told the investigators from GAO that the National Security Unit investigator said they generally do not investigate or locate individuals whose visas were revoked for terrorism concerns, but may still be in the United States. Is that an accurate or inaccurate statement?

Mr. DEMORE. Sir, I believe that to be inaccurate. I interviewed those officers this week. They told me that was not the message that they were communicating.

Mr. JANKLOW. Mr. Chairman, if I might, could I ask that Mr. DeMore's staff and Mr. Ford's staff get together and report to the committee whether or not this was an accurate statement by the GAO folks, or it is inaccurate.

I think it is really important to know whether or not the National Security Investigator said that they generally did not investigate or locate individuals whose visas were revoked for terrorism concerns but still may be in the United States. You say your staff never said that. Mr. Ford said that your staff reported it to his staff. We need to know what the accurate answer is.

Could you two get together and report the committee what the dispute is or what the accurate fact is?

Mr. DEMORE. Yes, sir; we would be happy to. In fact, I can tell you that we only received the information on 10 individuals. We investigated those 10.

Mr. JANKLOW. We just need to get to the bottom of who is saying what to whom. That is. It may be that the same staffers are saying different things to different people. I do not know. But we need to get to the bottom of it. I think you would understand why.

Mr. DEMORE. Yes, sir.

Mr. SHAYS. Without objection, so ordered.

Mr. JANKLOW. I think this goes to the heart of what I was getting at before. Now, over on page 25 of the GAO report, Ms. Barry, it appears that one of the reasons folks do not go after removing from the country folks whose visas are revoked, is because the notice from the State Department tells someone, "Mr. Janklow, your visa is revoked when you leave the country."

They said because of the wording of it, it causes them legal problems. Why cannot you change the wording of your visa revocation? Has this been discussed at all?

Ms. BARRY. It has been discussed, but only very recently. The discussion has not come to closure.

Mr. JANKLOW. Why recently? Post-September 11, why would it take 2 years to discuss? You are not going to let me into the country because you are concerned I might be a terrorist problem, but once I am in here, you will revoke me because you think I might

be a terrorist problem, and you will send me off to some other agency.

But you say in my language that you send to me that I am revoked when I leave the country. Why would you not just tell me, "You are revoked?"

Ms. BARRY. Because while they are present in the United States, the determining factor is that they have been legally admitted by the immigration officer at the port of entry. The visa has no bearing once that has happened.

Mr. JANKLOW. When can we expect a resolution of this issue?

Ms. BARRY. I am not a legal expert, but my guess is that we would expect this issue be resolved in about 2 to 3 weeks.

Mr. JANKLOW. OK. Is this in your agency?

Ms. BARRY. My agency is primarily responsible for vias, but as I said earlier, we previously have consulted DHS and DOJ on this.

Mr. JANKLOW. When did you see a draft of this report?

Ms. BARRY. We received a timely draft of this from Mr. Ford's staff. I do not remember exactly when that was.

Mr. JANKLOW. The reason I ask is this. On page 25, it says, "Homeland security official said that if State were to cease using the current language on the revocation certificates, the Government would no longer be effectively barred from litigating the issue. If a policy decision were made to pursue an aggressive litigation strategy, could seek to remove aliens who have been admitted but have subsequently had their visas revoked."

Why does it take GAO to figure this out?

Ms. BARRY. All I can say, sir, is that notification to us from DHS on this issue was very recent. It was after GAO had done their draft report.

Mr. JANKLOW. OK. Do you know how many of the September 11 attackers were students? The reason I am asking that question is because in your testimony you said, "We have always been very tough on screening students." Do you know how many of them had student visas?

Ms. BARRY. I do not remember the number of names, no.

Mr. JANKLOW. In terms of the data base for State, how does a person get into it? What facts are there that would put me into the data base if I were a foreigner?

Ms. BARRY. A denial of a previous visa.

Mr. JANKLOW. Is there any information if I have never had contact before with the American officials? Could I be in there?

Ms. BARRY. Through intelligence services, yes.

Mr. JANKLOW. That would put me in. It would also get me into TIPOFF; is that correct?

Ms. BARRY. Yes, sir; it would get you into TIPOFF.

Mr. JANKLOW. If I could switch gears for just a second, Mr. DeMore, on page 5 of your testimony—and I believe the chairman got into this—"Contrary to the draft's report findings, BICE always takes actions to investigate cases referred to the NSU. NSU conducted a full investigation of 100 percent of the referrals received."

Could I ask that you two get together and submit to the committee the accurate facts of whether or not the report is accurate or your opinion is accurate. We just need to know what the truth is.

Mr. DEMORE. Certainly. Absolutely.

Mr. SHAYS. Without objection, so ordered.

Mr. JANKLOW. At this stage of the game where we are with respect to national security, should there be informal policies?

Ms. BARRY. No, sir.

Mr. JANKLOW. Will State, after having read the report and discussing it among yourselves, do you plan on doing anything about these informal policies?

Ms. BARRY. The Bureau of Consular Affairs is engaged in an effort to formalize standard operating procedures.

Mr. JANKLOW. How long will that take? How long has the effort been going on?

Ms. BARRY. The effort has been going on for several months. I do not know how many we have put in place. It is beyond 15 so far. This will be the subject of a standard operating procedure.

I agree with you that it should be formalized and every staff member should know what it is.

Mr. JANKLOW. Do you know how long that will take?

Ms. BARRY. It should not take long. I cannot give you a specific answer. I would say it should be wrapped up within a month.

Mr. JANKLOW. The whole thing?

Ms. BARRY. The whole thing.

Mr. JANKLOW. OK. I speak for only me, but I understand the value to this country of over the years having these foreign students come to our country and study. The impact that it has had is, first, for economic purposes, second, for relationship purposes, and third, for intelligent purposes, cannot be measured in terms of the relationships that have been established between foreign students and the students and the people of this country.

I think what is important is that we have to have a good process and not harass the wrong people and harass the right people when it comes to entry into this country. There is no dispute with that; is there?

Ms. BARRY. No, sir.

Mr. JANKLOW. The last question I have is: Staff gave me a note between my questions that said: State should have known about the problems with the revocation, as least as far back as September 2002 when they saw a draft of the GAO's original visa report, which led to this report.

After you read the draft report back around September 2002, was there any discussion amongst the folks at State from and after last September about moving forward on some of these things have been highlighted? This is not a thing today to determine all of the good things that have happened. There have been a lot of good things. It is the one bad door they are going to come through. That is the door they will find their way through.

Ms. BARRY. We have taken all the GAO reports seriously. We have done a number of things to fix the vulnerabilities that they have identified. When they identified the vulnerabilities of the visa revocation process, we dealt with it. As I said, the cases for this year reflect that the system is working.

Mr. JANKLOW. Mr. DeMore, as I close, let me just ask each of you, have you heard of any discussions of anything that Congress can do legislatively to make the job, the mission that your agency has, easier?

Mr. DEMORE. Sir, I have not, but we would be most delighted to work with the committee and with Congress to review any language and provide our earnest input.

Mr. JANKLOW. Mr. Ahern.

Mr. AHERN. I believe at this point we need to do some internal perfecting of our standard operating procedures and then see if there are any legislative changes that need to be made.

Mr. JANKLOW. How often do your four agencies talked with each other? Daily?

Mr. DEMORE. I would say multiple times, daily. In the field and also at headquarters.

Mr. JANKLOW. And you feel that State is as much in the loop as your three agencies? I see your three agencies more as a take-charge, law-enforcement, public-safety kinds of people. I am exaggerating for effective vernacular. But State is State. I am just wondering if they are really in the loop on all of this.

Mr. MCCRAW. I think so, Congressman. I am biased because early on they provided data and also a full-time person to the Foreign Terrorism Tracking Task Force when I was its director. I found them most willing and concerned, like the rest of us, on how do we fill these gaps.

Mr. JANKLOW. You have 66 Joint Task Forces?

Mr. MCCRAW. Yes, 66 Joint Terrorism Tracking Task Forces throughout the United States; yes, sir.

Mr. JANKLOW. Mr. DeMore, do you have any problems with State?

Mr. DEMORE. I think we are all extraordinarily motivated right now to work together.

Mr. JANKLOW. Mr. Ahern?.

Mr. AHERN. I believe we have a good path ahead. In the last couple of weeks I know that we have been dealing more with the State Department.

Mr. JANKLOW. You said in the last couple of weeks. Is that because of your newness in the position? Or have things gotten better in the last 14 days?

Mr. AHERN. In the last couple of weeks. I became aware of it as part of Customs and Border Protection. We are formalizing the procedures we have in place, and also improving the internal practices we have at the border.

Mr. JANKLOW. I have two last questions.

Mr. Ford, I realize you work for Congress, but is there anything that you have come across where a legislative action may be beneficial to helping any of the remaining issues?

Mr. FORD. I think this can be handled through policy and procedure with the executive agencies. We did not identify any legislative problems based on this particular analysis. We do not think there are any laws that need to be changed.

Mr. JANKLOW. When was the gathering of data concluded for the purposes of the report?

Mr. FORD. The analysis of the data is ongoing. We just recently received some information from INS on their computerized entry system which we are tying to match with the 30 names we identified through another source that they have.

But the timeframe of the analysis runs through the end of calendar year 2002. So the 240 names that we used were from September 11, to December 31, 2002.

Mr. JANKLOW. OK.

That is all I have, Mr. Chairman. Thank you very much.

I would like to talk to all of you. You have been very candid under some tough questioning. I appreciate it.

Mr. SHAYS. We are going to be done very shortly.

Let me say that I think the very good news that has not been disputed is that the FBI has checked and contacted and found everyone—and correct me if I am wrong—that has been identified as a potential terrorist who is a visitor to the United States. Is that correct, Mr. McCraw?

Mr. MCCRAW. That is correct.

Mr. SHAYS. OK. That clearly was our biggest concern. Disappointing that information appears not to have been conveyed to GAO before the report was drafted. I would like to know if that can be avoided in the future. The GAO is supposed to have a process that allows for all comments. Sometimes those comments result in the redrafting of the report to correspond with reality.

The reality of this report that still holds is—I am getting the sense—being responded to, that there were inconsistencies in formal practices, and that we are going to have formal practices, that the inconsistencies are being addressed, and that the lack of on-time notification has already been addressed.

Is that correct, Ms. Barry?

Ms. BARRY. Yes, sir; that is correct.

Mr. SHAYS. So just the informal policy is the issue that now does need to be addressed?

Ms. BARRY. Yes, sir; and we will do so.

Mr. SHAYS. That is the sense that I have. This is a good news story. The problems have been identified. It is being addressed. We would like a copy of the formalized procedures so we will know when it is done and we also know what it is.

Without objection, so ordered.

Mr. Ford, we thank you for doing this report. Let me ask you this. In the course of hearing the testimony here, is there anything that we should be asking these individuals to address that you do not think they are inclined to address?

Mr. FORD. Based on what I have heard, I think there is an issue that I would like to pose as a question for the Department of State, and that is this.

If what the FBI says is true, that only those cases that come through the TIPOFF are areas of concern, then I think that the State Department should look at the way they code the revocations so that any misunderstandings about the purpose for which the revocation is made, are made more clear.

I think that had the Justice Department provided us with comments of the nature that we have heard today, we probably would have modified some of the conclusions in our report. Regarding our recommendation to DHS to resolve some of these issues with policy and procedure, I think that this is one of them that in my view needs to be resolved. If, in fact, the problem is a lot smaller than

it appears to be, that should be remedied by the way that they code revocations.

Mr. SHAYS. I think those are sound requests.

Let me ask you. There is one area that does not appear as being addressed, and that is the issue that is nonsensical from my standpoint. I do not know if this is an international challenge, but we issue a visa that gives someone the right to come in. If we revoke it, if we are fortunate enough to catch them before they come into the United States, it is revoked. But if they come into the United States, it is put on suspension until they leave. As I think of it, they may not want to come back. I do not know what good that has accomplished.

Are there any of you that have a suggestion on how we deal with this? Let me ask you in this way. Maybe this will answer the question. Someone is here legally. You question them, Mr. McCraw or Mr. DeMore. You determine they are terrorists. What are you allowed to do?

Mr. DEMORE. I can tell you from the BICE standpoint if we determine there is a nexus to terrorism, we will use our National Security Law Division to initiate removal proceedings. In the four cases that we found——

Mr. SHAYS. Do you have to go through court? Do you have to go through a legal process?

Mr. DEMORE. Yes, sir.

Mr. SHAYS. What happens? Does that mean that you would have to disclose sources and methods?

Mr. DEMORE. It depends upon the information that was available to us. If there is classified information, the agency that classified that information would determine if they wanted to make that available.

Mr. SHAYS. I just want to understand how the system works. Do you have to go before an immigration judge?

Mr. DEMORE. Yes, sir.

Mr. SHAYS. Ms. Barry.

Ms. BARRY. Could I clarify that a visa does not give anyone the right to enter the United States. It gives them the right to present themselves for inspection to the DHS officer at the border.

Mr. SHAYS. So once they are here, though, they are here?

Ms. BARRY. Once they are here pursuant to a decision from that inspector.

Mr. SHAYS. And you do agree, though, that it is a lot easier for you to deny a visa?

Ms. BARRY. Yes, sir; I do agree.

Mr. SHAYS. You wanted me to be aware of something. I am not aware of what you wanted me to be aware of. What do you want me to be aware of? I want to be a better listener. What is the point?

Ms. BARRY. I think the point is what you were getting at sir, that they do go to court. They go through removal proceedings because they have been legally admitted into the United States. There is a very specific process in the statute.

Mr. SHAYS. We have a reason to want to avoid that. That is where I was headed. If, in fact, they robbed a bank, it is easy and we can say they did something illegal. But, in fact, if it relates to

terrorism, we do not want to be in the position of having to share sources and methods.

Is it conceivable that if we are not capable of showing sources and methods, that we know they are terrorists, that they are then allowed to stay? Honestly? The answer is yes; is it not?

Nodding of the head does not constitute an answer.

Mr. DEMORE. I would say that is conceivable; yes. If there is no information that was available to us to render someone removable in a court, it is inconceivable that person would not be subject to removal. However, we would work very closely with the sources of that information to ensure that we would use every means necessary to safeguard American interests, meaning if we have to, we will release classified parts of it to effectuate a removal.

I think the point you are getting to is: If the language in the revocation letter was retroactive saying that the revocation is effective on the date of issuance of the visa, then that would render that person removable administratively because they would have entered the country ostensibly without a valid visa.

So if the language said that your visa is revoked, and it is retroactive to the date of issuance, we would not need to use these other sources.

Mr. SHAYS. If we were able particularly before they entered.

Mr. McCraw, do you have any comment?

Mr. MCCRAW. No, sir. Obviously we use every tool that we can use. It is a privilege to come to the United States and not a right. If they violate those immigration laws along the way, and they are linked to terrorism, that is clearly why the legacy INS is so important to what we do on a day-to-day basis.

Mr. SHAYS. It is important, Mr. McCraw, that you were here and you were able to qualify this report.

Mr. MCCRAW. I apologize for not getting Mr. Ford the right information at the right time. Clearly that was my responsibility and I did not do that.

Mr. SHAYS. I am delighted to allow any of you to put on the record any information you want without my interruption.

Ms. Barry, about an hour-and-a-half ago, you wanted to talk about something and let us know about some reforms. Whatever you want to put on the record, please put on the record.

Ms. BARRY. Going back to the previous referral to the GAO report of September 2002, as I said, we are taking the recommendations of that report very seriously. We have made some major changes. For example, we recently set a new guideline of when a visa interview can be waived. We have started a process of formalizing standard operating procedures for use in the field and at headquarters. We will continue that effort.

We similarly took the procedural recommendations of this present report on visa revocations very seriously. We believe we have addressed the procedural issues, but we have not yet fully formalized that. We will do so.

Finally, as part of my wrap-up, I would say that the question of when a visa should be revoked from a legal point of view, and its effect in law, is an issue that we will energize a discussion within the Department of State on that point and consult with other ap-

propriate parties in the Federal Government, to try to wrap that up as soon as possible.

Mr. SHAYS. Thank you, very much.

Mr. Ahern.

Mr. AHERN. As I started to mention earlier about solutions, we believe we can have a lot better standardization of procedures within the Customs and Border Protection at the ports of entry to ensure that these things could not potentially occur. We will be happy to summarize those and submit those to you later, if you like.

Mr. SHAYS. Without objection, so ordered.

[The information referred to follows:]

Improved Visa Revocation and TIPOFF Procedures

The visa revocation process in the Bureau of Customs and Border Protection (CBP) is the responsibility of the Director of Intelligence. The Department of State (DOS) has now included CBP Intelligence on the cable distribution for visa revocations. Once CBP receives notification of a visa revocation from DOS, CBP takes the following steps:

- Determines if there is a lookout on the subject, and if not, immediately creates a lookout on that subject.
- Determines, to the extent possible, if the subject has entered the United States, and if so, immediately provides that information to the BICE Office of Intelligence for appropriate investigative follow up.
- Maintains detailed records on the steps taken for each visa revocation.

CBP performs the following internal steps to ensure the identification of TIPOFF and visa revocation subjects at ports of entry:

- The port of entry analytical units review advance information and ensure that lookouts are in the system.
- The National Targeting Center (NTC) supports ports of entry with the creation of one-day lookouts for persons identified as the subject of a visa revocation.
- Persons identified as the subject of a TIPOFF or visa revocation are met at the aircraft and escorted to primary or secondary inspection. All appropriate database queries are performed.
- When a person is identified as being a TIPOFF or visa revocation subject, the port takes immediate action to ensure that the subject will be identified.
- Regardless of other agency interest, CBP determines the admissibility of a TIPOFF or visa revocation subject.
- The NTC documents all contact with the port of entry.
- Ports of entry notify the Bureau of Immigration and Customs Enforcement duty agent of all lookout intercepts (including visa revocations) involving terrorism and/or national security.

- When a TIPOFF or visa revocation is processed in secondary, the results of the inspection are captured in the appropriate TECS/IBIS screen.

The bullets above summarize guidance issued to CBP field offices and to the CBP Director of Intelligence as well as a letter to the ICE office of National Security Investigations in July 2003.

Mr. AHERN. But one of the things we believe we need to be looking at is trying to go ahead and stop that passenger continuum, as early in the transportation process as possible and not have an encounter at the border. So as early in the process as we can make good effective determinations of who should be issued a visa to travel to the United States, it should be done, whether that is at the consular's office or if it has been issued, before that person even potentially departs a foreign location.

We then have a system in place to even have to deal with it in a foreign environment as opposed to upon arrival in the United States, if in fact, there is a good determination made for revoking somebody's visa.

Mr. SHAYS. Mr. DeMore, I feel I owe you an apology in terms of my question of why you did not know about the other 20 versus the 10. I do apologize.

Mr. DEMORE. No apology necessary, sir.

I would just tell you that I moved to Washington in October from California. When I got here with my two small children and recognizing what a target Washington is, I am greatly aware of my responsibilities and that of my agency to safeguard the American people.

Lest the committee got the sense that we were not serious about our business, we are. To that end, we are working very closely with our partners here at the table. Mr. Ahern and I are talking closely and working through additional data just to make sure that if there are cases that we did not previously pick up, we can potentially identify any of these other 20. We are working that presently. We will report back if we are able to come to some sense of those 20 other cases.

Mr. SHAYS. Thank you very much.

Without objection, so ordered.

When you mentioned Washington, when you have a conversation with a family member who lives in another part of Washington, and you say if there is an event, say, the White House, do not try to find us. Go far away from whatever happens. That is a weird conversation to have with one of your children. But it is the reality of our world.

Mr. McCraw.

Mr. MCCRAW. Thank you for your support and the opportunity to be here today. I appreciate this. This is a very important issue. I am glad we had a chance to discuss it.

Mr. SHAYS. It is an important issue. All of you have brought tremendous light to it.

Mr. Ford, we thank you for the work of GAO. We know that you all work very hard. We also know that all the various departments do as well.

I also want to thank the executive branch. We are all part of Congress. It is a lot better to be able to have this dialog without the GAO having spoken first, and having them at the table than walking away from table. Sometimes it is awkward for one or the other, but in the end we get at the truth. I thank you all for that.

I think this was a very helpful hearing. I thank all of you are participating.

This hearing is now adjourned.

[Whereupon, at 2:42 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Additional information submitted for the hearing record follows:]

TOM DAVIS, VIRGINIA,
CHAIRMAN

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July 1, 2003

The Honorable Colin L. Powell
Secretary
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Secretary Powell:

The Subcommittee on National Security, Emerging Threats, and International Relations, with oversight responsibilities for the Departments of Defense, Homeland Security, Veterans Affairs, and State, held a hearing June 18, 2003, on "Visa Revocations: Catching the Terrorists Among Us" at which Catherine Barry, Managing Director, Office of Visa Services, Bureau of Consular Affairs, testified.

During the hearing several points of contention arose that the Subcommittee believes require clarification. Therefore, we request you respond to the following questions for the hearing record:

- What, if any, specific disagreements does State have with the findings and recommendations of the GAO report, *Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process* (GAO-03-798, June 2003)?

- What steps has State taken in response to GAO's recommendations in *Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process* (GAO-03-798, June 2003)?
- Please submit a copy of formalized procedures regarding visa revocations and the sharing of that information both internally and externally as soon as they are available.

The following questions pertain to the 240 individuals whose visas were revoked ostensibly on terrorism grounds from September 11, 2001, through December 31, 2002.

- Please identify how many and which of the 240 individuals had records in the TIPOFF system at the time of revocation.
- For individuals who did not have records in TIPOFF, what was the source and type of derogatory information received?
- Is it possible for the Visa Office to receive derogatory information that leads to a visa revocation on terrorism grounds but which does not result in the addition of that individual to the TIPOFF system?
- In cases in which the names were not added to TIPOFF, what was State's rationale for not doing so?
- In cases in which the names were in TIPOFF, when and under what circumstances would information on the revocation be available to other users of the database (i.e. the FBI)?

In addition, Rep. Dennis Kucinich had a number of additional questions for the record.

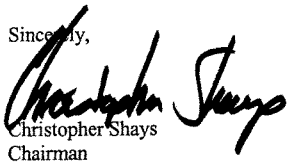
- What, if any, countries have a higher visa denial rate since September 11, 2001?
- How large a staff at the Bureau of Intelligence and Research screens intelligence for and from TIPOFF?
- Who decides that a visa applicant poses a potential terrorist threat?
- What criteria are used to determine if an applicant poses a potential terrorist threat?
- What oversight or review mechanisms are in place over the decision that an applicant poses a potential terrorist threat?
- How is this information shared with or enhanced by other agencies?
- How many applicants suspected of posing a terrorist threat have later been determined not to be a threat since September 11, 2001?

Please provide the information requested on or before the close of business Friday, August 1, 2003, to the Subcommittee office, room B-372 Rayburn House Office

Building, Washington, D.C. 20515. In the event you determine you are unable to provide all of the requested material at that time, please provide a written description of the circumstances preventing complete compliance and the date you anticipate delivery of any remaining material. If you or your staff have any questions about this request, please contact Lawrence Halloran, Staff Director, or Thomas Costa, Professional Staff, at 202-225-2548 or Tom.Costa@mail.house.gov.

Thank you for your attention to this request and for your assistance in the Subcommittee's oversight work.

Sincerely,



Christopher Shays
Chairman

cc: Hon. Tom Davis
Hon. Henry A. Waxman
Hon. Dennis J. Kucinch
Hon. Michael Turner

United States Department of State

Washington, D.C. 20520

August 1, 2003

Dear Mr. Chairman:

Following the June 18, 2003 hearing at which Catherine Barry, Managing Director, Office of Visa Services testified, additional questions were submitted for the record. Please find enclosed the responses to those questions.

If we can be of further assistance to you, please do not hesitate to contact us.

Sincerely,

Paul V. Kelly
Assistant Secretary
Legislative Affairs

Enclosure:
As stated.

The Honorable
Christopher Shays, Chairman,
Subcommittee on National Security, Emerging Threats,
and International Relations,
Committee on Government Reform,
House of Representatives.

Questions for the Record
Office of Visas Services Catherine Barry's Testimony
"Visa Revocations: Catching the Terrorist Among Us"
June 18, 2003

Question: What, if any, specific disagreements does State have with the findings and recommendations of the GAO report, *Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process (GAO-03-798, June 2003)*?

Answer:

We have attached the Department's comments on the GAO report. See attachment.

United States Department of State

Washington, D.C. 20520

June 10, 2003

Dear Ms. Westin:

We appreciate the opportunity to review your draft report, "BORDER SECURITY: New Policies and Procedures Needed to Fill Gaps in the Visa Revocation Process," GAO-03-798, GAO Job Code 320172.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Hale Vankoughnett, Bureau of Consular Affairs, at (202) 663-1152.

Sincerely,

Christopher B. Burnham
Assistant Secretary and
Chief Financial Officer

Enclosure:

As stated.

cc: GAO/IAT - John Brummet
State/OIG - Luther Atkins
State/CA - Maura Harty

Ms. Susan S. Westin,
Managing Director,
International Affairs and Trade,
U.S. General Accounting Office.

Department of State Comments on the Draft Report
Border Security: New Policies and Procedures Needed to Fill Gaps
in the Visa Revocation Process
(Job Code 320172)

State appreciates the opportunity to offer some clarification of the visa revocation process and the issues touched on in the draft report "Border Security: New Policies and Procedures Needed to Fill Gaps in the Visa Revocation Process" (Job Code 320172).

The report focuses on 240 visas that were prudentially revoked by the Department of State pursuant to the Secretary of State's authority under Section 221(i) of the Immigration and Nationality Act. We believe it is very important that all concerned parties understand the character of these visa revocations. It is not accurate, nor fair to the persons who held these visas to suggest that all of the persons whose visas were revoked were terrorists or suspected terrorists. Unlike consular officers, the Secretary of State or the Deputy Assistant Secretary for Visa Services as his designee may revoke a visa on a prudential basis, without a finding of inadmissibility. (In contrast, Department of State regulations permit consular officers to revoke a visa only if they find an alien to be inadmissible, and therefore ineligible for a visa, under the INA or other relevant law.) Such revocations often are undertaken because some information has surfaced that may disqualify the individual from a visa or from admission to the U.S., or that in any event warrants reconsideration of the individual's visa status. The information available at the time of a prudential revocation is often insufficient by itself to support a formal finding of inadmissibility. In some cases, for example, it may not be clear whether the available intelligence relates to the visa holder.

A prudential visa revocation thus constitutes a precautionary measure to preclude an alien from gaining admission to this country until his or her entitlement to a visa can be reestablished. It precludes admission to the United States unless the alien reapplies for a visa. At the time of any such subsequent visa application, there is an opportunity to explore fully the alien's qualifications for a visa. Identity issues can often be resolved, and in addition the new visa application triggers a more thorough analysis of the intelligence reporting on the individual, which is assessed along with the information obtained in connection with the new application and any interview. Often at the time of the subsequent visa application, the information that initiated a revocation is found not to relate to the individual whose visa was revoked.

The 240 revocations that are focused on in this report involved two broad classes of cases: 1) cases involving individuals about whom the State Department (through its Bureau of Intelligence and Research) received potentially derogatory information from the intelligence or law enforcement community, and 2) 105 visa cases in which the FBI did not respond to the Department in a timely fashion regarding security clearances. In the first class of cases, the Department decided, after analysis of intelligence reporting, that the available information was sufficient to warrant precautionary revocation of the

visas. As explained above, however, it cannot be assumed that the individual visa holder in fact is ineligible for a visa. The second class differs greatly from the first. A new interagency clearance program, known as Visas Condor, was established in January 2002 for counter-terrorism purposes. The participating agencies agreed to review visa cases on a "clock" basis, meaning that the consular officer would be free to issue the visa absent a "hold" request from another agency (relayed through the Department) within 30 days. A "hold" request did not necessarily imply that the applicant was ineligible, but rather indicated a desire for more time in light of possible agency interest. Given a "hold" request, the Department would then instruct the post to hold the visa application in abeyance pending resolution. Subsequent to institution of these procedures, the number of the visa condor cases overwhelmed resources and the clearing agencies did not possess the capacity to review all cases within the 30-day period. Once we became aware of this problem, we eliminated the 30-day clock. We also revoked all visas that had been issued pursuant to standard procedures but in which a clearing agency had in effect requested a "hold" after the 30-day period. The revocation of these 105 visas was precautionary and simply restored the cases to their "pending clearance" status. Thus, it does these visa applicants a disservice to suggest that they were terrorists or even suspected terrorists. In fact, a number of these cases were later cleared by the Foreign Terrorist Tracking Task Force of the FBI.

We believe it is also important that the GAO understand the reasons for the language used in the certificate of revocation. As the study pointed out, the certificate indicates that the revocation is effective immediately unless the person is in the United States, in which case the revocation is effective upon the person's departure from the United States. This longstanding practice has its roots in legal considerations, including the respective authorities of the Immigration and Naturalization Service (now the Department of Homeland Security) and the Department of State and litigation risks. It was reviewed by the INS General Counsel and the State Department in 1999 in consultation with the Justice Department's Office of Immigration Litigation. After that review, INS and State agreed that the Secretary of State's authority to revoke should continue to be administered as reflected in the certificate.

More recently, at the request of DHS, the Department agreed, subject to establishment of clear interagency procedures, to consider revoking visas effective immediately in potential security cases involving persons who are undergoing inspections at ports of entry and have not yet been admitted. DHS did not ask the Department to change the effective date of its visa revocations in cases of aliens already admitted to the United States. As the GAO report notes, lack of a valid visa is not a ground for removal from the United States. Indeed, many aliens enter the United States on single-entry visas and thus inherently have no valid visa after admission. They are nevertheless in lawful status if in compliance with the conditions of admission imposed by the Department of Homeland Security (the conditions being duration of and purpose of stay). Thus, the only reason to change the effective date of the Department's visa revocations in cases of aliens already admitted to the United States would be to test the ability of the Executive branch to remove an alien who has been admitted to the United States on a valid visa that was subsequently revoked effective retroactively; i.e., to the time of admission or of visa issuance). This would entail instituting removal proceedings under Section 237 of the

INA on the ground that the alien was inadmissible at time of entry. Such an approach would require taking the position that the alien as a matter of law entered without a valid visa because after admission his visa was revoked under INA section 222(i) retroactive to a time prior to admission. Neither State nor any of the other concerned agencies have to our knowledge wished to undertake such a course of action, with its attendant litigation risks.

Question: What steps has State taken in response to GAO's recommendations in *Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process* (GAO-03-798, June 2003)?

Answer:

State has adopted the following procedures. Additionally, we continue to discuss interagency procedures with the Department of Homeland Security (DHS).

The Department may revoke a visa when it receives derogatory information directly from another government agency, including a member of the intelligence or law enforcement community. The process is initiated by the receipt of derogatory information, usually reaching the Visa Office (VO) through the Bureau of Intelligence and Research (INR), when the reporting agency is within the law enforcement or intelligence community. Once it has been determined that the derogatory information appears sufficient to warrant a revocation, the subject's name shall be entered into CLASS, and a Certificate of Revocation will be submitted for signature to the Deputy Assistant Secretary of State for Visa Services with a summary of the available intelligence and/or background information, and any other relevant documentation. When the Certificate of Revocation has been signed, it will be

communicated within the Department and to other agencies by the following means:

- The file is reviewed to ensure that the subject has been entered into CLASS under the appropriate code. For a prudential revocation, the "VRVK" code will be entered as well as any applicable quasi-ineligibility ("P") code that corresponds to the suspected ineligibility. In the case of a prudential revocation based on derogatory information forwarded to VO by INR, the "DPT-00" code will be entered as well as "VRVK" and any applicable "P" code. For revocations based on a finding of ineligibility, the appropriate ineligibility code is entered, but the "VRVK" code is not required. In the case of a revocation based on information from post where the alien is in the U.S., post should enter the appropriate refusal code in CLASS, and the Department will make the "VRVK" entry.

- Copies of the Certificate of Revocation are sent by fax to DHS and, to INR when the revocation relates to INA 212(a)(3)(B) or (F).

- A cable instructing post to attempt to notify the visa holder of the revocation is sent to the issuing post, DHS and, when the revocation relates to INA (212(a)(3)(B) or (F)), the FBI. (Note: If law enforcement interests require that the subject remain unaware of U.S. Government interest, post will be informed of the revocation but instructed not to notify the subject).

Except for revocations based on recommendations from post where the alien may be in the U.S., most of the Department's revocations are prudential revocations, which do not constitute permanent finding of ineligibility. They simply reflect that, after visa issuance, information surfaced that has called into question the subject's continued eligibility for a visa. Subjects of prudential revocations are free to reapply and reestablish their eligibilities. If a subject of a CLASS code of "DPT-00" or an ineligibility under INA 212(a) applies for a visa, post must request either a Security Advisory Opinion to CA/VO/L/C or, if there is no "00" entry and the ineligibility code relates to a 212(a) subsection other than 212(a)(3)(A), (B), (C), (D), (E), or (F) an Advisory Opinion other than Security to the Visa Office's Advisory Opinions Division (CA/VO/L/A). (If the "VRVK" code is only

accompanied by an entry from another post, the adjudicating post should send a Visas Alpha, and in most cases will not need to send a cable to the Department). Upon receipt of a visa application from a subject of a prudential revocation for which CLASS reflects a Department entry of a code of "VRVK" or a quasi-ineligibility under an INA section other than 212(a), posts are required to obtain Department approval prior to visa issuance. Posts must submit an SAO request to the Visa Office's Coordination Division (CA/VO/L/C) in cases with CLASS codes relating to a security-related subsection of INA 212(a), or a Request for Advisory Opinion Other than Security to CA/VO/L/A in cases relating to other INA 212(a) subsections.

Question: Please submit a copy of formalized procedures regarding visa revocations and the sharing of that information both internally and externally as soon as they are available.

Answer:

The formalized procedures regarding visa revocation are as follows:

9 FAM 41.122 PN 12.3 Prudential Revocations

a. Although consular officers generally may revoke a visa only if the alien is ineligible under INA 212(a) or is no longer entitled to the visa classification, the Department may also revoke a visa if an ineligibility or lack of entitlement is suspected. In addition to the conditions described in PN12.2, the Department may revoke a visa when it receives derogatory information directly from another U.S. Government agency, including a member of the intelligence or law enforcement community. The process is initiated by the receipt of derogatory information, usually reaching the Visa Office (CA/VO/L/A) through INR, when the reporting agency is within the law enforcement or intelligence community. When the derogatory information relates to a suspected security ineligibility, it will be evaluated by CA/VO/L/C. Otherwise, derogatory information will be evaluated by CA/VO/L/A. Once it has been determined that the derogatory information appears

sufficient to warrant a revocation, the subject's name shall be entered into CLASS, and a Form DS-4047, Certificate of Revocation of Visa by Consular Officer, will be submitted for signature to the Deputy Assistant Secretary (DAS) of State for Visa Services with a summary of the available intelligence and/or background information, and any other relevant documentation. When the Form DS-4047 has been signed, it will be communicated within the Department and to other agencies by the following means:

(1) The file is reviewed to ensure that the subject has been entered into CLASS under the appropriate code. For a prudential revocation, the "VRVK" code will be entered as well as any applicable quasi-ineligibility ("P") code that corresponds to the suspected ineligibility. In the case of a prudential revocation based on derogatory information forwarded to VO by INR, the "DPT-00" code will be entered as well as "VRVK" and any applicable "P" code. For revocations based on a finding of ineligibility, the appropriate ineligibility code is entered, but the "VRVK" code is not required. In the case of a revocation based on information from post where the alien is in the United States., post should enter the appropriate refusal code in CLASS, and the Department will make the "VRVK" entry.

(2) Copies of the Form DS-4047, Certificate of Revocation of Visa by Consular Officer are sent by fax to Department of Homeland Security (DHS) and, to INR when the revocation relates to INA 212(a)(3)(B) or (F).

(3) A cable instructing post to attempt to notify the visa holder of the revocation is sent to the issuing post, DHS and, when the revocation relates to INA (212(a)(3)(B) or (F)), the FBI. (Note: If law enforcement interests require that the subject remain unaware of U.S. Government interest, post will be informed of the revocation but instructed not to notify the subject).

b. Except for revocations based on recommendations from post where the alien may be in the United States, most of the Department's revocations are prudential revocations, which, do not constitute permanent finding of ineligibility. They simply reflect that, after visa issuance, information surfaced that has called into question the subject's continued eligibility for a visa. Subjects of prudential revocations are free to reapply and reestablish their eligibilities. If a subject of a CLASS code of "DPT-00" or an ineligibility under INA 212(a) applies for a visa, post must request either a security advisory opinion to CA/VO/L/C or, if there is no "00" entry and the ineligibility code relates to a INA 212(a)

subsection other than 212(a)(3)(A), (B), (C), (D), (E), or (F), an advisory opinion other than security to CA/VO/L/A. (If the "VRVK" code is only accompanied by an entry from another post, the adjudicating post should send a visas alpha, and, in most cases will not need to send a cable to the Department). Upon receipt of a visa application from a subject of a prudential revocation for whom CLASS reflects a Department entry of a code of "VRVK" or a quasi-ineligibility under an INA section other than 212(a), posts are required to obtain Department approval prior to visa issuance. Posts must submit an SAO request to CA/VO/L/C, in cases with CLASS codes relating to a security-related subsection of INA 212(a), or a request for advisory opinion other than security to CA/VO/L/A, in cases relating to other INA 212(a) subsections.

Question: The following questions pertain to the 240 individuals whose visas were revoked ostensibly on terrorism grounds from September 11, 2001, through December 31, 2002.

Please identify how many and which of the 240 individuals had records in the TIPOFF system at the time of the revocation.

Answer:

Fifty-seven of the 240 individuals revoked currently have records in the TIPOFF system. Fifty-two out of the 57 individuals with records in TIPOFF were entered in TIPOFF before the revocation. Sufficient derogatory information for TIPOFF purposes was not available for the remaining 183.

Question: For individuals who did not have records in TIPOFF, what was the source and type of derogatory information received?

Answer:

Information generally came from the FBI, which, in the aftermath of September 11, 2001, provided VO/L/C extensive lists of names of individuals of interest.

Question: Is it possible for the Visa Office to receive derogatory information that leads to a visa revocation on terrorism grounds but which does not result in the addition of that individual to the TIPOFF system?

Answer:

This scenario is possible though very unusual. First, most of the information on which L/C bases revocations arrives in the Visa Office through TIPOFF. In the event that L/C were to receive derogatory information sufficient for a revocation independent of TIPOFF, that office would be informed of our decision to revoke and provided whatever derogatory intelligence L/C had for their own consideration. As TIPOFF holds a vast amount of information on various individuals, it is more likely that TIPOFF might hold intelligence on a visa holder that does not warrant a revocation than that L/C would decide to execute a revocation on information TIPOFF deemed not worthy of entry. In the immediate aftermath of September 11, 2001, however, many visas were prudentially revoked for individuals for whom TIPOFF criteria were not met.

Question: In cases in which the names were not added to TIPOFF, what was State's rationale for not doing so?

Answer:

CA's standards for prudential revocation and TIPOFF standards for watchlisting can differ. In the immediate aftermath of 9/11, the Visa Office received a large number of names directly from the FBI. These individuals were best described as persons of interest, not suspects of any crime. TIPOFF decided at that time that the FBI had not developed sufficient derogatory information on these individuals to justify watchlisting them. However, the Visa Office determined that as these individuals were of interest to the FBI (who wished to locate and possibly interview them), by revoking their visas on prudential grounds, we could assist the FBI in locating these subjects. Once a person's visa is revoked, he/she would be stopped by the INS at the port of entry allowing the FBI to interview him or take whatever other steps the FBI deemed necessary. As our intention was to allow the FBI the opportunity to intercept these individuals, the Visa Office instructed Posts not to inform the subjects of their revocations. Only in cases where law enforcement interest would preclude our informing the individual of his

revocation does the Visa Office not inform the subject of his status.

Question: In cases in which the names were in TIPOFF, when and under what circumstances would information on the revocation be available to other users of the database (i.e. the FBI)?

Answer:

When advised of a terrorism-based revocation, TIPOFF staff creates or updates the appropriate records. That information would be available to authorized users (State, NSA, CIA, DIA, and FBI) on TIPOFF Web the same day and would be exported to CLASS and IBIS databases during their next regular weekly update. The Bureau of Consular Affairs also immediately notifies the Department of Homeland Security's Bureau of Customs and Border Protection.

Question: What, if any, countries have a higher visa denial rate since September 11, 2001?

Answer:

The following countries have had a higher nonimmigrant visa refusal rate since September 11, 2001:

Afghanistan
Algeria
Bahamas
Bahrain
Belize
Bosnia & Herzegovina
Botswana
Brazil
Burkina Faso
Burma
Burundi
Cambodia
Cameroon
Cape Verde
Central African Republic
China-mainland born
China-Taiwan born
Colombia
Congo, Democratic Republic of
Cote d'Ivoire
Croatia
Cuba
Denmark
El Salvador
France
Germany
Great Britain
Guatemala
Guyana
Honduras
Hong Kong
Hungary
Iran
Iraq
Ireland
Jamaica
Japan
Kenya

Kuwait
Laos
Latvia
Lebanon
Lesotho
Liberia
Luxembourg
Madagascar
Malaysia
Mauritania
Mexico
Mongolia
Morocco
Nepal
New Zealand
Nigeria
Oman
Pakistan
Panama
Papua New Guinea
Peru
Philippines
Qatar
Romania
Saudi Arabia
Senegal
Serbia & Montenegro
Singapore
Slovakia
Somalia
Spain
Sudan
Sweden
Syria
Tanzania
Thailand
Togo
Trinidad
Turkmenistan
Uganda
Ukraine
United Arab Emirates
Uruguay
Uzbekistan
Venezuela
Zambia

Question: How large a staff at the Bureau of Intelligence and Research screens intelligence for and from TIPOFF?

Answer:

TIPOFF staff includes six INR government hires (one Foreign Service officer and five Civil Servants) and contractor analytical and technical support, funded by the Bureau of Consular Affairs' MRV fees. The number of on-site contractor analysts and the hours they work vary with funding availability; there are currently 13 contractors who work at least part-time in TIPOFF.

Question: Who decides that a visa applicant poses a potential terrorist threat?

Answer:

The ultimate responsibility in any visa adjudication is the consular officer in the field. As each applicant is checked against the CLASS database, if an "00" code appears (which would indicate a TIPOFF or other security "hit", the consular officer is required to seek a Security Advisory Opinion from Washington. That SAO request, which includes information developed by the consular officer, comes simultaneously to TIPOFF and to the Bureau of Consular Affairs. TIPOFF checks the database and seeks additional information from the intelligence and law enforcement community. TIPOFF provides that information to the Bureau of Consular Affairs, along with an analysis of its reliability and significance. The Bureau of Consular Affairs responds to the SAO based on the information from TIPOFF and its knowledge of visa law and regulations and the consular officer makes the final determination for or against visa issuance.

Question: What criteria are used to determine if an applicant poses a potential terrorist threat?

Answer:

TIPOFF staff use a criteria of "reasonable suspicion" that an individual has or would engage in terrorist activity (as defined in the Immigration and Naturalization Act) in determining whether or not to include an individual in the database. Entries include the TIPOFF staff's evaluation of precisely which section of the INA would be grounds for the ineligibility.

Question: What oversight or review mechanisms are in place over the decision that an applicant poses a potential terrorist threat?

Answer:

TIPOFF conducts its own internal quality control review of random records to ensure consistency of analysis and completeness of records. As outlined above, the actual determination of whether an applicant poses a potential threat and thus should not be granted a visa is a process which includes TIPOFF, the Bureau of Consular Affairs and the consular officer overseas. Each step of the process provides for oversight and review. In addition, senior consular officials are tasked with reviewing refusals.

Question: How is this information shared with or enhanced by other agencies?

Answer:

TIPOFF is the U.S. government's single repository for highly classified intelligence, a redacted version of which is shared with both consular and border security officials, and provides the only automated mechanism to do so. TIPOFF also seeks, receives, and includes in the database information from diplomatic, law enforcement and open sources. TIPOFF provides access to the full database to a Community of Interest (State, NSA, CIA, DIA, and FBI) on CTLINK via the TS/SCI INTELINK network. TIPOFF provides Sensitive But Unclassified exports of biodata elements to CLASS, IBIS (for Department of Homeland Security elements), the Governments of Australia and Canada, and the Department of Justice's Foreign Terrorist Tracking Task Force.

Question: How many applicants suspected of posing a terrorist threat have later been determined not to be a threat since Sept. 11, 2001?

Answer:

A preliminary check of the Visa Office's records indicates that of the 240 revocations between 9/11/01 and 12/31/02, 15 subjects were later re-issued visas because additional security vetting revealed no information that indicated the applicants were ineligible for visas or posed a threat to the United States. (The Visa Office will continue our review of past revocation records and will provide the Subcommittee corrected statistics if additional reissuances are discovered.)

105 of the 240 revoked visas were revoked because the Foreign Terrorism Tracking Task Force asked the Department to place holds on the cases after the visas had been issued. With regard to these cases, however, the FBI testified on June 18 before the House Committee on Government Reform that "… no information was found that would have prevented the individuals from legally entering the United States." In the event that any of these individuals were to reapply for visas in the future, they would likely be reissued visas unless other derogatory information comes to light.

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July 1, 2003

The Honorable Tom Ridge
Secretary
Department of Homeland Security
Washington, D.C. 20407

Dear Secretary Ridge:

The Subcommittee on National Security, Emerging Threats, and International Relations, with oversight responsibilities for the Departments of Defense, Homeland Security, Veterans Affairs, and State, held a hearing June 18, 2003, on "Visa Revocations: Catching the Terrorists Among Us" at which Jayson P. Ahern, Assistant Commissioner, Office of field Operations, Bureau of Customs and Border Protection (CBP), and Charles H. Demore, Interim Assistant Director for Investigations, Bureau of Immigration and Customs Enforcement (ICE), testified.

During the hearing several points of contention arose that the Subcommittee believes require clarification. Therefore, we request you respond to the following questions for the hearing record:

- What, if any, specific disagreements does the Department have with the findings and recommendations of the GAO report, *Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process* (GAO-03-798, June 2003)?

- What steps has the Department taken in response to GAO's recommendations in *Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process* (GAO-03-798, June 2003)?
- Please submit a copy of formalized procedures regarding visa revocations and the sharing of that information both internally and externally as soon as they are available.

The following questions are directed to CBP:

- We understand the CBP Lookout Unit has analyzed the 240 visa revocation cases to determine which individuals entered the United States but for whom CBP does not have a record of departure. From your analysis, what do you determine to be the number of individuals of the 240 who may still remain in the United States?
- How does CBP refer cases to ICE?
- ICE testimony indicated ICE was notified and investigated 10 of the suspected 30 revoked visa cases. Were all cases referred? If not, why not?

The following questions are directed to ICE. In Mr. Demore's testimony, he reported ICE's National Security Unit (NSU) investigated all referred cases and located 10 individuals whose visas were revoked on the basis of terrorism concerns.

- Why did the NSU initiate these investigations?
- From whom did the NSU receive referrals or information regarding these investigations?
- When were the 10 investigations started and completed?
- What were the results of the investigations—where were the 10 people located, what were they doing, and what follow-up action was recommended?
- What steps has ICE taken in response to the other 20 suspected aliens with revoked visas in the country?
- How were the investigations coordinated with the FBI?
- Mr. Demore said the NSU did not agree with GAO's assessment of the role the NSU plays in locating and investigating individuals with revoked visas who may be in the United States. How would NSU characterize this role and how does it differ from what GAO reported?

In addition, Rep. Carolyn Maloney had additional questions concerning the Student and Exchange Visitor System (SEVS).

- How many foreign students are currently missing in New York State?

- Is the system working in all schools?
- How is DHS notified of missing students?
- Is DHS being notified of all missing students?
- How is DHS notified where the system is not working?

Please provide the information requested on or before the close of business Friday, August 1, 2003, to the Subcommittee office, room B-372 Rayburn House Office Building, Washington, D.C. 20515. In the event you determine you are unable to provide all of the requested material at that time, please provide a written description of the circumstances preventing complete compliance and the date you anticipate delivery of any remaining material. If you or your staff have any questions about this request, please contact Lawrence Halloran, Staff Director, or Thomas Costa, Professional Staff, at 202-225-2548 or Tom.Costa@mail.house.gov.

Thank you for your attention to this request and for your assistance in the Subcommittee's oversight work.

Sincerely,

Christopher Shays
Chairman

cc: Hon. Tom Davis
Hon. Henry A. Waxman
Hon. Dennis J. Kucinch
Hon. Michael Turner

The Honorable Christopher Shays
Chairman
Subcommittee on National Security, Emerging Threats,
and International Relations
Committee on Government Reform
US House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of July 1 in which you submitted follow-up hearing questions for the record from the June 18 hearing on "Visa Revocations: Catching the Terrorists Among Us." Below are the responses from Mr. Charles H. Demore, Interim Assistant Director for Investigations, Bureau of Immigration and Customs Enforcement (BICE), and Mr. Jayson P. Ahern, Assistant Commissioner, Office of field Operations, Bureau of Customs and Border Protection (BCBP) who testified on behalf of the Department of Homeland Security.

- **What, if any, specific disagreements does the Department have with the findings and recommendations of the GAO report, Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process (GAO-03-798, June 2003)?**

Response: Specifically, BICE disagrees with statements on pages 5 and 24 of the GAO report. The GAO report states that the Immigration and Naturalization Service (INS), specifically investigators within the National Security Unit (NSU) who are now operating under the Bureau of Immigration and Customs Enforcement (BICE), do not routinely take action to investigate, locate, or resolve cases of individuals who remained in the United States after their visas were revoked. This statement is not accurate. When the Bureau of Customs and Border Protection Lookout Unit notifies BICE that Department of State (DOS) has issued a visa revocation and the alien may be in the United States, BICE has, and continues to refer the matter to NSU to investigate the matter and take the appropriate actions. The NSU always investigated and took appropriate action on all cases referred to it by BICE.

Pursuant to NSU standard operating policy, visa revocation cases are investigated and coordinated in the same manner as all other types of cases handled by the unit. The NSU submitted documentation to GAO proving that 100% of all visa revocation cases referred to the NSU were investigated. In all of the referred visa revocation cases where the alien was located, or had not departed, the United States, investigators determined that insufficient evidence was present linking the aliens to terrorism or any other applicable basis for removal from the United States. Therefore no action could be taken on these individuals after having their visa revoked.

- **What steps has the Department taken in response to GAO's recommendations in Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process (GAO-03-798, June 2003)?**

Recommendation 1: The Secretary of Homeland Security, in conjunction with the Secretary of State and the Attorney General develop specific policies and procedures for the interagency visa revocation process to ensure that notification of visa revocations for suspected terrorists and relevant supporting information is transmitted from State to immigration and law enforcement units, in a timely manner.

Response: Since the June 2003 report, BICE has requested and received immediate notification from DOS of all visa revocations, including revocations based on national security grounds. DOS is now transmitting cables of all visa revocations to the BICE Intelligence Unit. The Intelligence Unit then conducts records checks, obtains all derogatory information relating to the subject of the visa revocation, and creates a target folder. The target folder is then forwarded to the appropriate BICE Investigations Division for a full field investigation.

The Bureau of Customs and Border Protection (BCBP) has initiated a working group with DOS's Visa Office to clarify the existing process and jointly implement procedures that enhance the timeliness and accountability of posting revocation lookouts into the Interagency Border Inspection System (IBIS). BCBP has internally relocated the receipt and posting of visa revocations to the BCBP Office of Intelligence, which is best placed to act immediately upon revocations. Further, as an interim step, BCBP is performing queries upon all newly issued visa revocations to determine whether or not the alien has already made entry into the United States. In cases where the subject has already entered the United States, BCBP immediately informs BICE.

Recommendation 2: The Secretary of Homeland Security, in conjunction with the Secretary of State and the Attorney General develop specific policy on actions that immigration and law enforcement agencies should take to investigate and locate individuals whose visas have been revoked for terrorism concerns and who remain in the United States after revocation.

BICE has determined that there is no need to create additional policies to address actions that law enforcement and immigration agencies should take to investigate and locate individuals whose visa have been revoked because such policies are already in place. BICE Office of Investigations has jurisdiction over investigating persons who are in the United States in violation of immigration law and, and is an active member of the Federal Bureau of Investigation's (FBI) nation-wide Joint Terrorism Task Forces (JTTF). It is BICE policy to conduct a full field investigation of any foreign national who is believed to be in the United States and whose visa was revoked on national security grounds.

DHS and DOS currently are reviewing a variety of issues relating to the effective date of visa revocations and whether changes in current practices with respect to aliens already in

the United States could assist DHS in removing an alien from the United States more expeditiously.

In cases where an individual has a revoked visa based on national security grounds, but is present in the U.S., BICE has in the past and will continue to attempt to locate the individual and verify his/her immigration status and ensure that the person is complying with the terms of admission. BICE further investigates all immigration violations that would make the person amenable to removal proceedings (violations such as unauthorized employment, failure to depart the U.S. as required, etc.).

Recommendation 3: The Secretary of Homeland Security, in conjunction with the Secretary of State and the Attorney General determine if persons with visas revoked on terrorism grounds are in the United States and, if so, whether they pose a security threat.

The BICE Intelligence Unit, upon receipt of notification of a visa revocation, queried BICE databases to determine if any of the individuals who have had their visas revoked have entered the U.S. and still have not departed. Upon confirmation that individuals who have had their visas revoked for national security grounds have entered the U.S. and not departed, BICE Office of Investigations in coordination with the FBI will make every attempt to locate the individual and investigate all possible avenues to remove the individual from the U.S. thereby minimizing the threat they may pose to the Homeland.

- **Please submit a copy of formalized procedures regarding visa revocations and the sharing of that information both internally and externally as soon as they are available.**

Response: Previously, BICE provided GAO with copies of several memoranda related to NSU's standard operating procedures for handling of national security matters, which include case creation information and approval instructions. We have attached copies for your reference. These procedures are applicable to cases involving visa revocations on national security grounds. As indicated in response to Question 1, DOS is now transmitting cables of all visa revocations to the BICE Intelligence Unit. Additionally, BICE has finalized internal procedures for the coordination of national security visa revocation issues. Upon receipt of a visa revocation cable, the Intelligence Unit conducts records checks, obtains all derogatory information relating to the subject of the visa revocation, and creates a target folder. The target folder is then forwarded to the appropriate BICE Investigations Division for a full field investigation.

The following questions are directed to BCBP:

- We understand the BCBP Lookout Unit has analyzed the 240 visa revocation cases to determine which individuals entered the United States but for whom BCBP does not have a record of departure. From your analysis, what do you determine to be the number of individuals of the 240 who may still remain in the United States?

Response: From further analysis, BCBP has determined that 30 of the 240 aliens appeared to remain in the United States, meaning that no departure information existed for the 30.

- How does BCBP refer cases to BICE?

Response: BCBP notifies BICE National Security Unit (NSU) by creating an excel spreadsheet with the aliens name, date of birth, country of citizenship, date of entry, U.S. address and passport number. This spreadsheet is sent electronically to the NSU.

- BICE testimony indicated BICE was notified and investigated 10 of the suspected 30 revoked visa cases. Were all cases referred? If not, why not?

Response: During the period in which GAO examined visa revocations for its report, both the Lookout Unit and National Security Unit (NSU) were part of the former INS. We understand that NSU records show that only 10 of these were referred to the NSU. BCBP is not able to verify that all cases were properly referred within legacy INS. With the creation of DHS, the INS was abolished, and BCBP, as part of its border enforcement mission, assumed the responsibilities that had been previously carried out by the INS Lookout Unit. BCBP has developed processes with DOS and BICE to ensure complete, accurate, and timely notification of visa revocations from DOS to BCBP, as well as timely notifications from BCBP to BICE when persons with revoked visas are believed to have entered the country.

The following questions are directed to BICE. In Mr. Demore's testimony, he reported BICE's National Security Unit (NSU) investigated all referred cases and located 10 individuals whose visas were revoked on the basis of terrorism concerns.

- **Why did the NSU initiate these investigations?**

Response: The NSU initiated these investigations after receiving information from the former INS National Lookout Unit that 10 individuals who may be linked to international terrorism were admitted into the U.S. had their visas subsequently revoked.

- **From whom did the NSU receive referrals or information regarding these investigations?**

Response: The referrals were received from the former INS National Lookout Unit.

- **When were the 10 investigations started and completed?**

Response: The investigations were initiated in early January 2003 and were all completed by March 31, 2003.

- **What were the results of the investigations-where were the 10 people located, what were they doing, and what follow-up action was recommended?**

Response: The investigation revealed that five individuals departed the United State. Lookout records were placed in the Treasury Enforcement Communications System (TECS) for notification purposes in the event the individuals attempt to enter the U.S. at a later date.

One individual was found in Oregon attending a community college. This individual is complying with the terms of his admission and is not amenable to removal proceedings at this time. A TECS lookout exists for this individual indicating that his visa has been revoked.

One individual was found in California working as a professor at a university. This individual is complying with the terms of his admission and is not amenable to removal proceedings at this time. A TECS lookout exists for this individual indicating that his visa has been revoked.

One individual was found in New York working as a medical doctor. This individual is complying with the terms of his admission and is not amenable to removal proceedings at this time. A TECS lookout exists for this individual indicating that his visa has been revoked.

Two individuals were not located. TECS lookouts exist for these individuals indicating that their visas have been revoked.

- **What steps has BICE taken in response to the other 20 suspected aliens with revoked visas in the country?**

Response: The FBI has indicated that there are no other aliens with alleged ties to terrorism stemming from the GAO report. As indicated, prior to June 2003, BICE received only 10 referrals of individuals who had their visas revoked based on national security grounds and were believed to be in the United States. BICE has repeatedly requested information on the GAO claim of 20 additional leads and been told by BCBP and DOS that they are not aware of any such additional leads. GAO recently testified that there are as many as 50 "terrorists" in the U.S. who have had their visas revoked. The BICE Director of Operations will send a letter to GAO formally requesting all information they have on these 50 individuals.

- **How were the investigations coordinated with the FBI?**

Response: The investigations were conducted by former INS Special Agents assigned to the Joint Terrorism Task Force, under the supervision of the FBI.

- **Mr. Demore said the NSU did not agree with GAO's assessment of the role the NSU plays in locating and investigating individuals with revoked visas who may be in the United States. How would NSU characterize this role and how does it differ from what GAO reported?**

Response: The GAO report asserted that the former INS did not routinely investigate matters involving visa revocations. NSU provided documentation to GAO demonstrating that 100% of all visa revocation cases referred to NSU were fully investigated. NSU Special Agents met with GAO investigators on several occasions and discussed the investigations with them at length. In a final exit conference regarding the GAO report, the GAO investigators admitted that they had used language that was misleading in their report but refused to alter the report to accurately reflect the investigative efforts of the NSU and former INS.

In addition, Rep. Carolyn Maloney had additional questions concerning the Student Exchange and Visitor Information System (SEVIS).

- **How many foreign students are currently missing in New York State?**

Response: The BICE Compliance Enforcement Unit (CEU) has identified 447 students who either failed to show up for school, failed to maintain status as students, or failed to maintain the required academic caseload in the state of New York. At present, CEU is in the process of filtering these and other names through all available indices. This is done in an effort to develop and prioritize leads so as to deal with those persons that potentially pose the greatest risk to public interests and national security.

- **Is the system working in all schools?**

Response: Nearly 5,600 schools have been certified to participate in the SEVIS program. Those schools not opting to enroll with SEVIS will not be authorized to certify and enroll foreign students. In addition, Department of State has certified 1,400 exchange visitor programs to participate in the SEVIS program. Exchange programs not opting to enroll with SEVIS will not be granted DS-3036 certification, and as such, they will not have the ability to issue Forms DS-2019. The system *is working in all certified schools that choose to participate* in the SEVIS program.

- **How is DHS notified of missing students?**

Response: The primary method of reporting missing students to DHS/BICE is to have the school or exchange program sponsor report them on-line in SEVIS. That information is subsequently routed to the BICE-CEU where it is screened for viable leads, which are ultimately submitted to the appropriate field office for enforcement action.

Although usage of the on-line system is the preferred method of reporting student violators, CEU has also established a dedicated e-mail address and toll free number. The CEU continues to receive leads from these reporting methods as well as leads that are reported directly to the field offices. It is expected that the number and frequency of this type of reporting will diminish considerably once schools become more adept at utilizing SEVIS.

- **Is DHS being notified of all missing students?**

Response: After August 1, 2003, schools and exchange programs will be required to have all foreign students and exchange visitors enrolled in SEVIS. Schools and exchange programs are required to notify BICE (through SEVIS) of all missing students or exchange visitors. Additionally, SEVIS has certain applications or "Jobs" designed to filter through the SEVIS data and automatically terminate missing students even if schools fail to report them.

- **How is DHS notified where the system is not working?**

Response: To handle system problems, SEVIS provides and supports a dedicated national help- desk, separate from the main DHS BCIS/BICE call center, to the educational community. This SEVIS help desk addresses reports of technical issues and also includes input from and coordination with DHS subject matter experts. DHS provides many 'scripts' and information into the help desk knowledge-base on immigration policy and regulatory matters related to SEVIS. Likewise, Department of State provides information on the J-1 and related exchange visitor policy and regulatory matters not overseen by DHS.

I trust this information is useful to you. Please do not hesitate to contact me if I may be of any further assistance.

Sincerely,

Asa Hutchinson
Under Secretary for Border and Transportation Security

2507 guideline of when a visa interview can be waived. We have
2508 started a process of formalizing standard operating
2509 procedures for use in the field and at headquarters. We will
2510 continue that effort.
2511 We similarly took the procedural recommendations of this
2512 present report on visa revocations very seriously. We
2513 believe we have addressed the procedural issues, but we have
2514 not yet fully formalized that. We will do so.
2515 Finally, as part of my wrap-up, I would say that the
2516 question of when a visa should be revoked from a legal point
2517 of view, and its effect in law, is an issue that we will
2518 energize a discussion within the Department of State on that
2519 point and consult with other appropriate parties in the
2520 Federal Government, to try to wrap that up as soon as
2521 possible.
2522 Mr. SHAYS. Thank you, very much.
2523 Mr. Ahern?
2524 Mr. AHERN. As I started to mention earlier about
2525 solutions, we believe we can have a lot better
2526 standardization of procedures within the Customs and Border
2527 Protection at the ports of entry to ensure that these things
2528 could not potentially occur. We will be happy to summarize
2529 those and submit those to you later, if you like.
2530 Mr. SHAYS. Without objection, so ordered.
2531 [Information to be supplied follows:]

Improved Visa Revocation and TIPOFF Procedures

The visa revocation process in the Bureau of Customs and Border Protection (CBP) is the responsibility of the Director of Intelligence. The Department of State (DOS) has now included CBP Intelligence on the cable distribution for visa revocations. Once CBP receives notification of a visa revocation from DOS, CBP takes the following steps:

- Determines if there is a lookout on the subject, and if not, immediately creates a lookout on that subject.
- Determines, to the extent possible, if the subject has entered the United States, and if so, immediately provides that information to the BICE Office of Intelligence for appropriate investigative follow up.
- Maintains detailed records on the steps taken for each visa revocation.

CBP performs the following internal steps to ensure the identification of TIPOFF and visa revocation subjects at ports of entry:

- The port of entry analytical units review advance information and ensure that lookouts are in the system.
- The National Targeting Center (NTC) supports ports of entry with the creation of one-day lookouts for persons identified as the subject of a visa revocation.
- Persons identified as the subject of a TIPOFF or visa revocation are met at the aircraft and escorted to primary or secondary inspection. All appropriate database queries are performed.
- When a person is identified as being a TIPOFF or visa revocation subject, the port takes immediate action to ensure that the subject will be identified.
- Regardless of other agency interest, CBP determines the admissibility of a TIPOFF or visa revocation subject.
- The NTC documents all contact with the port of entry.
- Ports of entry notify the Bureau of Immigration and Customs Enforcement duty agent of all lookout intercepts (including visa revocations) involving terrorism and/or national security.

- When a TIPOFF or visa revocation is processed in secondary, the results of the inspection are captured in the appropriate TECS/IBIS screen.

The bullets above summarize guidance issued to CBP field offices and to the CBP Director of Intelligence as well as a letter to the ICE office of National Security Investigations in July 2003.

TOM DAVIS, VIRGINIA,
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CHRIS BELL, TEXAS

BERNARD SANDERS, VERMONT,
INDEPENDENT

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS,
AND INTERNATIONAL RELATIONS
Christopher Shays, Connecticut
Chairman
Room B-372 Rayburn Building
Washington, D.C. 20515
Tel: 202 225-2548
Fax: 202 225-2382

July 1, 2003

The Honorable Robert S. Mueller
Director
Federal Bureau of Investigation
2201 C Street, N.W.
Washington, D.C. 20520

Dear Director Mueller:

The Subcommittee on National Security, Emerging Threats, and International Relations, with oversight responsibilities for the Departments of Defense, Homeland Security, Veterans Affairs, and State, held a hearing June 18, 2003, on "Visa Revocations: Catching the Terrorists Among Us" at which Steven C. McCraw, Inspector-Deputy Assistant Director of Intelligence, testified.

During the hearing several points of contention arose that the Subcommittee believes require clarification. Therefore, we request you respond to the following questions for the hearing record:

- What, if any, specific disagreements does FBI have with the findings and recommendations of the GAO report, *Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process* (GAO-03-798, June 2003)?

- What steps has FBI taken in response to GAO's recommendations in *Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process* (GAO-03-798, June 2003)?

- Please submit a copy of formalized procedures regarding visa revocations and the sharing of that information both internally and externally as soon as they are available.

The following questions pertain to the 240 individuals whose visas were revoked on terrorism grounds from September 11, 2001, through December 31, 2002.

- In Mr. McCraw's testimony, he said the FBI cleared all 240 individuals. When, and through what means, did the bureau clear each of the 240 individuals? Mr. McCraw's testimony indicated the names were run against the TIPOFF and VGTOF (Violent Gangs and Terrorist Organization File) databases. When were the checks on all 240 individuals begun and completed? Were the names checked by any other means? How were the results of these clearances shared with the Departments of Homeland Security and State? Why weren't these results shared with the General Accounting Office or included in submitted written testimony?

- In Mr. McCraw's testimony, he stated TIPOFF is the "single end point" for information on terrorists and only 47 of the 240 were in TIPOFF. Recognizing 105 visas were revoked as a result of delayed Condor name checks and many were subsequently cleared, there were still cases among the remaining 135 revocations that were not in TIPOFF. Why does the FBI believe there was no concern these individuals might be suspected terrorists?

- In cases in which the individual was not in TIPOFF or VGTOF, did the FBI contact the State Department to determine the basis for revoking the visa? If yes, under what circumstances? If no, why not?

- Mr. McCraw said the FBI has had a system in place since 2002 that addresses "all issues in terms of visa revocations as well as other cables." Please describe this system and how the FBI would handle revocation information for individuals whose visas are revoked based on terrorism concerns but who are *not* in TIPOFF.

- Mr. McCraw said the FBI is "alerted any time any of these individuals that have been linked to terrorism enters the United States." Who notifies FBI when these individuals enter? For example, Mr. McCraw said eight individuals (who were

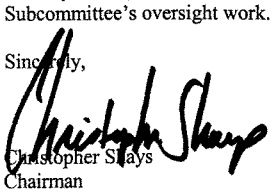
among the 47 in TIPOFF) were determined to have been in the United States at some point in time. On what date did these individuals enter the country? On what date was the FBI notified of their entry? Did the FBI take any action on these cases and if so, what was the resolution?

- Mr. McCraw's written testimony gave a detailed explanation of the FBI's procedures for doing name checks on visa applicants as part of the security clearance process but neglected to explain the Bureau's procedures, if any, for investigating and locating individuals whose visas were revoked on terrorism grounds *after* they had entered the United States. Please provide an explanation of these procedures, if they exist. Does the FBI use State's revocation cables as a starting point for further investigation?

Please provide the information requested on or before the close of business Friday, August 1, 2003, to the Subcommittee office, room B-372 Rayburn House Office Building, Washington, D.C. 20515. In the event you determine you are unable to provide all of the requested material at that time, please provide a written description of the circumstances preventing complete compliance and the date you anticipate delivery of any remaining material. If you or your staff have any questions about this request, please contact Lawrence Halloran, Staff Director, or Thomas Costa, Professional Staff, at 202-225-2548 or Tom.Costa@mail.house.gov.

Thank you for your attention to this request and for your assistance in the Subcommittee's oversight work.

Sincerely,



Christopher Shays
Chairman

cc: Hon. Tom Davis
Hon. Henry A. Waxman
Hon. Dennis J. Kucinch
Hon. Michael Turner

REP. CHRISTOPHER SHAYS
2003 AUG 14 AM 11:30
WASHINGTON, D.C.

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

August 1, 2003

Honorable Christopher Shays
Chairman
Subcommittee on National Security,
Emerging Threats, and International Relations
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in response to your letter dated July 1, 2003 in which you forwarded to the FBI questions for the record following the June 18, 2003 Subcommittee hearing on "Visa Revocations: Catching the Terrorists Among Us" at which FBI Assistant Director Steven McCraw testified.

Although we will be unable to submit our responses to the Committee by today's deadline, we have delivered our responses to the Department of Justice (DOJ) for review and approval. Upon approval by DOJ, we will transmit the final responses to you directly.

Thank you for your patience as the FBI works to develop appropriate and thoughtful responses to these important inquiries.

Sincerely,

Eleni P. Kalisch
Acting Assistant Director
Office of Congressional Affairs

Honorable Dennis Kucinich
Ranking Member
Subcommittee on National Security,
Emerging Threats, and International Relations
United States House of Representatives
Washington, D.C. 20515

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 29, 2003

The Honorable Christopher Shays
Chairman
Subcommittee on National Security, Emerging Threats,
and International Relations
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed please find responses to questions posed to the Federal Bureau of Investigation following the appearance before the Subcommittee of Assistant Director Steven C. McCraw on June 18, 2003, concerning visa revocations.

We hope that this information is helpful to you. Please do not hesitate to contact this office if we may be of additional assistance in connection with this or any other matter.

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Dennis J. Kucinich
Ranking Minority Member

Representative Christopher Shays
Questions for the Record for Director Mueller,
Federal Bureau of Investigation
following the June 18, 2003
Testimony of Assistant Director Steven C. McCraw
Before the Subcommittee on National Security, Emerging Threats,
and International Relations
Committee on Government Reform
U.S. House of Representatives

on

"Visa Revocations: Catching the Terrorists Among Us"

- **What if any, specific disagreements does FBI have with the findings and recommendations of the GAO report, *Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process* (GAO-03-798, June 2003)?**

  Response:

  The FBI is concerned that the GAO report conveys an inaccurate impression that the Department of States's (DOS's) visa revocation cables system is the only system that the FBI relies upon to locate known or suspected terrorists identified by the Intelligence Community. However, this is not the only system the FBI uses to locate known or suspected terrorists identified by DOS and the Intelligence Community. The GAO report did not take into account the systems that FBI does use. Therefore, the report gave the impression that there may be 33 terrorists in the United States who have not been appropriately investigated. The system discussed in Mr. McCraw's testimony leverages the unique capabilities of the Foreign Terrorist Tracking Task Force (FTTTF) to address all individuals identified by DOS and the Intelligence Community as associated with terrorism who somehow entered the United States undetected or whose relationship to terrorism was unknown until after they entered the United States, including those whose visas have been revoked.

  In October of 2001, the President directed the Attorney General to create the FTTTF, the primary mission of which is preventing terrorists and their supporters from entering the United States and locating those who have entered the country undetected. The FTTTF appropriately uses public and proprietary data in order to locate these individuals. The FBI and Intelligence Community provide the FTTTF with the names and biographical data of

known or suspected terrorists. The FTTTF uses this information to track them when they arrive in the United States and immediately refers this information to the FBI and to the Bureau of Immigration and Customs Enforcement for appropriate action.

- **What steps has FBI taken in response to GAO's recommendations in *Border Security: New Polices and Procedures Are Needed to Fill Gaps in the Visa Revocation Process* (GAO-03-798, June 2003)?**

Response:

Since the subcommittee hearing and the publication of the GAO report, Mr. McCraw has met with GAO investigators to discuss their findings and to provide details as to the system in place to track known or suspected terrorists, regardless of whether or not they have visas. The FBI welcomes any suggestions that would improve this system.

- **Please submit a copy of formalized procedures regarding visa revocations and the sharing of that information both internally and externally as soon as they are available.**

Response:

As indicated in Mr. McCraw's testimony, the FBI does not have written formalized procedures to specifically address visa revocations. The FBI does, however, have a formalized process to address all visa cables received from DOS. DOS cables, to include visa revocations, are received by the FBI's Communications Center. The cable is printed and routed to the front office of the appropriate section within the affected operational Division. Necessary information from the cable is parsed and placed in a server for provision to the National Name Check Process (NNCP). Parsed information is run against the FBI Universal Indices (UNI) system through the NNCP. Negative results/No Records (NR) results are returned by automated means to DOS within 72 hours. A secondary search is conducted by the FBI's Records Management Division on name matches that cannot be positively identified. Individuals who can be eliminated at this point are marked as NR and returned to DOS in the next automated response. Files on individuals who cannot be eliminated and "Idents" (name and identifying factor matches) are pulled by the File Services Unit, Records Management Division (RMD), and forwarded to the File Review Unit, RMD, for further review. Individuals who can be eliminated at this point are marked as NR and returned to DOS in the next automated response. Individuals who still cannot be eliminated and Idents are forwarded to the appropriate operational Division for review and response.

The enclosed testimony of FBI Assistant Director Robert J. Garrity on June 4, 2003, before the House of Representatives Committee on Small Business provides additional details about this process.

- **In Mr. McCraw's testimony, he said the FBI cleared all 240 individuals. When, and through what means, did the bureau clear each of the 240 individuals? Mr. McCraw's testimony indicated the names were run against the TIPOFF and VGTOF (Violent Gangs and Terrorist Organization File) databases. When were the checks on all 240 individuals begun and completed? Were the names checked by any other means? How were the results of these clearances shared with the Departments of Homeland Security and State? Why weren't these results shared with the General Accounting Office or included in submitted written testimony?**

Response:

On or about May 2, 2003, Mr. McCraw met with GAO investigators regarding visa revocation matters. During this meeting, GAO investigators indicated that they had a list of 240 individuals whose visas had been revoked on terrorism grounds. GAO was advised that regardless of the internal dissemination and status of the visa revocation notification cables, all known or suspected terrorists identified by DOS and the Intelligence Community are entered into the TIPOFF database. The FTTTF monitors entry and movement activity to prevent terrorists and their supporters from entering the United States and to locate those who enter the country undetected. On or about May 3, 2003, GAO provided the FBI with an electronic spreadsheet containing the 240 individuals whose visas were revoked on terrorism grounds. The list was provided to the FTTTF, which determined that of the 240, only 86 were possible matches of known or suspected terrorists. This information was provided to GAO on May 14, 2003.

Subsequently, these 86 potential matches were further assessed, and it was determined that, regardless of how they were characterized in the DOS cables, only 47 had been actually identified by the Intelligence Community as being linked to terrorism. Review of records available to the FTTTF determined that there was no basis to believe that the 47 individuals had not been appropriately addressed.

- **In Mr. McCraw's testimony, he stated TIPOFF is the "single end point" for information on terrorists and only 47 of the 240 were in TIPOFF. Recognizing 105 visas were revoked as a result of delayed Condor name checks and many were subsequently cleared, there were still cases among the remaining 135 revocations that were not in TIPOFF. Why does the FBI believe there was no concern these individuals might be suspected terrorists?**

Response:

TIPOFF is a program managed by the DOS Bureau of Intelligence and Research that acts as a clearinghouse for sensitive intelligence information provided by other agencies throughout the U.S. Government. The TIPOFF staff reviews and evaluates the information concerning known or suspected terrorists and enters the information into its database. The Intelligence Community, by agreement, is obligated to place names of known or suspected terrorists into TIPOFF. The FTTTF receives extracts from this database of known or suspected terrorists that they use for their tracking protocol. If the remaining 135 individuals were known or suspected terrorists, their names should have been included in the TIPOFF database. As DOS stated in its testimony, a visa revoked on terrorist grounds does not mean that the individual is a known or suspected terrorist. The Condor check process is, nevertheless, a valuable screening tool that allows the FBI to check its databases for associational or other references.

- **In cases in which the individual was not in TIPOFF or VGTOF, did the FBI contact the State Department to determine the basis for revoking the visa? If yes, under what circumstances? If no, why not?**

Response:

The FBI did not contact DOS to determine the basis for revoking the visa in such cases. DOS may revoke a visa for many reasons. Revoking a visa on terrorism grounds does not necessarily indicate that the person is a known or suspected terrorist, as was the case with the 105 visas revoked due to a delay in the Condor name checks. If DOS had information indicating that a foreign individual was a known or suspected terrorist, DOS and the Intelligence Community are obligated to include the name and identifying data in the TIPOFF database, which is forward to the FTTTF.

- **Mr. McCraw said the FBI has had a system in place since 2002 that addresses "all issues in terms of visa revocations as well as other cables." Please describe this system and how the FBI would handle revocation information for individuals whose visas are revoked based on terrorism concerns but who are not in TIPOFF.**

Response:

The system about which Mr. McCraw testified is the leveraging of the unique capabilities of the FTTTF to address all individuals identified by DOS and the Intelligence Community as associated with terrorism who somehow entered the United States undetected, or whose relationship to terrorism was unknown until after they entered the United States, including

those whose visas have been revoked. Revocation information for individuals not in TIPOFF is indexed and placed into a file for future retrieval.

- **Mr. McCraw said the FBI is "alerted any time any of these individuals that have been linked to terrorism enters the United States." Who notifies FBI when these individuals enter? For example, Mr. McCraw said eight individuals (who were among the 47 in TIPOFF) were determined to have been in the United States at some point in time. On what date did these individuals enter the country? On what date was the FBI notified of their entry? Did the FBI take any action on these cases and if so, what was the resolution?**

Response:

The FTTTF notifies the FBI any time it obtains information that an individual linked to terrorism enters or has entered the United States, regardless of whether that individual has a visa.

With respect to the eight individuals who were determined to have been in the United States at some point in time:

- One entered the United States on July 19, 2002, but was immediately arrested and deported by the INS on July 20, 2002.
- Seven entered the United States prior to the existence of the FTTTF.
  - Five of these seven departed the United States prior to the existence of the FTTTF.
  - Two of these seven were subjects of separate FBI investigations. These subjects were deported on or about April 4, 2002, and August 2, 2002.

In addition to these eight individuals, GAO provided the FBI with a list of nine known or suspected terrorists whose visas were revoked and who appeared to have entered the United States and not departed. With respect to those nine individuals:

- All entered the United States prior to the existence of the FTTTF.
- Three were identified as associates of the hijackers involved in the September 11, 2001, attacks on the World Trade Center and Pentagon. These three were identified and investigated by the FBI.

- Of the other six:
  - One was detained by INS upon arrival in the United States.
  - One was already in INS custody awaiting removal proceedings.
  - One was a Guantanamo Bay detainee.
  - The other three of those six were located outside the United States.

- **Mr. McCraw's written testimony gave a detailed explanation of the FBI's procedures for doing name checks on visa applicants as part of the security clearance process but neglected to explain the Bureau's procedures, if any, for investigating and locating individuals whose visas were revoked on terrorism grounds *after* they had entered the United States. Please provide an explanation of these procedures, if they exist. Does the FBI use State's revocation cables as a starting point for further investigation?**

  Response:

  The FBI does not use the revocation of a visa as a starting point for terrorism investigations for three reasons. First, DOS has revoked visas using the terrorism classification even when there is no information linking someone to terrorism. For example, the 105 visa revocations discussed above were based solely on delays in processing the name checks. Second, the visa revocation process cannot be relied upon to provide essential terrorism leads in a timely manner. The GAO study clearly documented the problems with the visa revocation process. Instead, of relying on that revocation process, the FBI works side-by-side with the Intelligence Community to provide an immediate response should the Intelligence Community identify a known or suspected terrorist who may have entered the United States. Lastly, the system discussed above addresses not only known or suspected terrorists who have entered the United States and whose visas have been revoked, but also those suspected terrorists whose visas have not been revoked, those suspected terrorists who were not required to have visas to enter the United States, and those suspected terrorists who entered the United States illegally.

Testimony of Robert J. Garrity, Jr., Assistant Director (Acting), Records Management Division, Federal Bureau of Investigation, before the House of Representatives Committee on Small Business June 4, 2003

Mr. Chairman and members of the Committee, thank you for inviting Director Mueller here today to testify in this hearing, in which the Committee is examining the impact of the visa approval process on small business. Unfortunately, Director Mueller is out of the country and could not be here today, so I have been designated to provide testimony in his stead. My name is Robert Garrity, and I have served as an FBI Special Agent since 1976. I currently serve as the acting Assistant Director of one of the FBI's newest divisions, the Records Management Division (RMD). Here with me today is David Hardy, who serves as the Chief of the Record/Information Dissemination Section, the section within the RMD responsible for the National Name Check Program. My goals today are to inform you of the FBI's visa name check process; provide you with an accurate assessment of how well this process is functioning; and describe to you the measures the FBI is taking to continually improve this process.

First, I want to emphasize to you that the FBI is sensitive to the impact that delays in visa processing may have on business, education, tourism, this country's foreign relations, and worldwide perceptions of the United States. With these considerations in mind, the FBI is working diligently with the Department of State toward the common goal of improving the expediency and efficiency of the visa clearance process. At the same time, the consequences of the FBI's mission on homeland security requires that our name check process be primarily focused on an accurate and thorough result. This means that there are instances when the FBI's review of a visa request must require as much time as needed to obtain an unequivocally correct result.

National Name Check Program

The National Name Check Program (NNCP) has the mission of disseminating information from the FBI's Central Records System in response to requests submitted by federal agencies, congressional committees, the federal judiciary, friendly foreign police and intelligence agencies, and state and local criminal justice agencies. For all except law enforcement requests, the program is to be operated on a fee-for-service basis, with the beneficiary of the name check paying for it, not the American taxpayers. The Central Records System contains the FBI's administrative, personnel and investigative files. The NNCP has its genesis in Executive Order 10450, issued during the Eisenhower Administration. This executive order addresses personnel security issues, and mandates National Agency Checks (NAC) as part of the pre-employment vetting and background investigation process. The FBI is a primary NAC conducted on all U. S. Government employees. From this modest beginning, the NNCP has grown exponentially, with more and more customers seeking

background information from FBI files on individuals before bestowing a privilege. Whether that privilege is government employment or an appointment; a security clearance; attendance at a White House function; a Green card or naturalization; admission to the bar; or a visa for the privilege of visiting our homeland; more than 70 customers regularly request an FBI name check. Two specific visa request categories, Visas Condor and Visas Mantis, are relevant to the hearing today. In addition to serving our regular governmental customers, the FBI conducts numerous name searches in direct support of the counterintelligence, counterterrorism and homeland security efforts of the FBI.

Exponential Growth

Prior to September 11, 2001, the FBI processed approximately 2.5 million name check requests per year. In FY 2002, that number increased to 3.2 million. For FY 2003, the number of requests to date already exceeds 5.6 million and is expected to reach 9.8 million requests. That represents an increase in excess of 300%. Attachment A illustrates this explosive increase. This year, the FBI will process approximately 200,000 visa name check requests, including approximately 75,000 Visa Condor requests and 25,000 Visa Mantis requests.

Over Burdened System

I can tell you, Mr. Chairman, that with the advent of new visa screening requirements in late 2001, specifically the Visa Condor program, the FBI was overwhelmed by the increase in names to be checked. We did experience a backlog, and visas requested in the spring and summer of 2002 were delayed beyond the time period travelers had anticipated. We have significantly reduced the backlog, and have worked together with the State Department to ensure that any old visa requests have been accounted for and processed. The days of what some people would characterize as an unreasonable delay have now passed us by. I would now like to explain the process the FBI uses to conduct name checks on these visas requests.

FBI Name Check Process

It may be helpful to the Committee to follow along with Attachment B, a flow chart of the FBI visa name check work process. Consular officers worldwide determine whether a visa request falls into one of the special visa categories requiring additional scrutiny. Two of these categories are Visa Condor, relevant to certain individuals who are from or who have visited designated countries, and Visa Mantis, relevant to certain individuals who will have access during their visit to American special technologies. The consular officer will submit their name check requests by cable, simultaneously to both the FBI and State Department headquarters. This is an important distinction in the efficiency issues of this process: the FBI and State receive these visa name check requests from embassies and consulates around the world.

In the next step of the process, the FBI communications center forwards the batches of names to be checked electronically to the name check program. The name is electronically checked against the FBI Universal Indices (UNI). The searches seek all instances of the individual's name and close date of birth, whether a main file name or reference. By way of explanation, a main file name is that of an individual who is, himself, the subject of an FBI investigation, whereas a reference is someone whose name appears in an FBI investigation.

References may be associates, witnesses, conspirators, or a myriad of other reasons may exist to explain why an FBI Agent believed it important to index a particular name in an investigation for later recovery. The names are searched in a multitude of combinations, switching the order of first, last, middle names, as well as combinations with just the first and last, first and middle, and so on. It also searches different phonetic spelling variations of the names, especially important considering that many names in our indices have been transliterated from a language other than English.

If there is a match with a name in a FBI record, it is designated as a "Hit", meaning that the system has stopped on a possible match with the name being checked, but now a human being must review the file or indices entry to further refine the names "Hit" on. If the search comes up with a name and birth date match, it is designated an "Ident." An "Ident" is usually easier to resolve.

Resolution Rate

Approximately 85% of name checks are electronically returned as having "No Record" within 48 hours. A "No Record" indicates that the FBI's Central Records System contains no identifiable information regarding to this individual. By agreement with State, partially due to our concern about the time factors in approving most visa requests, a No Record equates to a No Objection to the issuance of a visa. The substantive investigative divisions in the FBI, (i.e., Counterterrorism Division (CTD), Counterintelligence Division (CD), Criminal Investigative Division (CID) and the Cyber Division (CyD)) do not review visa requests where there is no record of the individual. Duplicate submissions (i.e., identically spelled names with identical dates of birth submitted within the last 120 days) are not checked and the duplicate findings are returned to State.

Because a name and birth date are not sufficient to positively correlate the file with an individual, additional review is required. A secondary manual name search usually identifies an additional 10% of the requests as having a "No Record", for a 95% overall "No Record" response rate. This is usually accomplished within a week of the request. The remaining 5% are identified as possibly being the subject of an FBI record. The FBI record must now be retrieved and reviewed. If the records were electronically uploaded into the FBI Automated Case Support (ACS) electronic recordkeeping system, it can be viewed quickly. If not, the relevant information must be retrieved from the existing paper record. Review of this information will determine whether the information is identified with the subject of the request. If not, the request is closed as a "No Record."

The information in the file is reviewed for possible derogatory information. Less than 1% of the requests are identified with an individual with possible derogatory information. These requests are forwarded to the appropriate FBI investigative division for further analysis. If the investigative division determines there is no objection to the visa request, the request is returned to the name check dissemination desk for forwarding to the State Department. If there is an FBI objection to the visa request, the investigative division will prepare a written Security Advisory Opinion (SAO) and forward it to the State Department. In reviewing these visa requests, the FBI has identified individuals attempting to enter the United States who are of serious concern to the FBI.

Processing Times

As in the name checks processes for 70 other agencies, the name check system accurately monitors the status of visa requests in the name check process. The reliability is unequivocal. The system's metrics are a dynamic tool, allowing the FBI to identify when to add additional personnel to process visas. The metrics also provide an accurate tool to determine whether the name check process is causing delays for visa requests.

The FBI's goal is to have all requests completed within 120 days. Attachment C illustrates the current status of Visa Condor names checks, and Attachment D illustrates the same for Visa Mantis name checks. This status was taken on May 29, 2003. For example, for Visas Condor, the FBI has received 5,146 requests during the last 30 days. The FBI has resolved all but 143 of these requests, for a 97% resolution rate (See Attachment C). For Visas Mantis, the FBI has received 1,240 requests within the last 30 days and has resolved 1,054, or 85%, of them (See Attachment D). Most name check requests that are over 90 days old are the result of the time required to retrieve and review field office record information. Some delay has occurred at substantive analysts' desks, but this is to be expected. These analysts are assigned to the investigative divisions and are primarily assigned to the analysis of intelligence reports from around the world in order to support on-going investigations, or to support the flow of intelligence to the policy makers. As is well known, the FBI does not have as many intelligence analysts as we need, and they are significantly over-assigned in their primary responsibilities. These are the best professionals, however, to review information in our records and to then make an informed decision on whether a requester of a visa represents a threat to our homeland, or is interested in illegally acquiring our targeted technology. Nevertheless, the FBI's resolves 99% of all types of visa requests within 120 days. The FBI believes these numbers are the best manner to appropriately determine whether there are substantial delays, both in time and in numbers, attributable to the FBI name check process of visa requests.

Process Improvement

As I have said, during the spring and summer of 2002 the FBI was unable to adequately account for visa request processing times. This is no longer the case. This was accomplished through clarification of the FBI name check database, software modifications that allowed development of detailed metrics, and the development of an internal FBI tracking system for SAO opinions. With these metrics, the FBI can allocate resources as necessary to meet requirements. And, as I have also already said, the FBI worked closely with State on visa name check procedures. These past six months have seen considerable improvement in the coordination of visa name check processing.

Improperly formatted cables are an obvious weak point in the visa submission process. The State Department submits their names by cable, whereas other agencies submit their requests by disc or tape and formatting errors are returned on disc to the requesting agency. This allows the requesting agency to identify and correct the errors in an electronic format. The State Department is working hard to resolve this problem by developing a system whereby visa requests will be submitted on disc through State as opposed to the current system of separate cables directly to the FBI. The FBI fully supports this effort. Recognizing the need for interim measures until the time that State can submit all visa requests on disc or

tape, the State Department is batching unresolved cables held within their database and submitting them on tape to the FBI. In order to avoid the duplicate name problem, the FBI has developed special codes and manipulates the name check application for each submission. This is a time consuming, but necessary process to support State's efforts. This week alone the FBI is running thousands of names submitted by State from State's database.

Personnel Dedicated to NNCP

The FBI recently increased name check personnel from 75 employees to 125 employees. This 65% increase was taken from within existing Records Management Division resources and designed to address the projected increase in name check requests since September 11. We also reorganized the unit, dividing it into two units, one for Personnel Security name checks and one for Homeland Security name checks. The new homeland security unit will allow us to better focus on sensitive name check programs such as visa requests. To clear older cases, the FBI brought in additional personnel from the field on a temporary duty (TDY) basis and authorized substantial overtime work. The number of cases in excess of 120 days has been significantly diminished. The FBI is continuing these efforts by bringing in additional support employees to collect file information from the field. The FBI's Counterterrorism Division is temporarily assigning additional Agents to conduct SAO reviews. Visa Condor and Visa Mantis have been given the highest priority in processing name check requests.

However, the FBI recognizes that the explosion in numbers of requests exceeds estimates and necessitates additional resources and development of even more efficient processes in order to sustain the current pace of processing name check requests. The FBI is in the process of developing interim improvements to minimize manual submissions by all agencies and increase efficiency within the name check unit. The FBI has a contractor developing high-level functional requirements for a new name check application compatible with the new FBI information systems in development. These new information systems, over time, will eliminate dependence on the retrieval of paper files.

Decentralized Recordkeeping System

I have touched upon our IT systems shortcomings, but now I want to discuss the primary factor in any delay in the FBI responding to a visa name check. When the NNCP systems produces a "Hit" or an "Ident" that requires further review, the analyst must consult the actual file. If he or she is lucky, the file has been uploaded into our electronic recordkeeping system, ACS, and can be instantly accessed from her workstation computer. This system only came on-line in October 1995, so often the full text of the information has not been uploaded and the analyst must resort to the paper record. Paper records are divided into two basic file categories: active files and closed files. Active files are, as the name suggests, current, on-going investigations, analytical projects, or administrative functions. Closed files are records of past investigations or functions, now inactive, but for which the FBI is required to retain the records, either in satisfaction of statutory authority or regulations, or because the information contained in the closed file represents a key component to FBI's intelligence base.

FBI files are currently stored at one of approximately 265 locations, including the FBI's Headquarters facility, several warehouses around the Washington Metropolitan area, in records centers either operated by the NARA or commercial concerns, four large Information

Technology Center facilities on the east and west coast, at each of the 56 field offices, many of the larger of our 400 resident agencies, and at legal attaché offices worldwide. This equates to approximately 1.8 million cubic feet of decentralized records storage, which provides some unique challenges to our efforts to be optimally effective and efficient. While the FBI's decentralized paper records management process does ease field investigations and local prosecutions - a process that may have sufficed before September 11, 2001 - those terrorist attacks have forced the FBI to shift from parochial investigations to nationwide intelligence gathering and sharing.

In addition, statutory authorities for domestic law-enforcement and international intelligence agencies have been expanded (e.g., USA PATRIOT Act), increasing the number of agencies requesting FBI information. As the FBI is called upon to share and/or jointly investigate complex cases, it must share information internally and with other cooperating organizations. Currently, analysts conducting research on terrorism or intelligence topics who develop leads based on information indexed in files located outside Washington, DC must request those files be retrieved from the shelves and shipped to FBI Headquarters. The decentralized records management system hinders timely nationwide investigations and information sharing, since much time and effort is expended simply locating and shipping files across the United States. Beyond file retrieval delays, records security and document safety are also a growing concern.

Delays have resulted from NNCP personnel identifying a file's location then requesting the file from a field office. Time delays mount as field office staff search file rooms and then ship the needed file or a prepared summary to FBI Headquarters. This process — repeated for many tasks, not only dilutes the FBI's responsiveness, but also limits information sharing — a critical success factor in working counterintelligence and counterterrorism cases. The name check delays have significant consequences to FBI customers and stakeholders. The delays impede hiring or clearing skilled workers; completing government contracts; student enrollment, and as is the interest of this Committee, clearing requested visas for business visits to the United States. More importantly than all of the foregoing, these processing delays can also diminish counterterrorism effectiveness.

New Central Records Repository

It is for this reason that the FBI has envisioned the need for a new Central Records Repository, located in the mid-Atlantic region, where all of our closed paper files will be located, and our active files stored electronically. Our frequently requested closed files will be scanned and uploaded into our electronic recordkeeping system, so that Agents and analysts world wide will have instant, electronic access to the information they need to do their job. The FBI will work within the Administration to submit a funding proposal for the Congress' consideration, to secure a suitable location, and design and build the building.

Conclusion

All of these efforts reflect the FBI's recognition of the importance of accurate and timely name check processing. I want to emphasize to you, this issue has the full attention of Director Mueller. The FBI appreciates the interest of the Committee in this matter. I thank you for your

invitation to speak to you today and look forward to working with you in the future. I am prepared to answer any questions the Committee may have.

TOM DAVIS, VIRGINIA,
CHAIRMAN

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ONE HUNDRED EIGHTH CONGRESS

Congress of the United States
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COMMITTEE ON GOVERNMENT REFORM

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INDEPENDENT

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS,
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Christopher Shays, Connecticut
Chairman
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Washington, D.C. 20515
Tel: 202 225-2548
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July 1, 2003

The Honorable David M. Walker
Comptroller General of the United States
U.S. General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Walker:

The Subcommittee on National Security, Emerging Threats, and International Relations, with oversight responsibilities for the Departments of Defense, Homeland Security, Veterans Affairs, and State, held a hearing June 18, 2003, on "Visa Revocations: Catching the Terrorists Among Us" at which Jess Ford, Director, International Affairs and Trade Division, testified.

During the hearing several points of contention arose that require further clarification. The Subcommittee requests you address the following questions for the hearing record:

- Please provide a chronology of your interaction with the Department of Justice (DOJ), including (1) meetings held between GAO and DOJ/FBI officials, (2) your requests for information from DOJ/FBI, (3) the opportunities you gave DOJ/FBI to comment on your report, and (3) the DOJ/FBI's response to your requests and its comments on your report. Please include pertinent information from the hearing on 6/18/03.

- The Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE), National Security Unit (NSU) did not agree with GAO's assessment of the role it plays in locating and investigating individuals with revoked visas who may be in the United States. How did GAO's interpretation differ from NSU's? Did GAO receive comments from ICE on this issue during the appropriate agency comment period?

Please provide the information requested on or before the close of business Friday, August 1, 2003, to the Subcommittee office, room B-372 Rayburn House Office Building, Washington, D.C. 20515. In the event you determine you are unable to provide all of the requested material at that time, please provide a written description of the circumstances preventing complete compliance and the date you anticipate delivery of any remaining material. If you or your staff have any questions about this request, please contact Lawrence Halloran, Staff Director, or Thomas Costa, Professional Staff, at 202-225-2548 or Tom.Costa@mail.house.gov.

Thank you for your attention to this request and for your assistance in the Subcommittee's oversight work.

Sincerely,

Christopher Shays
Chairman

cc: Hon. Tom Davis
Hon. Henry A. Waxman
Hon. Dennis J. Kucinch
Hon. Michael Turner

August 4, 2003

The Honorable Christopher Shays
Chairman, Subcommittee on National Security,
Emerging Threats, and International Relations
Committee on Government Reform
House of Representatives

Dear Mr. Chairman:

In response to your letter of July 1, 2003, after our testimony before the Subcommittee on June 18, we are submitting for the hearing record (1) a chronicle of GAO's interaction with the Department of Justice/Federal Bureau of Investigation and (2) information on the role that the Immigration and Naturalization Service[1] played in locating and investigating individuals with revoked visas.

Chronicle of GAO's Interaction with the Department of Justice/Federal Bureau of Investigation

On January 8, 2003, we held an entrance conference with the Department of Justice (DOJ) during which we outlined the scope of our engagement, including specific issues we wanted to discuss with Justice and Federal Bureau of Investigation (FBI) officials. These included the involvement of the Foreign Terrorist Tracking Task Force (FTTTF) regarding visas revoked on terrorism grounds, the derogatory information available to DOJ and the Department of State on persons whose visas had been revoked for that reason, and the FBI's actions to investigate or otherwise follow up on individuals whose visas had been revoked based on terrorism concerns and who may be in the United States. DOJ and Immigration and Naturalization Service (INS) officials attended the meeting, along with the FBI's Liaison official for GAO reviews. Although other FBI officials were invited, including FTTTF officials, they did not attend. The following is a chronology of subsequent meetings and requests for information we submitted to FBI officials.

Foreign Terrorist Tracking Task Force

Our October 2002 report[2] briefly discussed cases where a visa had been revoked because the FTTTF either believed the applicants were suspected terrorists or needed additional information to determine the applicant's true identity. To determine what follow-up had

[1]On March 1, 2003, the Immigration and Naturalization Service became part of three units within the Department of Homeland Security. INS inspection functions transferred to the Bureau of Customs and Border Protection; its investigative and enforcement function became part of the Bureau of Immigration and Customs Enforcement; and its immigration services function became part of the Bureau of Citizenship and Immigration Services.

[2]U.S. General Accounting Office, *Border Security: Visa Process Should Be Strengthened as an Antiterrorism Tool*, GAO-03-132NI (Washington, D.C.: October 21, 2002).

occurred on these cases, we contacted the FTTTF. We also wanted to discuss how the FTTTF interacted with the State Department and the evidence used in deciding to recommend to State that certain individuals should not receive a visa.

- On January 22, 2003, we requested a meeting with the director of the FTTTF. The director said the FTTTF would respond in writing. We submitted written questions to the FTTTF director on February 4, 2003, asking for information on 105 cases.
- On May 21, 2003, we received a five-page letter from the FTTTF, which explained how it reviewed and disposed of the 105 cases. According to the FTTTF, it was able to determine that for most of the cases there was "no objection" to the applicant receiving a visa. It further indicated that in nine cases, more investigation would be necessary. We did not have time to fully evaluate the FTTTF's response before our June 2003 report[3] because of the nature and volume of additional information needed to do so.

FBI Information in TIPOFF

In attempting to determine the type of derogatory information that had led State to revoke certain individuals' visas, we learned that some of the derogatory information was included in TIPOFF, the State Department's interagency terrorism watch list. Much of the information in TIPOFF was generated by agencies other than State, including the FBI.

On April 17, 2003, we wrote to the FBI to request access to FBI documents in TIPOFF on a sample of individuals whose visas had been revoked on terrorism ground.

- The FBI has not indicated whether it will provide us access to these documents.

FBI Process for Investigating Individuals with Revoked Visas

We made several inquiries in an attempt to determine the actions the FBI was taking when it received notification that State had revoked a visa for terrorism concerns.

- We asked the FBI on several occasions in March 2003 to identify the FBI units responsible for handling the State Department cables that notified the bureau of visa revocations. However, the FBI was not able to identify the appropriate units.
- Because we believed that the FBI's National Namecheck Program might receive State's notifications of revoked visas, we contacted the Unit Chief in late March. The Unit Chief told us that her unit was not responsible for processing revocation notifications.
- On April 16, 2003, we contacted an official in the FBI's National Security Law Office to determine if that office had any involvement in checking on persons with

[3]U.S. General Accounting Office, *Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process*, GAO-03-798 (Washington, D.C.: June 18, 2003).

revoked visas. The official suggested that we contact Steve McCraw, the bureau's new Assistant Director for Intelligence.

- On May 2, 2003, we met with Mr. McCraw and his special assistant to discuss FBI involvement in the visa revocation process. During a subsequent teleconference with Mr. McCraw's assistant on May 16, we were able to establish that revocation cables were received at the FBI's main communication center, but we were not able to verify whether appropriate counterterrorism units received the cables, entered the revoked individuals on watch lists, or opened investigations on the individuals. At the May 2 meeting we told Mr. McCraw that we believed that approximately 30 individuals whose visas were revoked for terrorism had entered the United States and may still remain in the country. Mr. McCraw requested these individuals' names and biographic identifiers, which we provided by e-mail that same day.
- We held an exit conference with the Department of Justice on May 21, which was attended by several FBI officials, including the previous director of the FTTTF who had just transferred to the Office of Intelligence, but not Mr. McCraw. At the conference, we provided the officials with a written synopsis of our FBI-related findings. The FBI officials gave us comments regarding the nature of State's revocation cables and confirmed that the cables were received at the bureau's main communication center, but they did not comment on the status of the FBI's checks into the 30 individuals. Moreover, they did not explain that the FBI would only be concerned with revocation cases where the individuals' names were in TIPOFF, as was later stated by Mr. McCraw in his testimony for the Subcommittee.
- We provided Justice with a draft of our report on May 27. We received technical comments from the FBI on June 10, which we incorporated into our report as appropriate. These technical comments did not address whether the FBI was investigating persons with revoked visas or comment on the actions the FBI was taking with regard to the 30 individuals whom we had identified as possibly remaining in the United States. We spoke with the DOJ-GAO liaison on June 10, who said that Justice had decided not to submit formal comments because the Office of the Deputy Attorney General and the FBI could not reach agreement internally on the content of the letter.

The INS National Security Unit's[4] Role in Locating and Investigating Individuals with Revoked Visas

In our report, *Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process,* we stated that INS did not routinely take action on individuals with revoked visas who had entered the United States. The report specifies that the INS's National Security Unit (NSU), unlike its Lookout Unit, did not receive copies of the faxed revocation certificates or cables from the State Department and that the Lookout Unit did not routinely notify NSU investigators of revocations unless the individual was in TIPOFF. We also state that the NSU investigators said that they

[4]On March 1, 2003, the INS National Security Unit became part of the Department of Homeland Security's Bureau of Immigration and Customs Enforcement.

generally did not investigate or locate individuals whose visas were revoked based on terrorism concerns, but that they had investigated and attempted to locate seven individuals because of congressional interest in these specific cases.

Upon meeting with the NSU investigators after the June 18 hearing for the Subcommittee, we learned that they were upset by our characterization of them in our report. They told us that they investigated all revocation cases that were referred to them but that they could not investigate cases that were not referred to them. They said that our report was unfair because we did not explain that the unit could not investigate or locate individuals with revoked visas unless they had received notification of the cases. They said that 10 revocation cases had been referred to them during the time period of our review and that they had conducted investigations in each case.

We stand by our overall conclusion that the INS, as an agency, did not routinely investigate or locate individuals with revoked visas. However, we recognize that the report could have more clearly stated that the NSU generally did not investigate or locate individuals whose visas were revoked for terrorism concerns but who may still be in the United States *because those cases were not referred to them.*

We submitted a draft of our report to the Department of Homeland Security on May 27, 2003, and requested comments from the agency by June 3. We were told by the GAO-DHS liaison that she would coordinate comments from the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement. We received both formal comments and technical comments from Homeland Security on June 11. We made several changes to the draft to reflect the technical comments. Neither the technical nor the formal comments included information reflecting the NSU investigators' concerns regarding their role in investigating and locating individuals whose visas had been revoked. Upon meeting with the investigators after the hearing, we learned that their remarks on this issue were submitted to DHS but were not included in the formal or technical comments that were eventually sent to GAO.

If you have additional questions, please contact me at 512-4128.

Sincerely yours,

[signed]

Jess T. Ford
Director, International Affairs and Trade

June 23, 2003

Ms. Catherine Barry
Managing Director, Office of Visa Services
Bureau of Consular Affairs
U.S. Department of State
2201 C Street, NW
Washington, D.C. 20520

Dear Ms. Barry:

The purpose of this letter is to confirm that the State Department is changing the language of its visa revocation certificates, enabling authorities to deport aliens whose visas have been revoked on terrorism grounds and closing a major loophole in our border security.

Based on your statement to the House Government Reform Subcommittee on National Security, Emerging Threats and International Relations, and information your office provided to my staff last week, it is my understanding that your office is making this change.

Specifically, the Office of Visa Services is working to reverse its longstanding practice of issuing revocation certificates that state the effective date of the revocation is immediate "unless the alien is present in the United States at that time..." The current language means that an alien who gets into the United States before his visa is revoked on terrorism grounds cannot be deported.

This legal loophole is a security risk and leaves our country vulnerable to suspected terrorists. This is the kind of Washington, DC bureaucratic nonsense that undermines public confidence in our government's ability to protect its citizens.

This problem was highlighted in a GAO report -- requested by Rep. Christopher Shays and I - which was released last week. The report, entitled "Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process," found severe problems in border security. The report was used during a hearing in the National Security subcommittee chaired by Rep. Shays on Wednesday, June 18, 2003.

I commend your office for making this change so that our federal enforcement agencies can more easily remove an alien without bureaucratic obstacles or unnecessary litigation. I respectfully request that my office receive a copy of the new revocation certificate as soon as it is finalized.

I appreciate that your office and the State Department are taking this issue seriously and saving time by changing the language, rather than having to wait for Congress to fix the problem with legislation. If you have any questions or concerns, you or your staff should contact Kathy Nuebel, at (202) 224-3744, or John Drake of my staff, at (202) 224-4515.

Sincerely,

Charles E. Grassley
United States Senator

cc: The Honorable Maura Harty
Assistant Secretary, Consular Affairs
Department of State

Dear Senator Grassley:

Thank you for your letter of June 23, 2003, regarding the June 18 hearing of the House Government Reform Subcommittee on National Security on visa revocations, at which the Managing Director of the Visa Office, Catherine Barry, testified. We are reviewing our revocation policy again, consistent with Ms. Barry's commitment at the hearing. In the meantime, we are pleased to have the opportunity to clarify where this issue stands at present.

As Ms. Barry indicated, when an alien is outside the United States, the Department always makes the revocation effective immediately and notifies DHS. Use of our new revocation code makes clear to any DHS immigration officer that the visa was revoked when the officer checks the DHS lookout system. This ensures that, if the alien later appears at a port-of-entry, DHS can deny entry on the ground that the alien is inadmissible under INA Section 212(a)(7) because he lacks a valid visa. If the alien challenges the decision, DHS can place the alien in expedited removal proceedings under section 235(b)(1) of the Immigration and Nationality Act (INA), which are available when an alien lacks a valid visa. This eliminates the need for DHS to place the alien in the more elaborate INA Section 240 removal proceedings, which are required under INA Section 235(b)(2) for aliens arriving with valid travel documents.

In addition, the Department of State has advised the Department of Homeland Security that it is prepared to begin revoking visas effective immediately in cases of aliens who present a valid visa to an immigration inspector at a port-of-entry but who DHS nevertheless stops for more in-depth inspection because of a potential security concern. We will institute this practice on a routine basis once we have developed implementation procedures with DHS; meanwhile, we will consider cases on an individual basis. Making a revocation effective immediately when the

The Honorable
Senator Charles Grassley
135 Hart Senate Building
United States Senate

alien is still undergoing port-of-entry inspection will allow DHS to use the same expedited exclusion procedures just mentioned; because the alien's visa will have been invalidated, DHS will be able to deny the alien admission to the United States under INA 212(a)(7)(lack of a valid visa). Thus, as in the cases of aliens outside the United States, the visa revocation will eliminate the need for DHS to establish that the alien is ineligible for admission under one of the security grounds of exclusion in Section 240 removal proceedings, which could require the disclosure of classified information.

A third situation arises if the alien has already been admitted to the United States. In this context, there is no legal precedent indicating that, if a visa were revoked effective immediately, it would facilitate DHS's ability to remove the alien from the United States. For example, it is unclear what removal charges could be filed against the alien. We intend to discuss this matter further with DHS as well as with the Department of Justice.

Should you or your staff have further questions, please do not hesitate to contact us again.

Sincerely,

Paul V. Kelly
Assistant Secretary

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Drafted: L/CA: C Brown Ext. 7-0688

Cleared:
CA/VO/L/A: J Gorsky
CA/VO/L: S Fischel
CA/VO: C Barry
CA: J Jacobs
DHS legal: yes - getting name

Congress of the United States
Washington, DC 20510

July 22, 2003

The Honorable Tom Ridge
Secretary
Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Ridge:

In the last several weeks, two subcommittees of the Congress have examined in hearings security concerns with the visa process and information sharing. Last week, the Senate Judiciary's Subcommittee on Immigration and Border Security held a hearing titled, *Visa Issuance, Information Sharing and Enforcement in a post-9-11 Environment: Are we ready yet?* In June, the House Committee on Government Reform Committee's Subcommittee on National Security, Emerging Threats and International Relations held a hearing entitled, *Visa Revocations: Catching the Terrorists Among Us*. Officials from the Department of Homeland Security, the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement, testified along with the Bureau of Consular Affairs at the State Department.

In all honesty, Members left both hearings with their questions unanswered and frustrated that officials are not getting the job done. The apparent lack of legal authority for immigration enforcement officers to remove suspected terrorists and other threats from our country once their visa has been revoked on terrorism grounds by the State Department is the most significant problem.

The visa revocation certificate the State Department forwards to Homeland Security does not give any legal grounds to remove the revoked visa holder. The language on the current certificate is a legal anachronism, a nicety of a simpler age. It must be addressed.

We bring this to your attention because it is clear from the hearings that neither of the Homeland Security bureaus believe they have the authority to remedy the problem. If a Memorandum of Understanding between the departments is needed, we ask that you complete it. If a legal opinion is necessary from your department, we ask that you provide it. If a statutory change is required, we ask that you inform us and provide us with legislative proposal to remedy the problem so we can proceed expeditiously.

We understand the easiest way to address this problem is to make the visa revocation effective at the time it is issued rather than when the visa holder departs the country. This requires only a simple change in the wording of the State Department's revocation certificate. We believe this would give the Bureau of Immigration and Customs Enforcement the legal grounds to remove individuals who are a threat to our nation's security.

We look forward to working with you on this matter. Because of the urgent nature of this matter, we would appreciate a response by the close of business, Monday July 28, 2003.

Sincerely,

Saxby Chambliss
Chairman
Subcommittee on Immigration, Border Security and Citizenship

Charles Grassley
Chairman
Committee on Finance

Christopher Shays
Chairman
Subcommittee on National Security, Emerging Threats and International Relations

cc: The Honorable Colin Powell

U.S. Department of Homeland Security

REP. CHRISTOPHER SHAYS

2003 AUG 29 PM 1:18

AUG 19 2003 WASHINGTON, D.C.

The Honorable Christopher Shays
Chairman, Subcommittee on National Security,
Emerging Threats and International Relations
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your recent letter, co-signed by Senate Chairmen Saxby Chambliss and Charles E. Grassley, regarding the need to change the current language on the visa revocation certificate issued by the Department of State (DOS).

We concur with and share your concerns about the visa revocation process and our ability to remove suspected terrorists from the United States once the DOS has revoked their visas. We also agree that the Bureau of Immigration and Customs Enforcement, Department of Homeland Security (DHS), should take the lead to resolve this potential threat to our Nation's security. We are reviewing the visa revocation process and are committed to taking all necessary steps to remove any additional barriers.

As you know, DHS and DOS have been working diligently on a Memorandum of Understanding (MOU) to implement Section 428 of the Homeland Security Act which gives DHS responsibility for the granting or refusal of visas (with some exception); it is anticipated that the MOU will solidify DHS' authority over visa revocation, amongst other issues. The MOU is nearing completion and we look forward to sharing that information with you soon.

In the interim, the DHS and DOS are reviewing the language on the revocation certificate. In addition, with respect to the issue of how to remove aliens admitted to the United States with revoked visas, we are considering administrative solutions. We believe that this issue can be addressed via the promulgation of a regulation. Accordingly, we do not believe that a legislative solution is necessary for either matter at this time.

Washington, D. C. 20528

I appreciate your interest in the Department of Homeland Security and we look forward to working with you on future homeland security issues. If we may be of further assistance, please contact the Office of Legislative Affairs at (202) 205-4412.

Sincerely,

Pamela J. Turner
Assistant Secretary for Legislative Affairs

Congress of the United States
Washington, DC 20510

July 22, 2003

The Honorable Colin Powell
Secretary
Department of State
Washington, D.C. 20520

Dear Secretary Powell:

In the last several weeks, two subcommittees of the Congress have examined in hearings security concerns with the visa process and information sharing. Last week, the Senate Judiciary's Subcommittee on Immigration and Border Security held a hearing titled, *Visa Issuance, Information Sharing and Enforcement in a post-9-11 Environment: Are we ready yet?* In June, the House Committee on Government Reform Committee's Subcommittee on National Security, Emerging Threats and International Relations held a hearing entitled, *Visa Revocations: Catching the Terrorists Among Us*. Officials from the Department of Homeland Security, the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement, testified along with the Bureau of Consular Affairs at the State Department.

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We look forward to working with you on this matter. Because of the urgent nature of this matter, we would appreciate a response by the close of business, Monday July 28, 2003.

Sincerely,

Saxby Chambliss
Chairman
Subcommittee on Immigration, Border Security and Citizenship

Charles Grassley
Chairman
Committee on Finance

Christopher Shays
Chairman
Subcommittee on National Security, Emerging Threats and International Relations

cc: The Honorable Tom Ridge

United States Department of State

Washington, D.C. 20520

AUG - 4 2003

Dear Mr. Chairman:

Thank you for your letter of July 22 regarding the Secretary of State's visa revocation authority. We also wish to ensure that the revocation authority is used as effectively as possible to remove suspected terrorists from the United States. We share your concerns and agree that it is important to clarify quickly whether additional legislation is needed.

The legal issues involved are complex. There is no doubt that the Secretary of State can revoke visas effective immediately, as you have suggested, regardless of whether the alien is in the United States. The key legal issue is whether such a revocation in and of itself can be a basis for DHS removing the alien, or whether DHS would have to prove that the alien is removable from the United States on some other ground. (The grounds for removal are generally enumerated in INA Section 237; none of the enumerated grounds specifically refers to the fact that the alien's visa has been revoked.) Moreover, under existing law, all aliens admitted to the United States are entitled to administrative and judicial proceedings prior to removal from the United States. It is unclear whether a visa revocation would provide a certain and expeditious way of removing aliens of security concern, or whether it would instead prolong the proceedings by introducing new and complicated legal issues. We intend to move forward as quickly as possible to address these questions with both DHS and Justice.

We will keep you informed of the results of these consultations, and will inform you promptly if a need for additional legislation emerges.

Sincerely,

Paul V. Kelly

Paul V. Kelly
Assistant Secretary
Legislative Affairs

The Honorable
Christopher Shays, Chairman,
Subcommittee on National Security,
Emerging Threats and International Relations,
Committee on Government Reform,
House of Representatives.

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