AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

SECURE VISAS ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION POLICY AND ENFORCEMENT

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

ON

H.R. 1741

MAY 11, 2011

Serial No. 112–39

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

66–315 PDF WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

LAMAR SMITH, Texas, *Chairman*

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
STEVE CHABOT, Ohio
DARRELL E. ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Florida
BEN QUAYLE, Arizona
[Vacant]

JOHN CONYERS, JR., Michigan
HOWARD L. BERMAN, California
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISI, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LINDA T. SÁNCHEZ, California
[Vacant]

SEAN MCLAUGHLIN, *Majority Chief of Staff and General Counsel*
PERRY APELBAUM, *Minority Staff Director and Chief Counsel*

SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

ELTON GALLEGLY, California, *Chairman*
STEVE KING, Iowa, *Vice-Chairman*

DANIEL E. LUNGREN, California
LOUIE GOHMERT, Texas
TED POE, Texas
TREY GOWDY, South Carolina
DENNIS ROSS, Florida

ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
PEDRO R. PIERLUISI, Puerto Rico

GEORGE FISHMAN, *Chief Counsel*
DAVID SHAHOULIAN, *Minority Counsel*

CONTENTS

MAY 11, 2011

Page

THE BILL

H.R. 1741, the "Secure Visas Act" 4

OPENING STATEMENTS

The Honorable Elton Gallegly, a Representative in Congress from the State of California, and Chairman, Subcommittee on Immigration Policy and Enforcement 1
The Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration Policy and Enforcement 11
The Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Chairman, Committee on the Judiciary 15

WITNESSES

Gary L. Cote, Acting Deputy Assistant Director, Office of International Affairs, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security
Oral Testimony 18
Prepared Statement 20
David T. Donahue, Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs, U.S. Department of State
Oral Testimony 27
Prepared Statement 29
Janice L. Kephart, Director of National Security Policy, Center for Immigration Studies
Oral Testimony 38
Prepared Statement 40
Edward Alden, Bernard L. Schwartz Senior Fellow, Council on Foreign Relations
Oral Testimony 50
Prepared Statement 52

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Material submitted by the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration Policy and Enforcement 12
Material submitted by the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Member, Subcommittee on Immigration Policy and Enforcement 67

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the National Immigration Forum 70

SECURE VISAS ACT

WEDNESDAY, MAY 11, 2011

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

The Subcommittee met, pursuant to call, at 3:25 p.m., in room 2141, Rayburn Office Building, the Honorable Elton Gallegly (Chairman of the Subcommittee) presiding.

Present: Representatives Gallegly, Smith, Ross, Lofgren, and Jackson Lee.

Staff present: (Majority) Dimple Shah, Counsel; Marian White, Clerk; and Tom Jawetz, Minority Counsel.

Mr. GALLEGLY. I apologize for the confusion around here. We normally like to have our trains run on time, but as you know, the bells just went off and we have a series of eight votes? Seven or eight votes. And in the interest of time, I am going to go over and start my voting, and then as soon as the voting series is over, we will reconvene and we will get on with this very important hearing.

I appreciate your being here. I appreciate your patience, but some things are above my pay grade. Thank you very much.

[Recess.]

Mr. GALLEGLY. I call the Immigration Subcommittee hearing to order.

First of all, I want to apologize to our witnesses for the delay. As I said before we left, there was a series of votes and some things are beyond our control. And I appreciate your patience and I appreciate your being here today.

The Departments of State and Homeland Security both have responsibility when it comes to admitting foreign visitors to the United States. The Department of State Consular Affairs is responsible for issuing visas, while Immigration and Customs Enforcement in DHS operates the Visa Security Program in designated, high-risk consular posts overseas.

Following the tragic events of September 11th, 2001, there was a great deal of discussion in Congress with respect to moving the visa issuance responsibilities from the State Department to DHS, the objective to treat visa issuance as a law enforcement and national security function, rather than a foreign relations tool. Rather than transferring these functions to DHS in their entirety, the Homeland Security Act of 2002 split the visa functions. DHS now writes the regulations regarding visa issuance and assigns staff to

consular posts abroad as part of the Visa Security Program to conduct investigations on visa applications. However, the State Department still has the responsibility to ultimately issue the visas.

Unfortunately, the Visa Security Program has not expanded nearly as quickly as expected. The Government Accountability Office reports that ICE has not implemented its 5-year expansion plan or even covered all high-risk posts. Therefore, Chairman Smith has introduced legislation, The Secure Visas Act, that requires DHS to maintain Visa Security Units, known as VSUs, at the 19 consular posts that already have them and expand these units to the posts that ICE has designated as "highest-risk." Some of these "highest-risk" countries include Yemen, Saudi Arabia, Syria, Morocco, Lebanon, and Algeria. VSU's are critical for national security. At VSU-staffed consular posts, 100 percent of applicants receive additional screening. At non-VSU posts, fewer than 2 percent of the applicants get extra screening.

The actions of Omar Farouk Abdulmutallab, who attempted to blow up Northwest Airlines flight 253 and kill over 200 innocent people on December 25, 2009, refocused attention on the responsibilities of the Departments of State and Homeland Security with respect to visa revocation.

Abdulmutallab was traveling on a valid visa issued to him in June of 2008. The State Department acknowledged that his father came into the U.S. embassy in Abuja, Nigeria on November 19, 2009 and told officials with the State Department and the CIA that his son had vanished and expressed concern that he had "fallen under the influence of religious extremists in Yemen." According to the news reports, the father's visit with the U.S. authorities was arranged by Nigerian intelligence officials, who his father had contacted after receiving a call from his son that made him fear that his son might be planning a suicide mission in Yemen.

Despite the father's visit and the warning he conveyed, the State Department made no effort to revoke the visa. The case of Abdulmutallab demonstrates that clearly something went drastically wrong.

In addition to expanding the Visa Security Program, Chairman Smith's bill provides law enforcement with the tools it needs to revoke visas by clarifying that the Secretary of DHS has the explicit power to refuse or revoke a visa when the Secretary determines that such refusal for revocation is necessary or advisable in the security interests of the United States.

Under current law, the DHS Secretary can ask the State Department to revoke a visa. The DHS Secretary, however, only exercised his revocation once in 2005. The State Department is the entity that normally revokes visas.

Furthermore, this bill makes clear the revocation of a visa is not subject to judicial review. H.R. 1741 simply applies the same review standards to visa revocations that is currently applied to visa denials. Ultimately, this bill provides DHS with the necessary tools to prevent potential terrorists or other criminals from entering our country and doing our citizens great harm.

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

The bill, H.R. 1741, follows:]

I

112TH CONGRESS
1ST SESSION

H. R. 1741

To authorize the Secretary of Homeland Security and the Secretary of State to refuse or revoke visas to aliens if in the security or foreign policy interests of the United States, to require the Secretary of Homeland Security to review visa applications before adjudication, to provide for the immediate dissemination of visa revocation information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 2011

Mr. SMITH of Texas (for himself, Mr. BILIRAKIS, Mr. KING of Iowa, Mr. CALVERT, Mr. POE of Texas, Mr. ROSS of Florida, Mr. GALLEGLY, Mr. AKIN, and Mr. MCCAUL) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To authorize the Secretary of Homeland Security and the Secretary of State to refuse or revoke visas to aliens if in the security or foreign policy interests of the United States, to require the Secretary of Homeland Security to review visa applications before adjudication, to provide for the immediate dissemination of visa revocation information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Secure Visas Act".

SEC. 2. VISA REFUSAL AND REVOCATION.

(a) AUTHORITY OF THE SECRETARY OF HOMELAND SECURITY AND THE SECRETARY OF STATE.—

(1) IN GENERAL.—Section 428 of the Homeland Security Act (6 U.S.C. 236) is amended by striking subsections (b) and (c) and inserting the following:

"(b) AUTHORITY OF THE SECRETARY OF HOMELAND SECURITY.—

"(1) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except for the authority of the Secretary of State under subparagraphs (A) and (G) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), the Secretary—

"(A) shall have exclusive authority to issue regulations, establish policy, and administer and enforce the provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and all other immigration or nationality laws relating to the functions of consular officers of the United States in connection with the granting and refusal of a visa; and

"(B) may refuse or revoke any visa to any alien or class of aliens if the Secretary, or designee, determines that such refusal or revocation is necessary or advisable in the security interests of the United States.

"(2) EFFECT OF REVOCATION.—The revocation of any visa under paragraph (1)(B)—

"(A) shall take effect immediately; and

"(B) shall automatically cancel any other valid visa that is in the alien's possession.

"(3) JUDICIAL REVIEW.—Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review a decision by the Secretary of Homeland Security to refuse or revoke a visa, and no court shall have jurisdiction to hear any claim arising from, or any challenge to, such a revocation.

"(c) AUTHORITY OF THE SECRETARY OF STATE.—

"(1) IN GENERAL.—The Secretary of State may direct a consular officer to refuse a visa requested by, or revoke a visa issued to, an alien if the Secretary of State determines such refusal or revocation

to be necessary or advisable in the foreign policy interests of the United States.

"(2) LIMITATION.—No decision by the Secretary of State to approve a visa may override a decision by the Secretary of Homeland Security under subsection (b).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act and shall apply to visa refusals and revocations occurring before, on, or after such date.

(b) ISSUANCE OF VISAS AT DESIGNATED CONSULAR POSTS AND EMBASSIES.—

(1) IN GENERAL.—Section 428(i) of the Homeland Security Act (6 U.S.C. 236(i)) is amended to read as follows:

"(i) VISA ISSUANCE AT DESIGNATED CONSULAR POSTS AND EMBASSIES.—Notwithstanding any other provision of law, the Secretary of Homeland Security—

"(1) shall conduct an on-site review of all visa applications and supporting documentation before adjudication at all visa-issuing posts in Algeria; Canada; Colombia; Egypt; Germany; Hong Kong; India; Indonesia; Iraq; Jerusalem, Israel; Jordan; Kuala Lumpur, Malaysia; Kuwait; Lebanon; Mexico; Mo-

rocco; Nigeria; Pakistan; the Philippines; Saudi Arabia; South Africa; Syria; Tel Aviv, Israel; Turkey; United Arab Emirates; the United Kingdom; Venezuela; and Yemen; and

"(2) is authorized to assign employees of the Department to each diplomatic and consular post at which visas are issued unless, in the Secretary's sole and unreviewable discretion, the Secretary determines that such an assignment at a particular post would not promote national or homeland security.".

(2) EXPEDITED CLEARANCE AND PLACEMENT OF DEPARTMENT OF HOMELAND SECURITY PERSONNEL AT OVERSEAS EMBASSIES AND CONSULAR POSTS.—The Secretary of State shall accommodate and ensure—

(A) not later than 1 year after the date of the enactment of this Act, that Department of Homeland Security personnel assigned by the Secretary of Homeland Security under section 428(i)(1) of the Homeland Security Act have been stationed at post such that the post is fully operational; and

(B) not later than 1 year after the date on which the Secretary of Homeland Security designates an additional consular post or embassy

for personnel under section 428(i)(2) of the Homeland Security Act that the Department of Homeland Security personnel assigned to such post or embassy have been stationed at post such that the post is fully operational.

(c) VISA REVOCATION.—

(1) INFORMATION.—Section 428 of the Homeland Security Act (6 U.S.C. 236) is amended by adding at the end the following:

"(j) VISA REVOCATION INFORMATION.—If the Secretary of Homeland Security or the Secretary of State revokes a visa—

"(1) the relevant consular, law enforcement, and terrorist screening databases shall be immediately updated on the date of the revocation; and

"(2) look-out notices shall be posted to all Department of Homeland Security port inspectors and Department of State consular officers.".

(2) EFFECT OF VISA REVOCATION; JUDICIAL REVIEW OF VISA REVOCATIONS.—

(A) IN GENERAL.—Section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)) is amended by striking the final sentence and inserting the following: "A revocation under this subsection shall take effect imme-

1 diately and shall automatically cancel any other
2 valid visa that is in the alien's possession. Not-
3 withstanding any other provision of law, includ-
4 ing section 2241 of title 28, United States
5 Code, or any other habeas corpus provision, and
6 sections 1361 and 1651 of such title, a revoca-
7 tion under this subsection may not be reviewed
8 by any court, and no court shall have jurisdic-
9 tion to hear any claim arising from, or any
10 challenge to, such a revocation.".
11 (B) EFFECTIVE DATE.—The amendment
12 made by subparagraph (A) shall take effect on
13 the date of the enactment of this Act and shall
14 apply to revocations under section 221(i) of the
15 Immigration and Nationality Act (8 U.S.C.
16 1201(i)) occurring before, on, or after such
17 date.

○

Ms. LOFGREN. Thank you, Mr. Chairman. This hearing touches on many important issues and I am looking forward to hearing the testimony of each of the witnesses.

Although I apologized to each of them individually, I share in your apologies for the late start. It was unavoidable. As we were casting those votes, I was thinking of you sitting here in the room.

Our embassies and consulates abroad really represent our face to the world and serve many critical functions, and the visa adjudication process is really important to advancing America's interests in legitimate travel, trade promotion, and educational exchanges, as well as business. It also plays an important role in keeping us safe by identifying people who would do us harm before they ever arrive at ports of entry, and meeting all of these goals is important to ensuring our security.

Now, as the Chairman has said, when Congress created the Department of Homeland Security, there was what I call a robust discussion about how involved the new agency should be in setting visa policy and handling the day-to-day business of adjudicating visa applications overseas. And the current act gives DHS authority over visa issuance, regulations, and authorizes the Secretary to refuse visas based on current law by working through the consular officers. And it also created the Visa Security Program.

Recognizing the State Department's expertise in foreign policy matters, the act retained the core functions of consular officers, and one of the most important functions they perform is adjudicating the very large number of visa applications that are received every day. Under the current system, consular officers collect biographic and biometric information, run the names, fingerprints, digital photographs through a variety of security and background checks, and ultimately the consular officer makes a decision regarding visa eligibility. When a case triggers national security or other concerns, it is forwarded to Washington, D.C. for a security advisory opinion. Even without red flags, broad categories of cases are routinely submitted for SAO's to undergo additional checks by intelligence and law enforcement agencies, and then any hits are manually reviewed by an analyst.

According to the State Department, this process took place 300,000 times last year. Unfortunately, the number of false positives that were encountered is very high. About 98 percent of the time a case was referred for an SAO, the analyst concludes that the law enforcement or security-related information in the system had nothing to do with the person who was applying for the visa. Because surnames in many parts of the world are similar or identical, mistakes are regularly made.

Now, the Homeland Security Act, mentioned by the Chairman, tried to lay out a framework that would be workable but left the agencies to fill out the details. We had an opportunity to check with General Colin Powell, hoping we might actually get him to be a witness here at this hearing, but he was not available this week. But he talked about really the personal negotiations that went on between him as Secretary of State and Homeland Security Secretary Tom Ridge, and they really reached a conclusion that I think in many ways has worked, maybe needs some improvement, but the shared responsibilities mean that each agency now plays a sig-

nificant role in determining who comes to the U.S., with State principally in charge of the visa process, but DHS and Customs and Border Protection as final gatekeepers determining who is permitted to board planes headed for the country, who is permitted to walk through the ports of entry.

Now, I am interested in hearing the witnesses' views on how this is working, whether we can adequately meet our goals while facilitating legitimate trade and travel and make this work in a very seamless and smooth way.

At the outset, I will say on the bill that the Chairman of the full Committee has introduced that I have a concern about the judicial review provision. It is already the case that visa revocations or denials made abroad are insulated from judicial review, and I for one would not change that. But this bill would eliminate judicial review for persons who are in this country and are placed in removal proceedings. That means that people who have resided lawfully in the United States for many years, who could have U.S. citizen spouses and children, could face the prospect of being permanently separated from their families without the opportunity for judicial review.

The Supreme Court has long recognized that the writ of habeas corpus guaranteed by the Suspension Clause of the Constitution provides a means by which to test the legality of executive detention. The Great Writ has also been used throughout our history to challenge the legality of deportation and exclusion proceedings. And this has been recognized by the Congress in the Intelligence Reform and Terrorism Prevention Act of 2004 and again in the REAL ID Act in 2005. And I think the bill as written would fail were it to be changed on constitutional grounds, and I thought it important to raise that at an early stage of the proceedings.

And I would also, Mr. Chairman, ask unanimous consent to submit for the record a letter from the ACLU regarding this point, as well as a statement from Senator Menendez.

Mr. GALLEGLY. Without objection.

[The information referred to follows:]

AMERICAN CIVIL
LIBERTIES UNION

OFFICERS AND DIRECTORS

May 10, 2011

The Honorable Lamar Smith
Chairman
House Judiciary Committee
2409 Rayburn House Office Bldg.
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
House Judiciary Committee
2426 Rayburn Office Bldg.
Washington, DC 20515

Dear Chairman Smith and Ranking Member Conyers:

RE: ACLU Opposes the Secure Visas Act of 2011 (H.R 1741)

On behalf of the American Civil Liberties Union ("ACLU"), a non-partisan organization with over half a million members, countless additional activists and supporters, and 53 affiliates nationwide, we urge you to oppose the Secure Visas Act of 2011 (H.R. 1741) when the bill comes up for consideration. For 90 years the ACLU has protected the rights of immigrants by ensuring equal protection and fairness under our laws. The Secure Visas Act, specifically section 2(b)(3), is an attack on the federal courts' vital oversight function – essential to our separation of powers – that is secured through independent judicial review by Article III judges of visa revocations. Review by an independent federal court is a tried-and-true oversight mechanism checking executive branch action. Removing it is an affront to the Constitution's guarantees of due process and judicial review.

Under long-established law, individuals placed in deportation proceedings on account of visa revocation are guaranteed judicial review by an immigration judge. Without judicial review, the government could abruptly revoke the visas of individuals admitted to the U.S. as permanent residents or those admitted based on their possession of valued skills - investors, physicians or engineers, for example. Upon visa revocation, those whom our government once welcomed into this country as valuable contributors would be subject to many permanent consequences including deportation, separation from U.S. citizen family members, termination of employment and severing of investment and other financial ties to the U.S. With so much at stake, Congress has seen fit to retain judicial review for those placed in deportation proceedings on account of visa revocation to protect law-abiding individuals against mistakes or violations made by government authorities.

Section 2(b)(3) of the Secure Visas Act mandates that "no United States court has jurisdiction to review a decision by the Secretary of Homeland Security to refuse or revoke a visa." This provision is intended to end access to federal courts for those admitted to the United States on the basis of a visa that is subsequently revoked on *any* ground. Yet Congress itself recently and specifically required judicial review of these visa revocations when it passed the Intelligence Reform and Terrorism Prevention Act of 2004.[1] Combined with the provisions of the REAL ID Act of 2005,[2] these post-9/11 statutes established a baseline of judicial review that must be harmonized with the Supreme Court's holding that "some judicial intervention in deportation cases is unquestionably required by the Constitution." *INS v. St. Cyr*, 533 U.S. 289, 300 (2001) (quoting *Heikkila v. Barber*, 345 U.S. 229, 235 (1953)). If enacted, the Secure Visas Act would end "judicial intervention" in visa revocations and thereby violate the Supreme Court's constitutional principle of independent Article III judicial review. As a result, the Act would be subject to a lengthy (and successful) litigation challenge, frustrating its purpose of "allow[ing] U.S. officials to expedite the removal of terrorists who are in the United States on a visa."[3]

In considering the Act, it is also crucially important to scrutinize its overbreadth and the incorrect claims made on its behalf. First, while purporting to be a national security measure, the Act strips judicial review for *all* visa revocations. The Secure Visa Act's provision to end judicial review of visa revocations would affect a much wider range of people than the bill's purported national security focus. There are multiple grounds for visa revocation that have nothing to do with national security or terrorism, some of which are highly technical and/or easily infringed without malicious intent. *See* 22 C.F.R. § 41.122(h) (listing nine grounds for visa revocation other than national security concerns, including alleged fraud and cases where "the visa has been physically removed from the passport in which it was issued"). Past judicial review of visa revocations has corrected legal errors, such as the revocation of a family's visas because the primary applicant's spouse and two minor children did not personally appear for a consular interview. *See Wong v. U.S. Dep't of State*, 789 F.2d 1380, 1385 (9th Cir. 1986) ("Mrs. Wong and her children traveled to the United States. To revoke a nonimmigrant visa at that stage because the consular officer failed to ensure that the correct procedures were followed, when the alien is actually qualified to receive the visa, seems harsh, indeed.").

The Secure Visa Act's constitutional infirmities are compounded by exaggeration of its practical benefits. An inaccurate claim in support of the Act states that "[u]nder current law, a terrorist whose visa has been revoked is allowed to remain in the U.S. to fight their deportation instead of being sent home."[4] In fact, challenges to visa revocation, like all other petitions for federal court review, can continue without the person being in the U.S.; only individuals who are granted judicial stays of removal, which require "a strong showing that he [or she] is likely to succeed on the merits," are permitted to remain in the U.S. while their cases are heard. *See* 8 U.S.C. § 1252(b)(3)(B); *Nken v. Holder*, 129 S. Ct. 1749 (2009). Equally misleading is the contention that "H.R. 1741 simply applies the same review standard to visa revocations that is currently applied to visa denials."[5] Visa applicants from abroad, who have not been admitted to the United States, are not granted access to administrative review of visa denials before Article I

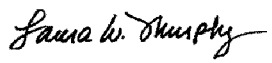
---

[1] Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, § 5304.
[2] REAL ID Act of 2005, Pub. L. No. 109-13.
[3] House Committee on the Judiciary, "Chairman Smith Introduces Secure Visas Act." (May 5, 2011), available at http://judiciary.house.gov/news/SecureVisas.html
[4] "Secure Visas Act," *supra* note 3.
[5] *Id.*

adjudicators – an immigration judge and the Board of Immigration Appeals, who are part of the executive branch – in contrast to those persons whose visas are revoked when they are within the United States.

In 2004-05 Congress recognized that visa revocations by the executive branch require independent oversight by the Article III judiciary. There is no indication that the current regime of judicial review is impeding expeditious removal of terrorists whose visas were revoked. The ACLU urges the House Judiciary Committee to oppose the Secure Visas Act. Please contact Joanne Lin, ACLU legislative counsel, with any questions at 202/675-2317 or jlin@dcaclu.org.

Sincerely,



Laura W. Murphy
Director, Washington Legislative Office

Joanne Lin
Legislative Counsel

Cc:

Members of the House Judiciary Committee

- Newsroom (http://menendez.senate.gov/newsroom/press/) >
- Release (http://menendez.senate.gov/newsroom/press/release/?id=4774b937-5b3d-4f40-ab76-c71efd584962)

Grassley Amendment on Visa Revocation

May 23, 2007

M. President, I rise in strong opposition to the Grassley amendment, which would abolish the last remnant of judicial review on visa revocations.

Currently, judicial review of visa revocation is already severely restricted. In fact, visa revocations are insulated from any judicial review when the visa holder is outside the U.S. and consular officers have exceptionally broad authority to make revocation decisions.

The only area that limited judicial review of visa revocations remains available is with respect to individuals who are in the U.S. and are placed in removal proceedings as a result of the revocation. Judicial review is permitted in the context of removal proceedings if the revocation is the sole ground for removal. This is a critical check on government authority to make arbitrary decisions.

It is vitally important to allow court review of removal proceedings because a person's ability to remain in the U.S. is at stake. The immigration authorities, as occasionally happens, may have made a mistake in the person's case or the person may have compelling circumstances that warrant consideration by a judge.

This amendment would eliminate that last remaining remnant of judicial review. Not allowing judges to consider the circumstances of a case denies basic American due process and does not solve the problem of undocumented immigration.

Eliminating judicial review for all visa revocations is unnecessary and unduly expands the already broad discretionary authority of the executive branch to make life-altering decisions.

Imagine the following case: A foreign government who wants to reign in one of their dissidents provides false information to the U.S. consulate that leads the consul to revoke the visa. The State Department notifies the Department of Homeland Security and Immigration and Customs Enforcement picks the person up and places him into removal proceedings.

That individual would have absolutely NO ability to contest the basis for removal. And that individual could be a LEGAL PERMANENT RESIDENT.

Exposing individuals in this country to such arbitrary and capricious government action is un-American. We should be striving for more balance and more transparency in our immigration system, not less.

Any program can be eviscerated in practice by restrictive rules, unfair adjudication, impermissible criteria or broad interpretations. That is why judicial review and due process is so vitally important. I urge my colleagues on both sides of the aisle to stand together and oppose this unnecessary amendment.

Print this Page e-mail this Page (javascript:window.print()) (http://menendez.senate.gov/send/?id=4774b937-5b3d-4f40-ab76-

---

Ms. LOFGREN. I yield back.

Mr. GALLEGLY. I thank the gentlelady. At this time, I will recognize the Chairman of the full Committee and the sponsor of the pending legislation, my good friend from Texas, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

In response to what the Ranking Member just said, I trust that that means she supports 95 or 96 percent of the bill, and I take that as a good sign. We can talk about the judicial review——

Ms. LOFGREN. If the gentleman would yield, I would not want to give that misimpression, but I thank the gentleman for his comment.

Mr. SMITH. I was going by the number of words you might have disagreed with.

But in any case, the broader point is that visa revocation is a discretionary decision. Numerous circuit courts have concluded that visa revocations are in fact a purely discretionary power held by the Secretary of DHS and therefore are not subject to any constitutionally mandated judicial review. So we might argue about the pros and cons. I just don't want to leave the impression that somehow it is constitutionally mandated.

Mr. Chairman, in any case, in light of Osama bin Laden's death, some believe the "war on terror" has ended, and that the threat posed by al Qaeda and other terrorist groups has diminished. This is far from the truth. In the words of bin Laden himself, "I can be eliminated, but not my mission."

The 19 hijackers involved in the September 11, 2001 terrorist attacks applied for 23 visas and obtained 22 out of 23 visas. These terrorists began the process of obtaining visas almost two and a half years before the attack. At the time, consular officers were unaware of the potential indicators of a security threat posed by these hijackers.

Recent events underscore the need to strengthen and improve visa security. We know terrorists use loopholes in our immigration system to enter the United States.

After receiving a B2 tourist visa, Omar Farouk Abdulmutallab attempted to blow up a plane on its way to Detroit on Christmas Day 2009. Thankfully, his attempt was thwarted and hundreds of innocent lives were spared.

Although he failed in his attempt to murder innocent people, Abdulmutallab should never have been allowed to board the plane to Detroit. Despite warnings from Abdulmutallab's father about the son's possible Muslim radicalization, the U.S. visa issued to him in 2008 was neither identified nor revoked.

More recently, Khalid Aldawsari, a 20-year-old who entered the United States from Saudi Arabia on a student visa, was arrested on February 24, 2011 on terrorism charges, including attempted use of weapons of mass destruction. While Aldawsari was screened by the Visa Security Units, he had never come to the attention of law enforcement before because he was a "lone wolf" actor and he never demonstrated any harmful or criminal tendencies.

Authorities only learned of Aldawsari February 1, 2011, when a shipping company and a chemical supplier called authorities to report a suspicious attempt to purchase a large quantity of Phenol, a chemical that can be used to make explosives.

The Homeland Security Act of 2002 authorized the placement of Department of Homeland Security Visa Security Units at "highest-risk" U.S. consular posts. This was an effort to address lapses in the current system, increase scrutiny of visa issuance, and prevent terrorists from gaining access to the United States. Visa security units ensure that thorough background checks are conducted on all visa applicants, not just a select few.

The intent of the Visa Security Units is to ensure that national security, and not meeting the demands of foreign nationals for visas, is the number one goal of our visa issuing process. Unfortunately, since 2002, neither the State Department nor DHS has put a high enough priority on the establishment of Visa Security Units. Visa security units exist only in 19 consulates located in 14 countries. Meanwhile, there are close to 50 countries that have been designated as "highest-risk."

Last week, I introduced legislation to make the visa process more secure. H.R. 1741, the "Secure Visas Act," requires placement of Visa Security Units at all U.S. consular posts in highest-risk countries such as Algeria, Lebanon, and Syria.

H.R. 1741 also grants the Department of Homeland Security Secretary the authority to revoke a visa in cases like that of the Christmas Day Bomber and to delegate that authority to appropriate agency officials. These are common-sense steps that ensure no one who seeks to harm our country is able to enter and stay in the United States.

In addition to making it harder for terrorists to enter the U.S., The Secure Visas Act allows U.S. officials to remove suspected terrorists and others with revoked visas who are already in the U.S. Under current law, an alien terrorist in the U.S. whose visa has been revoked can remain in the U.S. to fight their deportation in Federal court and force the Government to release classified information. Giving litigation rights to terrorists makes no sense. The Secure Visas Act closes this loophole and allows the terrorist to be removed from American soil without threatening the disclosure of intelligence sources and methods.

Many national security officials warn of future attacks. We don't need national security officials to simply predict attacks. We need them to prevent attacks. That means we must prevent terrorists from entering this country before they act, and this legislation allows us to do just that.

Visa security is critical to national security. Terrorists will continue to enter the U.S. legally if we do not improve and secure our visa process.

The September 11th hijackers, the Christmas Day Bomber, and the Texas university student terrorist serve as proof that the war on terror continues and that radical jihadists are as committed as ever to killing Americans. America must be equally committed to stopping them.

Thank you, Mr. Chairman, and I will yield back.

Mr. GALLEGLY. I thank the gentleman.

Without objection, other Members' opening statements will be made a part of the record of the hearing.

We have a very distinguished panel of witnesses today. Each of the witnesses' written statements will be entered into the record in its entirety. I would ask that each witness summarize his or her testimony in 5 minutes or less. To help you stay within the time, there is a little light system down there with a yellow light that would let you know you have 1 minute remaining, and then the red light would signal that the 5 minutes has expired. I really appreciate your cooperation on this so we can get through and have everyone have their opportunity to ask questions of the witnesses.

Our witnesses today starts with Gary Cote. He serves as the Acting Deputy Assistant Director for the U.S. Immigration and Customs Enforcement Office of International Affairs. He is the former director of the Visa Security Unit within the Office of International Affairs where he was responsible for managing the ICE headquarters Visa Security Unit and all foreign ICE Visa Security Units. Throughout his 37 years in law enforcement, he has held various high-level positions.

Our second witness is Mr. David Donahue. He serves as the Deputy Assistant Secretary for Visa Services at the Bureau of Consular affairs, U.S. Department of State. Prior to this position, he was the Director of Office Policy coordination and Public Affairs in the Bureau of Consular Affairs. Mr. Donahue joined the Foreign Service in 1983 and has held numerous positions stationed throughout the world. Mr. Donahue graduated from St. Meinrad College in Indiana.

Ms. Janice Kephart is the Director of National Security Policy at the Center for Immigration Studies. She previously served as counsel to the 9/11 Commission. Ms. Kephart received her bachelor's from Duke University and J.D. from Villanova Law School.

And our fourth witness today is Mr. Edward Alden. Mr. Alden is the Bernard L. Schwartz Senior Fellow at the Council on Foreign Relations. Prior to joining the council, Mr. Alden was the Washington bureau chief for the Financial Times and also served as the project director for the independent task force on U.S. immigration policy. Mr. Alden holds a master's degree in international relations from the University of California at Berkeley.

Mr. Cote, we will start with you. Welcome.

TESTIMONY OF GARY L. COTE, ACTING DEPUTY ASSISTANT DIRECTOR, OFFICE OF INTERNATIONAL AFFAIRS, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. COTE. Thank you, Chairman Gallegly, Chairman Smith, Ranking Member Lofgren, and distinguished Members of the Subcommittee.

On behalf of Secretary Napolitano and Assistant Secretary Morton, thank you for the opportunity to discuss ICE's international efforts to protect the Nation. Today I will discuss the important role that the Visa Security Program, along with the State Department, plays in protecting the homeland by helping to identify individuals who present a risk before they can travel to the United States. The Visa Security Program places DHS law enforcement officers in U.S. embassies abroad to work with the State Department consular officers and diplomatic security agents to secure the visa adjudication process.

As you know, section 428 of the Homeland Security Act of 2002 authorized the Secretary of Homeland Security to administer and enforce the Immigration and Nationality Act and other laws relating to visas, refuse and revoke visas for individual applicants in accordance with the law, assign DHS officers to diplomatic posts to perform visa security activities, initiate investigations of visa security-related matters, and provide advice and training to consular officers. In short, the Homeland Security Act directed DHS to assist

in the identification of visa applicants who may attempt to enter the United States for illegitimate purposes, including illegal immigration, criminal- and terrorist-related activities.

The visa adjudication process is often the first opportunity to assess whether a potential visitor or immigrant presents a threat to the United States. The U.S. Government has long recognized the importance of this function to national security. DHS regards the visa process as an important part of its broader security strategy, and the Visa Security Program is one of several programs focused on minimizing global risks.

DHS does not participate in all visa adjudications. Rather, DHS becomes a part of the process following initial screening of an applicant in countries where a Visa Security Unit is present. The Visa Security Program efforts complement the consular officer's initial screening. This is accomplished by conducting targeted, in-depth law enforcement-focused reviews of individual visa applications and applicants prior to issuance, as well as recommending refusal or revocation of applications where warranted.

ICE now has Visa Security Units at 19 high-risk visa adjudication posts in 15 countries. In fiscal year 2010, ICE opened offices in four additional locations. Also in fiscal year 2010, ICE agents screened 815,000 visa applicants at these 19 posts and, in collaboration with their State Department colleagues, determined that 104,000 required further review. Following the review of these 104,000 applications, ICE recommended the refusal of more than 1,300 applicants. In every instance, the State Department followed the Visa Security Unit recommendation and refused to issue a visa. Visa Security Program recommendations have also resulted in State Department visa revocations.

Effective border security requires broad information sharing and cooperation among U.S. agencies. In January, ICE signed a memorandum of understanding outlining roles, responsibilities, and collaboration between DHS and the State Department's Bureau of Consular Affairs and the Diplomatic Security Service. The MOU governs the day-to-day operations of the Visa Security Units at U.S. embassies and consulates abroad.

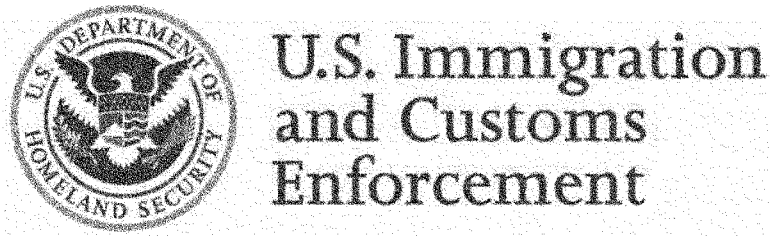
To facilitate information sharing and reduce duplication of efforts, ICE and the State Department support collaborative training and orientation prior to overseas deployments. Once they are deployed to overseas posts, ICE and State Department personnel work closely together in working groups coordinating meetings, trainings, briefings, and engage in regular and timely information sharing.

Under the direction of the Homeland Security Council, beginning in May 2008, ICE and the State Department collaborated on the development of the Visa Security Program's site selection methodology and came to an agreement on current site selection criteria which is based on risk. The process for selecting a particular site for a unit begins with the ICE site selection evaluation, which includes a quantitative analysis of threats posed by applicants at a particular consular office, as well as a site visit assessment. The site assessment and proposal are then entered into the formal nomination process and, prior to deployment of personnel, must be reviewed and approved by the chief of mission at a particular post

in a manner consistent with the National Security Directive-38 and its implementing guidelines.

I see that my time has expired. Thank you for your opportunity for me to testify today, and I would be willing to answer any questions that you may have.

[The prepared statement of Mr. Cote follows:]



STATEMENT

OF

GARY L. COTE

DEPUTY ASSISTANT DIRECTOR FOR INTERNATIONAL AFFAIRS
HOMELAND SECURITY INVESTIGATIONS
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"VISA SECURITY: PREVENTING TERRORISTS FROM ABUSING U.S. IMMIGRATION POLICY"

BEFORE THE

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

Wednesday, May 11, 2011 - 1:30 p.m.
2141 Rayburn House Office Building

INTRODUCTION

Chairman Gallegly, Vice-Chairman King, Ranking Member Lofgren, and distinguished Members of the Subcommittee:

On behalf of Secretary Napolitano and Assistant Secretary Morton, thank you for the opportunity to discuss the international efforts of U.S. Immigration and Customs Enforcement (ICE) to protect the nation. Today, I will discuss the important role that the Visa Security Program (VSP), along with the Department of State, plays in protecting the homeland by helping to identify individuals who present a risk before they can travel to the United States. The VSP places DHS law enforcement officers in United States embassies abroad to work collaboratively with Department of State (DOS) consular officers and Diplomatic Security Agents to secure the visa adjudication process. Before describing the VSP and our plans for expanding the program, I would like to discuss ICE's international efforts more generally.

ICE's Presence Overseas

ICE is the second largest federal investigative agency and has a significant international footprint. Through our Office of International Affairs (OIA), we have personnel in 69 offices in 47 countries. ICE personnel in these offices collaborate with our foreign counterparts and federal partner agencies in joint efforts to disrupt and dismantle transnational criminal organizations engaged in money laundering, contraband smuggling, weapons proliferation, forced child labor, human rights violations, intellectual property rights violations, child exploitation, human smuggling and trafficking, and facilitate the repatriation of individuals with final orders of deportation.

In fiscal year (FY) 2010, ICE opened offices in four additional locations. We consider this information to be sensitive, and would be happy to discuss specific locations in a closed setting. ICE's OIA is responsible for administering and staffing the VSP.

The Visa Security Program

Section 428 of the Homeland Security Act (HSA) of 2002 authorized the Secretary of Homeland Security to administer and enforce the Immigration and Nationality Act (INA) and other laws relating to visas; refuse and revoke visas for individual applicants in accordance with law; assign DHS officers to diplomatic posts to perform visa security activities; initiate investigations of visa security-related matters; and provide advice and training to consular officers. In short, the HSA directed DHS to assist in the identification of visa applicants who may attempt to enter the United States for illegitimate purposes, including illegal immigration, criminal, and terrorism-related activities.

The visa adjudication process is often the first opportunity to assess whether a potential visitor or immigrant presents a threat to the United States. The U.S. Government has long recognized the importance of this function to national security. DHS regards the visa process as an important part of its broader security strategy, and VSP is one of several programs focused on minimizing global risks.

ICE agents assigned to Visa Security Units (VSUs) are experienced law enforcement agents who focus on select applicants and any connection the applicants may have to terrorism. Each individual VSU, with input from the Department of State, develops a targeting plan based on assessed conditions and threats. Through the VSP, these trained law enforcement agents conduct a thorough review of applicants of concern in order to assess whether these individuals

pose a security threat to the United States. The background checks conducted by VSUs may include a review of the documents submitted by the applicant; automated checks of the Consular Lookout and Support System (CLASS) and other databases; interviews with the applicant; and assessment of local information in order to understand whether the applicant's affiliations raise any flags.

DHS does not participate in all visa adjudications; rather, DHS becomes a part of the process following initial screening of an applicant in countries where a VSU is present. VSP efforts complement the consular officers' initial screening, applicant interview and review of the application and supporting documentation. ICE agents conduct automated screening of criminal and terrorist databases with proactive law enforcement vetting and investigation. This is accomplished by conducting targeted, in-depth law enforcement-focused reviews of individual visa applications and applicants prior to issuance, as well as recommending refusal or revocation of applications when warranted.

ICE now has VSUs at 19 high-risk visa adjudication posts in 15 countries. In FY 2010, ICE agents screened 815,000 visa applicants at these 19 posts and, in collaboration with their DOS colleagues, determined that 104,000 required further review. Following the review of these 104,000 applications, ICE recommended refusal of more than 1,300 applicants. In every instance, DOS followed the VSU recommendation and refused to issue the visa. VSP recommendations have also resulted in DOS visa revocations.

Overseas Coordination with DOS

Effective border security requires broad information sharing and cooperation among U.S. agencies. On January 11, 2011, ICE signed a Memorandum of Understanding (MOU) outlining

roles, responsibilities and collaboration between DHS and the DOS Bureau of Consular Affairs and the Diplomatic Security Service. The MOU governs the day-to-day operations of VSUs at U.S. embassies and consulates abroad. To facilitate information sharing and reduce duplication of efforts, ICE and DOS support collaborative training and orientation prior to overseas deployments. Once they are deployed to overseas posts, ICE and DOS personnel work closely together in working groups; coordinating meetings, trainings and briefings; and engage in regular and timely information sharing. The VSP's presence at U.S. embassies and consulates augments an important law enforcement element to the visa review process. Additionally, this relationship serves as an avenue for VSP personnel to assist Consular Officers and other U.S. Government personnel to recognize potential security threats in the visa process.

Expansion of the Visa Security Program

Under the direction of the Homeland Security Council, beginning in May 2008, ICE and DOS collaborated on the development of the VSP Site Selection Methodology and came to an agreement on current site selection criteria, which is based on risk. The process for selecting a particular site for a VSU begins with an ICE site evaluation, which includes a quantitative analysis of threats posed by applicants at a particular consular office, as well as a site assessment visit. The ICE site assessment and proposal are then entered into the formal nomination process and, prior to deployment of personnel, must be reviewed and approved by the Chief of Mission at a particular post in a manner consistent with National Security Decision Directive-38 (NSDD-38) and its implementing guidelines.

ICE continues to evaluate the need to screen and vet additional visa applicants at high-risk visa issuing posts other than the 19 posts at which the agency currently operates. At this

time, the Administration has not proposed additional VSP locations. However, ICE will continue to conduct joint site visits with DOS to identify locations where deployment is required based on emerging threats. My counterparts at DOS and I are engaged in determining a common strategic approach to the broader question of how best to collectively secure the visa issuance process. We look forward to continuing to report back to you with updates on this process.

Recent Successes

To put the VSP discussion in perspective, I would like to provide a brief example of the results of this program. In December 2010, ICE agents were involved in the identification and investigation of a transnational alien smuggling organization that facilitates the illegal travel of Somali nationals into Yemen and onto other western locations including the United States. ICE agents received information from the ICE Attaché office in Amman, Jordan that two Somali nationals had been intercepted in Amman attempting to travel to Chicago using counterfeit travel documents. ICE agents contacted local officials of the Yemeni and Somali governments to investigate how the counterfeit documents had been obtained and how the subjects had transited Yemen. The information developed was shared with other U.S. agencies at post in Sana'a via the Law Enforcement Working Group, as well as ICE domestic offices and the appropriate FBI Joint Terrorism Task Force. While the joint investigation is ongoing, efforts to date have eliminated this scheme as a method of entry to the United States.

The Visa Security Program's Security Advisory Opinion Unit (SAOU)

The Security Advisory Opinion (SAO) process is the mechanism administered by DOS, with the support of other government agencies, to provide consular officers advice and

background information to adjudicate visa applications abroad in cases of security or foreign policy interest. In May 2007, Congress mandated the creation of a Security Advisory Opinion Unit (SAOU) within the VSP. VSP now supports the broader SAO process and the SAOU's findings are incorporated into the overall SAO recommendation used by consular officers worldwide to adjudicate targeted visa applications of national security or foreign policy interest.

The SAOU is currently operating a pilot program that screens selected visa applicants and communicates any potential admissibility concerns to DOS. The SAOU currently has co-located personnel at the Human Smuggling and Trafficking Center and U.S. Customs and Border Protection's National Targeting Center-Passenger, and also has personnel assigned to the National Counterterrorism Center and the Central Intelligence Agency. The integration of the SAOU into these centers and agencies allows for real-time dissemination of intelligence between the various stakeholders in the visa adjudication process.

CONCLUSION

Chairman Gallegly, Vice-Chairman King, Ranking Member Lofgren, and distinguished Members of the Subcommittee: thank you again for the opportunity to testify today and for your continued support of ICE and our law enforcement mission.

I would be pleased to answer any questions you may have.

Mr. GALLEGLY. Thank you very much, Mr. Cote.
Mr. Donahue?

TESTIMONY OF DAVID T. DONAHUE, DEPUTY ASSISTANT SECRETARY FOR VISA SERVICES, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. DONAHUE. I am honored by this opportunity to testify today on this important topic of close and fruitful cooperation with our ICE colleagues in our joint efforts to protect our borders.

The State Department strongly supports the mission and future of the Visa Security Program, the VSP. We embrace a layered approach to security screening and believe the VSP supports the critical role that State Department consular officers play in securing our borders. The VSP maximizes the utility of the visa application and interview processes to detect and combat terrorism, criminality, and other threats to the United States and the traveling public.

We share visa application information widely with the interagency group responsible for national security. Robust sharing of data between agencies is part of the layered approach to security adopted after 9/11. A complex layered approach to screening, beginning with biometric and biographic checks against law enforcement databases, interviews by consular officers, multiple steps by ICE and U.S. Customs and Border Protection, and matching of biometrics collected abroad at the port of entry to confirm the identity and intentions of those wishing to enter the United States ensure the security of the visa process. These measures are constantly reviewed and enhanced as needed. ICE VSP officers assigned to Visa Security Units abroad provide timely and valuable on-site vetting of visa applications and other law enforcement support to our consular officers.

Here in Washington, we work with our VSP colleagues on issues affecting program operations and on longer-term issues related to the expansion of the program to select overseas posts. VSP officers in Washington review our visa databases and advise posts of emerging information about visa holders. In addition, we cooperate on the resolution of issues that are raised as the VSP is expanded to more posts. In January 2011, we concluded the memorandum of understanding governing VSU-State Department interactions with visa sections, procedures for resolving the very few disputed visa cases that emerge from the VSU review process, and collaboration between ICE-VSU officers and diplomatic security agents assigned as regional security officers or assistant regional security officers for investigations at our consular sections.

The recently released GAO report on VSP operations noted that visa officers and ICE-VSP officers sometimes consider the same set of facts and reach different conclusions. In fact, we work together to resolve those few cases. In the end, there must be full agreement on any decision since the traveler cannot travel without a visa and DHS will not permit boarding of someone who is a security threat for a flight to the United States.

Let me address the expansion of the VSP which I know is of keen interest to the Members of this Subcommittee. The Department works collaboratively with DHS pursuant to the October 2004 MOU on the administrative aspects of assigning personnel overseas and the National Security Decision Directive-38. The most recent round of VSU expansion was launched in early 2010 when we re-

ceived NSDD-38 requests from ICE for the establishment of VSU's in four countries and for increases to VSU staff in two more countries. Those requests have all been approved by the respective chief of missions and the new VSU's are either deployed or in the latter stages of deployment.

As an established part of the process, senior officials from the State Department Bureau of Consular Affairs and Diplomatic Security accompany ICE officials on the site assessments preceding NSDD-38 submission. The assessment teams consult with officials at post to determine the feasibility and timing of establishing an office and brief the chief of mission on the role of the VSU. In June 2010, a joint State-ICE team conducted assessments of three posts.

Before closing, I would like to highlight the consular officers' essential role in enforcing U.S. immigration law and protecting our borders. Our 246 consular sections in 167 countries are staffed by more than 1,500 officers, nearly 4,000 locally engaged staff, and 100 full-time diplomatic security agents assigned as ARSO-I's devoted to fraud prevention efforts.

Officers devoted to visa adjudication are highly qualified, well-trained, and very motivated professionals committed to a career of serving the United States overseas. They have foreign language skills necessary to stay abreast of the local trends and conduct interviews. 1,067 of our consular officer positions require fluency in 1 of 65 languages.

Consular officers are fully prepared for this critical responsibility. Our officers understand foreign cultures and political, legal, and economic developments in countries where they are posted. This unique cadre of employees gives the Department a special expertise in matters directly relevant to the full range of visa ineligibilities. The Department's commitment to training and continuing education to equip consular officers with particular expertise in identifying individuals who pose a threat, possess fraudulent documents, are imposters or otherwise attempting to enter into the United States.

Thank you, Mr. Chairman, Madam Ranking Member. I am pleased to take any questions.

[The prepared statement of Mr. Donahue follows:]

DEPARTMENT OF STATE

WRITTEN STATEMENT

OF

DAVID T. DONAHUE

DEPUTY ASSISTANT SECRETARY OF STATE

FOR VISA SERVICES

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

HEARING

ON

VISA SECURITY: PREVENTING TERRORISTS FROM ABUSING U.S. IMMIGRATION POLICY

MAY 11, 2011

1:30PM – RAYBURN HOUSE OFFICE BUILDING

Good afternoon, Chairman Gallegly and Ranking Member Lofgren. Thank you for the opportunity to testify today on this important topic. I am glad to share the panel with my colleague from the Department of Homeland Security (DHS). As you will see in my testimony, we enjoy close and fruitful cooperation in this area.

The State Department strongly supports the mission and future of the Visa Security Program (VSP). We embrace a layered approach to security screening and believe the VSP is a valuable component of the U.S. government's overall policy of protecting our borders. The VSP maximizes the utility of the visa application and interview processes to detect and combat terrorism, criminality, and other threats to the United States and the traveling public. We work very closely together with DHS to ensure that no terrorist receives a visa or is admitted into our country.

U.S. Immigration and Customs Enforcement (ICE) special agents assigned to Visa Security Units (VSUs) provide timely and valuable on-site vetting of visa applications and other law enforcement support to our consular officers. In fact, reports from our VSU posts suggest that as the VSP has matured over the past few years, VSU personnel have, where resources permit, moved beyond a singular focus on visa application review, and have been able to contribute their expertise and resources to enhance our response to all kinds of threats to the visa and immigration processes - terrorism, human smuggling and human trafficking, and trafficking in a wide variety of contraband. As reported by one of our missions, "(i)n addition to their concerns with visa security, [VSU agents'] efforts have also

led to arrests and indictments in the areas of child pornography and countering the proliferation of controlled technology. This is a win-win partnership."

Here in Washington, we work very closely with our VSP colleagues on day-to-day issues affecting the operations of the program, as well as longer-term issues related to the expansion of the program to select overseas posts. VSP officers in Washington review our visa databases and advise posts of emerging information about visa holders. Another important aspect of our Washington partnership is the resolution of issues that are raised as the VSP expands to more posts. In January 2011, the State Department's Bureaus of Consular Affairs (CA) and Diplomatic Security (DS) concluded a Memorandum of Understanding (MOU) with ICE. This MOU governs VSU-State Department interactions within visa sections, procedures for resolving the very few disputed visa cases that emerge from the VSU review process, and collaboration between ICE/VSU agents and their DS law enforcement colleagues assigned as Regional Security Officers (RSOs) or Assistant Regional Security Officers for Investigations (ARSO-Is) assigned to consular sections.

As the recent Government Accountability Office (GAO) report noted, reasonable and conscientious professionals sometimes can, and do, consider the same set of facts and reach different conclusions. As with any process involving so many records and individual travelers, a small number of adjudications require extra effort to complete—a process facilitated by the positive working relationships among interagency partners. Under the umbrella of section 428 of the Homeland Security Act, we work together to resolve cases. In the end, there must be full agreement on any visa decision, since the traveler cannot travel

without the visa and will not be boarded for a flight to the United States without the approval of DHS.

Let me address the expansion of the VSP, which is of keen interest to the members of this Subcommittee. The Department works collaboratively with DHS, pursuant to an October 2004 MOU between the Department of State and the ICE Visa Security Program on the Administrative Aspects of Assigning Personnel Overseas, and National Security Decision Directive 38 (NSDD-38). This is to determine whether the establishment of a VSU is appropriate at a particular post based on a number of factors, including the effectiveness of alternative arrangements for DHS staff, available space at the embassy, support capabilities, and security concerns. NSDD-38s give the Chief of Mission (COM) responsibility for the size, composition and mandate of U.S. government agency staff under COM authority. This includes all executive branch personnel, except those under the command of a U.S. military area commander or on the staff of an international organization. While there are no NSDD-38 criteria specific to VSUs, each individual COM considers the following five issues before making their decision:

- Whether the need for the proposed position is addressed in the Mission Strategic Plan;

- Whether other resources at post might perform the proposed function;

- If the request is for one or more U.S. direct-hire positions (i.e., full-time U.S. government employees), whether the function could be performed by temporary duty (TDY) or local-hire staff;

- What administrative support, space, and funding arrangements would be required for the proposed position; and

- Whether the benefits of increasing the post's staff size outweigh the heightened security risk relating to such an increase.

The most recent round of VSU expansion was launched in January 2010, when we received NSDD-38 requests for the establishment of three newVSUs and for increases to VSU staff at two other posts. In February 2010, we received a NSDD-38 request regarding the establishment of another VSU. Those requests all have been approved by the respective COMs, and the new VSUs are either deployed or in the latter stages of deployment. In addition, a previously closed VSU was reopened when visa operations were resumed, after having been suspended for security reasons in 2005.

Before submitting an NSDD-38 request, ICE officials, with the support of senior State Department officers from CA and DS, conduct a post-specific, on-site assessment. The visit provides an opportunity for the team to consult with officials at post to validate the interagency assessment of the risk environment, determine

the feasibility and timing of establishing an office, and brief the COM on the role of the VSU. In June 2010, a joint State-ICE team conducted on-site assessments at three posts.

Before closing, I would like to expand on the critical role our consular officers play in enforcing U.S. immigration policy and protecting our borders. The State Department has unique expertise and authorities required to carry out the responsibilities for issuance of visas to eligible aliens. Our 246 consular sections, in 167 countries, are staffed by more than 1,500 officers, nearly 4,000 locally engaged staff and 100 full-time DS agents assigned as ARSO-Is devoted to fraud prevention efforts. We are on the ground to coordinate data sharing with foreign governments, and we communicate with them directly on a regular basis.

We carefully screen all visa applications. All visa applications are adjudicated according to the law, taking into account the circumstances of the alien, as well as any information made available by any of the relevant U.S. government agencies at the time of the visa application.

Prior to the visa interview, all applications are screened against multiple biographic and biometric databases, including the Consular Lookout and Support System (CLASS, our online repository of visa-lookout information). Almost seventy percent of the records in CLASS are provided to us by other U.S. government agencies. Applicants' fingerprints are compared to holdings in the FBI's Integrated Automated Fingerprint Information System (IAFIS) and relevant

DHS databases. Their photographs are processed through our facial recognition database, which is the largest of its kind in the world. There is a complex, layered approach to screening, which includes multiple steps by ICE and U.S. Customs and Border Protection (CBP) to ensure the security of the visa issuance process. As a result of this layered screening, and/or based on information developed during the visa interview, hundreds of thousands of applicants annually undergo additional interagency counterterrorism, criminal history, immigration history, and other checks. In addition, working with ICE and CBP, and with other agencies, we constantly review our databases for any visa holders about whom new derogatory information has become available and revoke these visas as appropriate.

Consular Affairs shares its visa consolidated database widely within the interagency group responsible for national security. In fact, several data mining and analytical tools have been developed based on the information we share. We are told by CBP that the case notes from adjudicating consular officers seen by CBP officers at our Nation's ports of entry are invaluable in determining admissibility to the United States. This robust sharing of data between agencies is part of the layered approach to security adopted after 9/11. Interviews and checks by consular officers, constant vetting of applicant data by CBP's National Targeting Center-Passenger, screening by Visa Security Units overseas and ICE agents in the U.S., and the robust use of biometrics are just a few of the measures in place to confirm the identity and intentions of those wishing to enter the United States. These measures are constantly reviewed and enhanced as needed.

While national security is paramount, the visa function also has foreign and economic policy implications, directly tied to U.S. relations and contacts with other nations and people. Our professional staff understands foreign cultures and follows overseas political, legal, and economic developments in a way that gives the Department special expertise over matters directly relevant to the full range of visa ineligibilities.

Officers devoted to visa adjudication are highly qualified, well trained, and very motivated professionals committed to a career of serving the United States overseas. These employees have the foreign-language skills necessary to stay abreast of local trends and conduct visa interviews—1,067 of our consular officer positions require fluency in one of 65 local languages.

Training gives our officers particular expertise in identifying individuals who possess fraudulent documents, are imposters, or are otherwise attempting to enter the United States improperly. Consular training at the Foreign Service Institute begins with the basic consular course—an intensive 31-day curriculum that includes two weeks of security-related training, on subjects such as recognizing and combating fraud, terrorist mobility, and alien smuggling.

Officers beginning their foreign affairs careers are fully prepared for this critical responsibility, and are closely supervised by experienced officers who review adjudications daily. Officers receive continuing education, including courses in fraud prevention and advanced security name-checking. Training

continues throughout consular officers' careers, through distance learning and other methods. And as an institution, we continue to work with all of our interagency partners on new ways to make the overall process of screening visitors to the United States more effective and efficient.

Esteemed members of the Subcommittee, we are pleased with the partnership we have built with the Department of Homeland Security and I assure you that we work together every day to make full use of emerging technologies and information to ensure safe, secure, and efficient borders. I welcome your questions.

Mr. GALLEGLY. Thank you, Mr. Donahue.
Ms. Kephart?

TESTIMONY OF JANICE L. KEPHART, DIRECTOR OF NATIONAL SECURITY POLICY, CENTER FOR IMMIGRATION STUDIES

Ms. KEPHART. Thank you, Chairman Gallegly and Ranking Member Lofgren, for the opportunity to testify today on the importance of assuring that security is embedded throughout the visa process.

Let me start today with my conclusion. Extending appropriate visa adjudication authorities judiciously where necessary helps build a stronger and more flexible border framework that can adapt to changes in terrorist travel methods as we move forward.

The 9/11 Commission's recommendations emphasize that terrorists are best stopped when "they move through defined channels." Remember that of 23 hijacker applications, 22 were approved.

The first and best opportunity to stop terrorist travel is in the visa adjudication process where triggers for further investigation can mimic what should have been triggers in the 9/11 investigation, such as recently obtained new passports, suspicious or fraudulent travel stamps, indicators of extremism, or incomplete applications or fraudulent applications.

However, we know that new terrorist travel methods evolve constantly, and it is actually DHS and ICE that have the best access to the information and expertise to expose those methods because only ICE holds the open-case information and sensitive data we need to identify terrorists.

In addition—and this is really important to our discussion today—a foreign national's affiliation with terrorism may develop after or because of an already-existing U.S. visa. Osama bin Laden and colleague Sheikh Mohammad specifically sought out individuals with existing U.S. visas. Thus, in my view visas need periodic review, especially prior to U.S.-bound travel. Revocation investigations need to be as robust as those conducted by VSU's prior to visa issuance. In fact, as we know already, visa revocations can be the linchpin to deny entry or support removal of those already in the United States.

With the death of bin Laden and an increase in retaliatory statements by al Qaeda, we may now experience even more splintering of al Qaeda into factions or "lone wolf" type terrorists. Our consular posts will be under more pressure than ever to get adjudications right, most particularly in visa-issuing countries where there is currently no formal policy on pre-travel vetting. Today visa waiver travelers coming for business or pleasure are vetted through ESTA, a DHS travel authorization program which operates as a virtual mini-visa for nationals of visa-waiver countries.

But visa-issuing countries have no such standardized pre-travel vetting. This is a significant gap, even if the State Department is trying to fill it in right now. There is no formalization of that. In these instances, revocations could occur without the threat posed by airline travel of a terrorist such as the Christmas Day Bomber.

From the lens of a former 9/11 Commission staffer, my view is that extending visa revocation authority to DHS and expanding VSU's worldwide is common sense from a legal, policy, and bureaucratic viewpoint. VSP security-related reviews in high-risk areas of the world and throughout the visa process are essential. From a policy perspective, security has to trump infrastructure, political, or diplomatic considerations that are not always in line with security

decisions. From a legal perspective, it is DHS that is responsible for both homeland and border security at heart. Thus, what VSU's add to security of visa processing at consulates overseas is invaluable because it is what they do.

The State Department has its top mission as diplomacy and is an absolutely and necessary function, and the work they do is extremely important. But State's chief of missions really should not have a say in determining whether VSU presence should be at a consular post or not.

Moreover expanding VSP authority to security-related revocations is feasible. The VSU's combine intelligence operation and law enforcement to intercept terrorists and constrain terrorist mobility, as we have already heard today.

Our national security depends in part on the robustness of our border security to keep out foreign nationals with nefarious intentions. Counterterrorism efforts outside of our physical borders and throughout the entire visa process in both issuance and revocation has to be as secure as possible. The entity really with the mission, expertise, and bureaucratic functioning on national security-related immigration cases is DHS. In addition, DHS already has that visa authority by law. An extension of that authority simply to include revocations seems to make common sense. You know, legislation supporting this end should certainly be considered and a priority.

Thank you.

[The prepared statement of Ms. Kephart follows:]

HEARING BEFORE THE

HOUSE JUDICIARY SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

"VISA SECURITY: PREVENTING TERRORISTS FROM ABUSING U.S. IMMIGRATION POLICY"

MAY 11, 2011 at 1:30 pm
ROOM 2141
RAYBURN HOUSE OFFICE BUILDING

TESTIMONY OF

JANICE L. KEPHART

Former Counsel, 9/11 Commission

National Security Policy Director, Center for Immigration Studies

HEARING BEFORE THE
HOUSE JUDICIARY SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

"VISA SECURITY: PREVENTING TERRORISTS FROM ABUSING U.S. IMMIGRATION POLICY"

MAY 11, 2011 at 1:30 pm

TESTIMONY OF **JANICE L. KEPHART**
Former Counsel, 9/11 Commission
National Security Policy Director, Center for Immigration Studies

Introduction

I want to thank full Committee Chairman Smith, Subcommittee Chairman Gallagly, Vice-Chairman King, and Ranking Member Lofgren for the invitation to testify on the importance of the visa security apparatus to curtail terrorist travel to the United States. My testimony is based on the following work, plus additional research specific to today's hearing:

- As a counsel to the Senate Judiciary Subcommittee on Technology, Terrorism and Government Information prior to 9/11;
- As a counsel on the 9/11 Commission "border security team" which produced the *9/11 Final Report* draft recommendations and analysis;
- As an author of the 9/11 staff report, *9/11 and Terrorist Travel*;
- As the National Security Policy Director for the Center for Immigration Studies for nearly the past three years.

At the Commission, I was responsible for the investigation and analysis of the Immigration and Naturalization Service and current Department of Homeland Security (DHS) border functions as pertaining to counterterrorism, including the 9/11 hijackers' entry and acquisition of identifications that are mostly contained in our staff report, "9/11 and Terrorist Travel." My team also produced the terrorist travel portions of the *9/11 Final Report* that were unanimously agreed to and refined by 9/11 Commissioners led by Governor Tom Kean and Representative Lee Hamilton. I have spent the years since the publication of our 9/11 work ensuring, in part, that our border findings, lessons learned and recommendations are properly understood and implemented. I also work to assure that other types of terrorist travel that were not specifically covered as part of the 9/11 investigation are considered under the tenets and intentions of the 9/11 Commission findings, lessons learned and recommendations in light of ever-changing times. To be clear, the views I represent are my own, and not official positions of 9/11 Commission leadership.

I am glad this Committee takes to heart the policy put forth in the *9/11 Final Report* that securing our borders is not only in our national interest, but absolutely essential to our national security. Assuring that we fulfill key 9/11 Commission recommendations piece by piece, by extending

appropriate authorities judiciously where necessary, helps build a stronger and more flexible border framework that can adjust to changes in terrorist travel methods as we move forward. From this vantage point I testify on the Department of Homeland Security's (DHS) Visa Security Program (VSP) today.

Backdrop to Visa Security Program

In the aftermath of September 11 and the knowledge at that time that our immigration system had failed us in not keeping the hijackers out of the country and off our domestic planes, the DHS was created to pull a number of agencies under a national security umbrella. Some of these agencies, like the former Immigration and Naturalization Service (INS), had only a minor mission in national security prior to September 11. After September 11, and before the publication of the *9/11 Final Report* and accompanying *9/11 and Terrorist Travel* monograph, legacy INS was split apart and its component parts were all given a primary mission of countering terrorism. At the time, there was considerable discussion about whether all immigration-related functions, including the Department of State's Consular Affairs, responsible for issuing visas to foreign visitors from overseas, should also be folded into the DHS.

While that consideration faded, the Homeland Security Act of 2002 (P.L. 107-296) gave the Secretary of Homeland Security authority to issue regulations with respect to the issuance and refusal of visas. More specifically, Section 428 of the Homeland Security Act authorizes the DHS to assign DHS employees to consular posts overseas to support the visa process through various functions. This Section 428 authority quickly evolved into what are now the Visa Security Units (VSUs) in 19 countries operated by DHS' Immigration and Customs Enforcement Office of International Affairs. What is perhaps most interesting about the Section 428 language is that it is limited to visa "issuance and refusal;" the provision leaves out of DHS jurisdiction the adjudication of a visa revocations as well as official involvement in the Visa Viper process.

The value of the legislation before this Committee today is that it bundles the visa issuance process with the visa revocation process where it pertains to national security in the hands of the department tasked with national security, DHS. The Department of State retains its power to issue visas as they pertain to foreign and economic interests of the United States, also in line with the overall diplomatic mission of the State Department. Even with the three Memorandums of Understanding and a DOS cable on the subject of missions and responsibilities of the VSUs at consular posts, the clear lines demarking all national security-related visa reviews residing with the DHS (or the intelligence community) and all foreign and economic interest-related visa issuances residing with DOS makes common national security sense. In addition, while there are some minor criticisms of ICE's ability to self-assess its performance by a recent General Accountability Office (GAO) report, a two year old DHS Office of Inspector General (OIG) report provides sufficient detail on the VSU operations to conclude that these units even two years ago were bureaucratically mature enough to handle new responsibilities.

9/11 Commission findings of facts and recommendations support VSUs

The 9/11 Commission did not commence until after the passage of the 2002 Homeland Security Act and the creation of the VSUs. However, while our final report recommendations do not

mention VSUs directly, our terrorist travel monograph specifically references that after the passage of the Homeland Security Act, "State now coordinates visa determinations with DHS's Immigration and Customs Enforcement officers in some overseas ports, including Saudi Arabia." Moreover, our overall 9/11 Commission recommendations emphasize that terrorists are best stopped when "they move through defined channels". The first, and best, opportunity to stop terrorist travel is in the visa adjudication process. It is best to stop at issuance, where triggers for further investigation can be anything from a recently obtained new passport, suspicious (fraudulent) travel stamps, or indicators of extremism, as was the case with the 9/11 hijackers.

Our key 9/11 Commission Findings of Fact show that: (1) visa acquisition was critical to the success of the 9/11 travel operation and execution of the plot; (2) fraud was an essential component of the visa applications submitted by Al Qaeda; and (3) terrorist passports contained indicators of extremism to which only the intelligence and law enforcement personnel would be privy to. Anti-crime, anti-fraud and anti-terror investigations can be intricately tied to each other, and the VSUs are providing a critical function in working alongside other law enforcement overseas in supporting a broad array of national security-related investigations.

Relevant Findings of Fact from *9/11 and Terrorist Travel:*

- **The success of the September 11 plot depended on the ability of the hijackers to obtain visas** and pass an immigration and customs inspection in order to enter the United States. If they had failed the plot could not have been executed.
- **The 9/11 hijackers submitted 23 visa applications during the course of the plot, and 22 of these applications were approved**. During the course of the plot, these visas resulted in 45 contacts with immigration and customs officials. The hijackers applied for visas at five U.S. consulates or embassies overseas; two of them were interviewed. One consular officer issued visas to 11 of the 19 hijackers.
- Fourteen of the 19 September 11 hijackers **obtained new passports** within three weeks before they applied for their U.S. visas, **possibly to hide travel to Afghanistan recorded in their old ones or to hide indicators of extremism that showed ties to Al Qaeda.** The new passports caused no heightened scrutiny of their visa applications as consular officers were not trained, and would not have been privy to, such intelligence.
- Two hijackers lied on their visa applications in detectable ways, but were not further questioned about those lies.
- **Three of the hijackers, Khalid al Mihdhar, Nawaf al Hazmi, and Salem al Hazmi, presented with their visa applications passports that contained an indicator of possible terrorist affiliation.** We know now that Mihdhar and Salem al Hazmi each possessed at least two passports, all with this indicator.
- **There is strong evidence that two of the hijackers, Satam al Suqami and Abdul Aziz al Omari, when they applied for their visas presented passports that contained fraudulent travel stamps that have been associated with al Qaeda**. There is reason to believe that three of the remaining hijackers presented such altered or manipulated passports as well.
- Hijackers Nawaf al Hazmi and Khalid al Mihdhar were the first to submit visa applications because they were originally slated to be pilots. The four hijackers who did

become pilots applied for visas in 2000. The remaining "muscle" hijackers applied in the fall of 2000 through the spring and summer of 2001, three applying twice.

- Twenty-two of the 23 hijacker applications were approved. Eight other conspirators in the plot attempted to acquire U.S. visas during the course of the plot; three of them succeeded. **Five were not part of the plot because they could not obtain visas. (None were denied due to national security concerns.)** One, al-Kahtani, was stopped at Orlando Airport by an astute immigration officer. One dropped out. The other was **Khalid Sheikh Mohammed, the mastermind of the 9/11 plot, who obtained a visa in Jeddah, Saudi Arabia, in July 2001 under an alias.**

While our 9/11 facts made abundantly clear that at least some of the most flagrant fraud employed Al Qaeda would require specially trained and cleared personnel to physically review it to determine its terrorist connection, most especially in indicators of extremism or even the fraudulent travel stamps, in visa issuance, we did not specifically address visa *revocation* namely because it fell outside of our immediate 9/11 facts. However, not always – nor usually – will triggers for further investigation be as obvious as we noted in these findings of fact (which were not obvious at the time). In addition an affiliation with terrorism may develop after – *or because of* – an already existing U.S. visa. Osama bin Ladin and Khalid Sheikh Muhammad specifically sought out individuals with existing U.S. visas.

Thus, informatiou developed after issuance indicating a terrorism affiliation requires the same vigilance as prior to issuance, and a visa revocation is an excellent tool to deny entry, or support removal, if already in the United States. It is the VSU's special agent expertise and access to information that can be the critical element to denying terrorist entry in such cases. With the death of Bin Ladin, and an increase in retaliatory statements by Al Qaeda, we may now experience even more splintering of Al Qaeda into factions or lone wolf-type terrorists. Our cousular officers will be under more pressure than ever to get visa adjudications right.

Thus, the primary point is that the visa process does not eud with issuauce. The visa process continues during the life of the visa. Since visa life cycles (term life of the visa) and types of visas (siugle or multiple entry) are negotiated by the State Departmeut on a case by case basis with countries (United Arab Emirates had ten year visas at the time of 9/11, for example), the ability to review the visa for security-related reasons remains throughout its life span. This is one reason why security reviews of visa revocation and pre-travel to the United States can be equally as important as visa revocations.

Yet again, it is not all about issuance. Those with existiug U.S. visas will be sought after, aud thus review of existing visas prior to travel (although not part of the legislation before this committee today) and revocations should weigh heavily in prioritization at consular posts worldwide. There should, in fact, be a heightened trigger to conduct a security review of visas (alongside a TSA or CBP review of travel authorization) when an air or sea reservation is made to enter the United States, much in the same way an Electronic Security Travel Authorization (ESTA) reviews visa waiver applicants today. Even with ESTA reviews iu place, just to be clear, the VSUs in visa waiver countries where there is a known high rate of fraud and known evolving terrorist threat are a necessary and additional layer of hands-on vigilance that is not cosmetic, but essential, to the health of our border security apparatus.

However, a visa issued to an individual in a visa-issuing country will always be a greater security risk if it is not reassessed immediately prior to travel. This is because visa-issuing countries do not use ESTA, so there is no pre-travel security review of the applicant until airline check-in through TSA's Secure Flight. This is where the VSUs can play a key role, both pre-travel in and revocation reviews. A role VSUs do not have now, but falls in a direct linear line to the valuable work they currently conduct on Security Advisory Opinions and visa issuance. This work is equally as difficult, updating information where perhaps little or no derogatory information existed previously. Such vigilance is absolutely critical in non visa waiver (visa issuing) countries, as it is the last stop gap that can assure a reassessment and interview of an applicant pre-travel in a less time-sensitive manner than air travel where review can be limited to pre-boarding for international flights bound for the United States.

Abdulmulltalab's visa issuance

With the limited number of VSUs operational around the world—and not in Nigeria despite its long-known fraud problems-- alongside perhaps a narrower statutory language than intended in retrospect, our nation ended up with the unfortunate wildcard near-success of the 12/25 bomber, Umar Farouk Abdulmulltalab. With a VSU in place in Nigeria, Abdulmulltalab's visa may never have been issued. His visa revocation would most likely have occurred. Either way, he could have been prevented from boarding a plane on 12/24 and attempting to blow up a plane preparing for landing in Chicago on Christmas Day 2009.

The 9/11 Commission recommendations on border and aviation security eerily predicted an attempt such as that made Christmas Day by Abdulmutallab. One of the key phrases from the commission's report is that "for terrorists, travel documents are as important as weapons." This plot has made clear to the world that while travel documents such as visas are as important as weapons to terrorists, air travel itself is also an essential component of the weapon. But without the visa, the operation would never have taken flight.

The 9/11 Final Report and our staff monograph, *9/11 and Terrorist Travel*, hit all the important points - watch lists, visa adjudication and pre-boarding vetting. Other 9/11 recommendations with a direct bearing on Abdulmutallab findings of fact read as follows:

> *Because officials at the borders encounter travelers and their documents first ... they must work closely with intelligence officials.*
>
> *The job of protection is shared among many defined border checkpoints. By taking advantage of them all, we need not depend on any one point in the system to do the whole job. The challenge is to see the common problem across agencies and functions and develop a conceptual framework - an architecture - for an effective screening system.*

We need not go beyond the Christmas Day bomber to conclude that the visa process remains undeniably prioritized towards diplomacy, not security. In late March 2010, three and one half months after the attempted bombing and the intense scrutiny under which the event was reviewed, the *Washington Post* released news that the State Department had not included in its after-action reports that had been under media scrutiny for the prior three months: not once, but

twice, the State Department failed in keeping a U.S. visa out of a terrorist's hands. Abdulmutallab had initially had his visa denied in 2004, four years prior to his 2008 application. In 2004, he applied again, and the initial denial was overturned because a supervisory consular officer decided Abdulmuttalab's father was too prominent in Nigerian politics and finance to upset the U.S. diplomatic applecart in that country and deny his son a visa. Ironically, this was the same father who four years later visited the U.S. embassy in Nigeria and sought to help the U.S. keep his son out of the U.S., only subsequently to have the U.S. decide he was not important enough to listen to.

The legal kicker in this visa story is that on Abdulmuttalab's 2008 application, he lied and said he had never received a prior denial, enough to deny him a visa under law and keep him out of the country. As the matter was "considered resolved," the State Department did not look again at the 2004 denial when the young Al Qaeda operative sought another visa in 2008. Instead, he was granted the multi-year visa he used to attend an Islamic convention in Houston in 2008 and again for airline check-in on Christmas Eve.

What comes to light is that not only was revocation at issue, issuance should have been at issue as well. Yet it was not. The crux of the State Department explanation of the 2004 denial and 2008 visa granted to Abdulmuttalab is as follows, according to the *Washington Post*:

> *A U.S. consular official originally denied terrorism suspect Umar Farouk Abdulmutallab a visa to enter the United States in 2004 after finding false information on his application, but that official was overruled by a supervisor, according to senior government sources.*
>
> *Because the 2004 situation was considered resolved, it was not revisited in 2008, when Abdulmutallab received a second U.S. visa, which allowed him to board a Detroit-bound airliner on Dec. 25, officials acknowledged.*
>
> ***An official said the incident was left out because the move to overturn the initial decision did not seem out of the ordinary. That official and others said that, in reversing the initial decision and granting Abdulmutallab a visa, consular officials took into account that his father was a prominent Nigerian banker with strong ties to his community.*** *There was no derogatory information or suggestion that he had ties to Islamist terrorism.*
>
> *Abdulmutallab first applied for a U.S. visa in Lome, Togo, but was told that he needed to apply closer to his place of residence in Nigeria. He returned to Lagos and filed an application that stated incorrectly that he had never been denied a visa, leading a consular official to deny him one. [emphasis added]*

Clearly, the political status of Abdulmuttalab's father in Nigeria was the driver for overruling the 2004 visa denial. Without Abdulmuttalab's father, it is likely that the Christmas Day bomber would never have gotten a visa at all. Yet, the father's political status was not sufficient to trigger a visa revocation when national security was at stake. This small gap of not adequately reviewing either Abdulmutallab visa *during its life cycle* amounted to a huge failure. Filling

these gaps will never assure 100 percent against another successful terrorist attack, but it will edge border and aviation security ever closer to that assurance.

To be clear, the role of intelligence in preventing terrorist plots is essential, but when teamed with border and aviation security, its relevancy occurs only when: (1) The intelligence community has analyzed information, (2) aviation and border systems have sufficient access to the intelligence in real time, (3) the investigative and decision authority within these systems is sufficient to stop the traveler, and (4) policy structures put security first, especially in the area of visa issuance and revocation. If any of these circumstances is lacking, the risk of terrorist success is high. At consular posts, DHS is best equipped to assure that intelligence and operations are successfully fused to make solid visa issuance, and revocation, decisions. Their mission is right, as well as their expertise. (Both discussed below).

9/11 Commission Stance on the Visa Security Program

On the 9/11 Commission, numerous recommendations apply to the specific orientation of this hearing: the expansion of visa authority to DHS and consequential expansion of the VSUs operated by ICE that support visa adjudication at consulates around the globe. From a 9/11 Commission perspective, the expansion of visa authority and VSUs worldwide makes sense from a national and border security perspective.

While obvious, it is worthwhile to repeat that it is only DHS, by law, that is responsible for both (1) homeland security *and* (2) border security. The State Department has a very different mission. According to State's own statement about mission priorities in its "FY 2004-2009 Department of State and USAID Strategic Plan," diplomacy is the State's top priority, as it should be. Diplomacy is a vital and necessary function for which we should be grateful as a nation; State does arduous work to support U.S. interests with our foreign counterparts.

State's consular functions were created in part to support diplomacy. While State has done a solid job in layering in more full biometric enrollment of applicants; more robust biometric, passport and visa requirements with other countries; more in-person interviews for non-immigrant visa applicants; and a strong visa information system (CLASS), their visa mission remains under a mission of diplomacy, not security. To be clear, the terms "border", "security", "consular", nor "visa" are ever mentioned in the State's mission statement. It is, however, the primary function of DHS' Customs and Border Protection, ICE and US Citizenship and Immigration Services. Thus, what VSUs add to security of visa processing at consulates overseas is invaluable, because that *is* what they do.

While the 9/11 Commission did not ever offer an opinion on what federal government department should have visa authority, we did both (1) acknowledge the Visa Security Units in *9/11 and Terrorist Travel* as a crisis management tool in a post-9/11 environment and (2) continually emphasized that all aspects of our border framework, with emphasis on consular posts, need to be used to curtail terrorist mobility. Our most relevant and pertinent 9/11 recommendation to the issue of securing visa issuance, and the Visa Security Program issue we undertake today, are as follows:

> *Recommendation: Targeting travel is at least as powerful a weapon against terrorists as targeting their money. The United States should combine terrorist travel intelligence, operations, and law enforcement in a strategy to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility.*

While the VSUs were created prior to the 9/11 Commission Final Report, the legal authority supporting the VSP dovetails with the above-quoted recommendation. The VSUs operate today, according to the According to the DHS Office of Inspector General Visa Security Program (VSP) Report (OIG-08-79), to combine intelligence, operations, and law enforcement to intercept terrorists and constrain terrorist mobility at the time of visa issuance. In the DHS OIG's "Results of Review", they conclude that "law enforcement expertise and resources add layer of security to visa process." The report continues with why ICE agents need to be at post, and provide an example of VSU value-added:

> *ICE special agents assigned to VSUs use their expertise in immigration and nationality law, investigations, document examination, intelligence research, and counterterrorism to complement the consular visa adjudication process with law enforcement and vetting and investigation. In addition, ICE special agents assigned to VSUs at post focus on identifying "not yet known" terrorists and criminal suspects and preventing them from reaching the United States.*
>
> *While the VSU screening process is automated, the vetting process requires hands-on presence at post. During the vetting process, ICE special agents need access to relevant documents, such as the visa application and passport, as well as financial, employment, or other supporting documents. For example, three long-term residents of a country with a VSU applied for visas to visit the United States. Consular and VSU system checks resulted in no alerts on the applicants. An ICE special agent assigned to a VSU reviewed the visa application packages, including employment records, and determined that the applicants had merged personal bank accounts with their employer's bank account. Through further investigation, the agent identified a link from the employer to a company identified by the Department of Treasury's Office of Foreign Assets control as a Specially Designated Global Terrorist and Foreign Terrorist Organization. Because an agent was assigned to the VSU at post, a potential terrorism link was identified, the applicants' visas were denied, and further investigation could be performed to identify other related companies.* (p. 9-10)

The value of the VSUs is not simply in anecdotal hits. Rather, they provide crucial functions in recommending refusal of visas, creating lookouts and subject records in a variety of government databases, participate in the Security Advisory Opinion process during visa adjudication, and nominate individuals for watchlisting. ICE special agents also create intelligence reports, conduct investigations and secondary interviewing of applicants, support domestic ICE investigations, identify the latest trends and terrorist travel tactics, and even remove inaccurate derogatory information from law enforcement systems.

While the VSP remains young and is still developing performance measures, the DHS OIG 2008 report indicated that the eight VSUs in existence at that time were providing value then, with

ICE agents recommending denial of 750 visas and identifying 49 "not yet known" terrorists in 2007. They also created 68 watchlist nominations, 933 lookouts, and 557 subject records. While I do not have the latest numbers, I assume that these numbers are significantly higher with 19 VSUs and a continued uptick in performance measures over the past two years.

Conclusion

It is time to extend DHS authority to visa revocation, and expand the VSU operations around the globe. An extension of VSU authority to the entire visa portfolio simply fills in a gap left by the Homeland Security Act of 2002 whereby many of the same types of investigative techniques, expertise and data brought to consular posts by VSU personnel that is now used to stop visa issuance can simply be used—with some training—in the visa revocation arena as well.

The other primary consideration to weigh expansion of authorities is feasibility. With a National Security Directive, three Memorandums of Understanding in place, cables, and robust—even if sometimes challenging—discussions on implementation between the State Department and DHS have resulted in the expansion of VSUs to 19 locations. While insufficient, we are dealing with more than survival of the program abroad. According to the DHS Office of Inspector General Visa Security Program (VSP) Report (OIG-08-79), "the VSP complements the DOS visa screening process with law enforcement resources not available to consular officers to ensure ineligible applicants do not receive U.S. visas."

The national security of the United States depends, in part, on the robustness of our border security to keep out foreign nationals with nefarious intentions. Counterterrorism efforts are best outside of our physical borders, and thus, the visa process—both issuance and revocation—must be made as secure as possible. The entity with the mission, expertise and bureaucratic functioning on border security is DHS. In addition, DHS already has visa authority by law in issuance, and an extension of that authority to revocations makes sense. The VSP should be expanded in operations and authority. The State Department's Chief of Missions should not have a say in determining VSU presence at a consular post; security must trump infrastructure, political or diplomatic considerations. The VSP is effective, offering up counterterrorism investigations and watchlist nominations out of consular posts that would not occur but for their presence. The VSP is the place to rest security related reviews in high risk areas of the world and throughout the visa process and legislation supporting this end should be considered a Congressional priority.

Mr. GALLEGLY. Thank you, Ms. Kephart.
Mr. Alden?

TESTIMONY OF EDWARD ALDEN, BERNARD L. SCHWARTZ SENIOR FELLOW, COUNCIL ON FOREIGN RELATIONS

Mr. ALDEN. Good afternoon, Chairman Gallegly and Ranking Member Lofgren, and distinguished Members of the Subcommittee.

I have researched extensively the issues of national security and immigration, both for my book, "The Closing of the American Border: Terrorism, Immigration and Security Since 9/11," and as project director for the council's independent task force on U.S. immigration policy.

The goal of visa security is to use the visa system as a screening tool to keep out those suspected of having terrorist or criminal links or otherwise posing a security threat to the United States. Successful screening requires pulling together all of the information available to the Government and checking the identities of visa applicants against that information. The question of which agency is in charge or where the individuals doing the screening are located is less important than having an effective system in place.

I have four points.

First, the security review system should be both comprehensive and efficient, allowing for accurate determinations in a timely manner. Security done well will improve not detract from travel facilitation because it permits scarce consular and intelligence resources to be focused on those who may pose a threat while allowing the vast majority of lawful travelers to receive visas promptly.

Second, screening tools have improved immensely over the past decade. In the aftermath of 9/11, there were few good options. The United States had little choice but to scrutinize certain visa applicants on the basis of general profile characteristics—nationality, age, gender, et cetera—that were only loosely connected to the actual risk posed by an individual. That is no longer the case. For the past couple of years, the Government has been pilot-testing a new system in which all visa applicants will be checked quickly and accurately against the information available in the Government's terrorism, border, criminal, and visa databases. In particular, it is my understanding that this process helps to resolve many of the false name matches that plague the current procedures while also identifying security risks that are missed under the current system.

Third, it is time, therefore, to streamline some of the redundant and inefficient security review programs put in place after 9/11 when better options did not exist. The security advisory opinion system in which detailed background checks are done each year on several hundred thousand visa applicants should become more targeted and focused.

Fourth, unnecessary visa delays, some—certainly not all—as a result of cumbersome security screening hurt the U.S. economy. The tourist industry, which is our largest single export, has missed out on a decade of strong growth in world travel. Visas are currently required for some 35 percent of visitors and that number will rise to more than half by 2002 because of growing travel from Brazil, India, and China. In a report on visa delays to be released tomorrow that I strongly recommend to your attention, the U.S. Travel Association estimates that simply regaining our pre-9/11

share of world travel would add $859 billion to U.S. GDP and create 1.3 million jobs. The Commerce Department has said that visa delays discourage foreign investment and keep business travelers, many who are coming here on buying missions, away from the United States. The result is jobs lost at a time when unemployment is near double-digit levels.

Finally, unnecessary visa delays damage the United States' reputation for fairness. I have come to know many of the innocent individuals caught up in lengthy delays because of poorly designed visa security measures. They are scientists and engineers and business people, most of whom have lived in the United States for years who faced long delays simply because they went home for a visit and triggered the background check when they tried to get their visas stamped to return.

One of them, Jay Sarkar, is a microchip designer who helped create Intel's latest generation of chips. He earned a Ph.D. at the University of Texas and almost gave up on this country after facing a 4-month security review in 2008. Today, thankfully, he works for Qualcomm in San Francisco and was awarded one of the small number of green cards given to outstanding researchers.

Another I wrote about recently, Lakshmi Ganti, an electrical engineer with an M.B.A. from Babson College, faced an 18-month security review in trying to return to his job in Boston. Not surprisingly, he lost that job. 5 months ago, he got a new job offer in the United States but was again faced with a security review. I am pleased to report that shortly after I filed my testimony on Monday, he called to tell me that his visa had finally been approved and that he will be able to return to the United States.

It is time to move past worn-out notions that delays in visa processing are necessary for security. They are not. Delays are simply costs with no benefits. It is possible for the U.S. Government to do better on both security and facilitation, and Congress and the Administration should work together to make this happen as quickly as possible.

Thank you.

[The prepared statement of Mr. Alden follows:]

COUNCIL *on* FOREIGN RELATIONS

May 11, 2011

Prepared statement by
Edward Alden
Bernard L. Schwartz Senior Fellow
Council on Foreign Relations

Before the
Subcommittee on Immigration Policy and Enforcement
Committee on the Judiciary
United States House of Representatives
First Session, *112*th Congress

Hearing on "The Secure Visas Act"

I want to thank Chairman Smith, Chairman Gallegly, Ranking Member Lofgren and the distinguished members of the subcommittee for inviting me to testify today on the issue of visa security.

The recent killing of Al-Qaeda leader Osama bin Laden reminded us once again of the wake-up call that came with the September 11, 2001 attack. The investigations that followed revealed serious vulnerabilities in the U.S. effort to prevent terrorist attacks on its soil. One of those vulnerabilities was the visa system. All 19 of the hijackers arrived in the United States on legal visas issued by the State Department, despite information that was available in other parts of the government that, had it been fully shared and recognized, would likely have prevented at least some of the 19 from coming to this country.

There has been tremendous progress in improving the security of the visa system since that time, but as we saw in December 2009 with the failed Christmas bombing attempt, there are still real challenges.

The goal of visa security is to use the visa system as a screening tool to identify and deny visas to those the United States suspects of having terrorist or criminal links. Successful screening requires pulling together all of the information available to the government and checking the identities of visa applicants against that information. The question of which agency is in charge, or where the individuals doing the screening are located, is less important than having an effective system in place.

The Council on Foreign Relations takes no institutional positions on policy issues and has no affiliation with the U.S. government. All statements of fact and expressions of opinion contained herein are the sole responsibility of the author.

I have four key points. First, to the greatest extent possible, the security review system should be both comprehensive and efficient, allowing for accurate determinations in a timely manner. As senior homeland security officials in both the Obama and Bush administrations have said many times, but not always acted on consistently, the issue is not one of "balancing" security and travel facilitation. Security done effectively will improve, not detract from, facilitation, because it will allow scarce consular and intelligence resources to be focused on those who may pose a threat, while allowing the vast majority of lawful travelers to receive visas promptly.

Second, the screening tools available have improved immensely over the past decade, and must be fully utilized. In the immediate aftermath of the 9/11attacks, there were few good options for improving security screening without considerable disruption to many lawful travelers. The necessary information systems, and in particular the necessary sharing of information within the U.S. government, were not in place. The United States had little choice but to scrutinize certain visa applicants on the basis of general profile characteristics – nationality, age, gender etc – that were loosely connected to the actual risk posed by an individual. That is no longer the case. The government now has the capability to do initial background checks on all visa applicants in an extremely timely fashion. This system allows for individuals to be checked against all the information available in the government's terrorism, criminal, border and visa databases, and can identify more quickly and with greater precision those who require additional scrutiny.

Third, it is time therefore to streamline some of the redundant and inefficient security review programs that were put in place after 9/11 when better options did not exist. The Security Advisory Opinion (SAO) system, in which detailed background checks are done each year on several hundred thousand visa applicants, should become more targeted and focused.

Fourth, the costs of the current system are extremely high for the U.S. economy. Visa delays – and not all of these are associated with security, though many are – have a price for the United States, and not just for the individuals delayed. The U.S. tourist industry – which is our largest single goods or services export – has missed out on a decade of explosive growth in world travel. Visas are currently required for about 35 percent of travelers to the United States, but that number is expected to rise to more than 50 percent by 2020 because of the rising number of travelers from Brazil, India and China. In a report that will be released this week that I strongly recommend to your attention, the U.S. Travel Association estimates that simply regaining our pre-9/11 share of world travel – which has fallen from 17 per cent to just 12 percent – would add $859 billion to U.S. GDP and create 1.3 million jobs.[1] The Commerce Department has said that visa delays are discouraging foreign investment and keeping business travelers – many coming here on buying missions – away from the United States.[2] While foreign investment is driven by many different economic and political factors, it is probably not a coincidence that the U.S. share of inward foreign direct investment (FDI) peaked just before 9/11 and has fallen in half since that time, even while other advanced economies have seen their shares remain stable. The result is still more jobs lost to the United States at a time when unemployment is still near double digit levels.

[1] U.S. Travel Association, *Ready for Takeoff: A Plan to Create 1.3 Million U.S. Jobs By Welcoming Millions of International Travelers*, May 2011.
[2] U.S. Department of Commerce, "Visas and Foreign Direct Investment: Supporting U.S. Competitiveness by Facilitating International Travel," November 2007, at http://trade.gov/media/publications/pdf/visas07.pdf.

Finally, I must note that unnecessary visa delays do great damage to the United States' reputation as a country that champions fairness and due process. I have come to know many of the innocent individuals caught up in lengthy delays because of poorly designed visa security measures. They are scientists and engineers and business people – most of whom have lived in the United States for years – who faced delays of months and in some cases years simply because they went home for a visit and triggered the background check when they tried to get their visa stamped for return. Often they have wives and children waiting for them to return to the United States.

One of them, Jay Sarkar, is a microchip designer who helped create Intel's latest generation of chips. He had earned a PhD at the University of Texas, and almost gave up on the United States after facing a four-month security review in 2008. Today, thankfully, he works for Qualcomm in San Francisco and was awarded one of the small number of green cards given to "outstanding researchers." Another whom I wrote about recently, Lakshmi Ganti – an electrical engineer with an MBA from Babson College – faced an 18-month security review in trying to return to his job in Boston in 2008-2009.[3] He wrote to me 15 months into his ordeal: "For a few months I was ok with the delay, and in my mind justified it as—greater good—national security/safety procedures…but 15+ months of background checks…on someone who has a clean record? Impossible to rationalize." By the time his review was completed and his visa was approved, he had lost his job. Five months ago he got a new job offer in the United States, and went to the U.S. embassy in New Delhi to re-apply, but was again thrown into a security review. He is still waiting for an answer. For too long, we have wrongly equated processing delays with security. The U.S. government has developed a better system, and should move ahead promptly to implement it fully.

Background

The effort to improve the security of the visa system did not begin after 9/11. The State Department created the first terrorist watch list established by any of the border security agencies, known as TIPOFF, in 1987, and pressed the intelligence community to share information on suspected terrorists so their names could be added to the list. But the system was far from adequate. Indeed, in 1993 a visa was mistakenly issued in Sudan to Sheikh Omar Abdel-Rahman, known as the "Blind Sheikh", who masterminded the first attack on the World Trade Center towers in 1993. Rahman was a well-known Islamic radical, and his name was on the TIPOFF watch list. But at the time the list was only on microfiche, and the local hire in the embassy in Khartoum failed to check the list before Rahman's visa was issued. Following the 1993 attacks, the State Department moved to transform TIPOFF into a modern, computer-based watch list system, and then integrated it into the larger Consular Lookout and Support System (CLASS) database that is available to all consular officers and also contains the names of anyone denied a U.S. visa in the past.

In the wake of 9/11, the government initiated an additional series of background checks aimed at identifying terrorists seeking visas to come to the United States. The most significant, created in January 2002, is known as Visas Condor. The checks are done routinely for most male nationals of more than two dozen countries (the so-called "List of 26") that are seen as posing a potential terrorist threat, and for others at the discretion of the consular officers. In some posts such as Syria, every applicant is normally referred for an SAO.

[3] Edward Alden, "America's National Suicide: The U.S. needs this man, but it won't let him in. The Orwellian tale of an immigration ordeal." *Newsweek*, April 10, 2011 at http://www.newsweek.com/2011/04/10/america-s-national-suicide.html.

A second review known as Visas Donkey provides additional scrutiny for those whose names come up as a hit against a name listed in CLASS. After 9/11, the number of names in CLASS roughly doubled – to nearly 20 million today – because the FBI's National Criminal Information Center (NCIC) database on convicted criminals was added to the CLASS database. The NCIC data includes both serious criminals and minor offenders like DUIs or shoplifters. If the name of the visa applicant matches a name in the database, then an SAO background check is initiated. The "Donkey" review poses particular problems due to the number of "false positives" – i.e. Names that are similar but not the same person as someone listed in CLASS. This is particularly so in countries such as India, China and Pakistan where certain surnames are extremely common. The CLASS system does not include dates of birth that would help to resolve false positives more quickly. I have been given estimates by government officials that anywhere from 90 to 99 per cent of the "hits" under CLASS are false positives, but the consular officer does not know this. All he or she knows is that a hit has occurred and the case must be sent back to the FBI and other relevant agencies in Washington for clearance before the visa can be issued.

The other large category of SAO checks is known as Visas Mantis, and it applies to individuals who have some sort of scientific or technical expertise. Established in 1998, the goal is to prevent espionage or the transfer of information that could be useful in foreign weapons programs, the same set of concerns dealt with through what are known as the "deemed export" requirements. Individuals studying or working with an array of "sensitive" technologies as enumerated in the U.S. Technology Alert List are normally subject to this review. After 9/11, however, amid growing fears over weapons proliferation, the number of individuals checked under Mantis each year rose from about 1,000 to more than 20,000 by 2003, and has grown further since then.

The SAO process requires that a request go out from the consulate or embassy to all U.S. government agencies that may have relevant information about the visa applicant. The State Department cannot issue a visa to that applicant until it receives an affirmative response from each of these agencies (a different procedure currently exists for Mantis, as will be explained below). The applicants are told only that their visa application has been suspended while it undergoes "administrative processing." In total, the State Department refers nearly 300,000 visa applicants each year for SAOs, a not insignificant number given that the United States issues about 6 million visas each year. In some embassies, the numbers are much higher. In Kuala Lumpur, Malaysia, according a recent State Department Inspector General report, SAO requirements affect more than 13 per cent of even successful applicants.[4]

In most cases the SAO checks are carried out promptly. Condor checks, for instance, average just three days. But individual cases can take much longer, and there have been times when the backlogs have grown significantly. In 2003 and 2004, the GAO reported, the average processing time for SAOs rose to more than two months, and many cases took far longer.[5] Significant backlogs, though not as long, arose again in 2008 and early 2009. And currently there appears to be a smaller new spike in delays, though this is based on anecdotal evidence.

---

[4] United States Department of State, Office of Inspector General, Report of Inspection, Embassy, Kuala Lumpur, Malaysia, Report Number ISP-I-10-74A, August 2010, at http://oig.state.gov/documents/organization/147028.pdf

[5] Government Accountability Office, *Border Security: Improvements Needed to Reduce Time Taken to Adjudicate Visas for Science Students and Scholars,* GAO 04-371, February 2004 at http://www.gao.gov/new.items/d04371.pdf; and the follow-on report *Streamlined Visas Mantis Program Has Lowered Burden on Foreign Science Students and Scholars, but Further Refinements Needed,* GAO 05-198, February 2005.

Improvements to the Visa Security Process

The central conclusion from the investigations of the 9/11 Commission and other evaluations was that the lack of effective information sharing within the U.S. government was at the heart of the breakdown that allowed the attacks to occur. With respect to visa security, the challenge is to use information systems to ensure that any intelligence available to the U.S. government about a visa applicant can be accessed, and acted upon, promptly.

While I am not aware of all the details, over the past two years the administration has been running pilot tests on a more comprehensive system that could do much to improve information sharing and streamline the current SAO procedures. This new system allows for all visa applicants to be checked routinely against databases that include all of the terrorist watch list, criminal, arrival/departure, overstay and other information available to the U.S. government. The goal is to search for actual intelligence or criminal information on each individual visa applicant, rather than checking applicants simply because they fit a certain profile or because their name matches as a hit in CLASS. This new system has been tested to run alongside the current security review system, and the pilot tests showed that not only did it identify everyone who was deemed to pose a risk under the current SAO process, the computer checks also identified additional individuals who had been missed under the current process.

The system is also highly efficient. The checks take no longer than 72 hours, which means they can be initiated upon receipt of the visa application and in almost all cases are completed before the visa interview is held. False positives under CLASS are resolved much more quickly than under the current system. Those applicants who produce derogatory information under the new system are then referred for the detailed background checks required under the SAO process. Instead of the several hundred thousand SAO reviews currently done each year, the new system would likely reduce that number into the low thousands. This would free up valuable government staff time that is currently being devoted to reviewing applicants who pose no risk, and instead allow for greater investigation of those who may pose such a risk. In other words, the new system would better for both security and facilitation.

My understanding is that there remain some issues to iron out before the system can be fully implemented, but the administration should be encouraged to move to full implementation as quickly as possible.

Once the new system is in place, it will make the current Condor and Donkey checks redundant, and these should be phased out. The administration has already indicated a positive willingness to move in this direction. Two weeks ago, DHS announced in a Federal Register notice that it would largely end still another layer of routine border screening for most visitors from countries of concern. This system, known as the National Security Entry-Exit Registration System (NSEERS), was created in 2002. The NSEERS system held some logic in 2002, by requiring that most travelers from the List of 26 countries be automatically subject to secondary screening upon arrival in the United States. But it has since been superseded by other, better security screening procedures. These occur not only through the visa process, but for travelers from visa waiver countries through the Electronic System for Travel Authorization (ESTA), for all incoming travelers as a result of CBP's Automated Targeting System, and at the point of inspection as a result of US-VISIT. As DHS said last week in announcing the changes to NSEERS, "DHS has determined that

---

5

recapturing this data manually when a nonimmigrant is seeking admission to the United States is redundant and no longer provides any increase in security." [6]

Similarly, when the administration gets the new visa check system up and running – which some government officials tell me will take as much as a year but others insist could be done almost immediately – the administration should in the same fashion eliminate the routine, post-9/11 security background checks under the Condor and Donkey programs.

The one exception should be the Visas Mantis checks, which target people who would not necessarily be identified in the course of terrorism or criminal-related background checks. I would like to take the opportunity here to praise both DHS and State for an initiative implemented two years ago that remains in place. As a result of careful internal analysis of the data on those undergoing Mantis reviews, the two departments discovered that, in the cases where other agencies identified security risks with a particular applicant, such information came to light very quickly. There was simply no reason for these determinations to take months, because if there was derogatory information, it generally appeared within 10 business days or less. So the departments have set a sensible internal deadline, under which visa applicants who are screened under Mantis now have their cases moved forward if no agency raises an issue within two weeks after the SAO process is initiated.

I would urge the administration to reduce the number of Mantis reviews, however. There is no plausible security reason that the number of individuals subject to those checks to has risen to the current levels. The security of scientific information has long been a difficult issue for the United States. We gain tremendously as a country from scientific openness, in part because the quality of our universities and of our most innovative companies attracts many of the world's best and brightest. It is of no small importance that half of the companies founded in Silicon Valley had immigrant founders or co- founders. This matters not only for America's economic success, but for its national security as well, which depends on maintaining the lead in the technology of modern warfare. The United States must ensure that efforts to improve security of some sensitive scientific information do not undermine the free flow of scientific information from which we as a country benefit immensely.[7]

I want to be clear that such security reviews – whether under the current SAO system or in the alternative being pilot-tested – are not intended as a substitute for the judgment of the consular officers in an overseas post. Most applicants are rejected for visas not because of hits against criminal or terrorist databases, but because the consular officer has reason to believe that they will overstay their visa, or is otherwise not persuaded that the purpose of their intended travel to the United States is legitimate. Security reviews are not intended to replace consular judgment, but to offer an additional, valuable tool for enhancing security in the visa process.

[6] Departement of Homeland Security, Office of the Secretary. Removing Designated Countries From the National Security Entry-Exit Registration System (NSEERS), Federal Register / Vol. 76, No. 82 / Thursday, April 28, 2011 / Notices p. 23830.
[7] See *Beyond Fortress America: National Security Controls on Science and Technology in a Globalized World*, Committee on Science, Security, and Prosperity; Committee on Scientific Communication and National Security; National Research Council, 2009.

The Costs of the Status Quo

Delays in visa processing have been a chronic problem over the past decade, though one in which there has been some real improvement, albeit inconsistent. Visa security reviews are only one factor in those delays, which can also stem from wait times for interviews or other elements of routine processing. And visa delays are only one reason that the United States has become a less attractive destination for overseas travelers. But the economic consequences are significant.

Over the past decade, the United States has lost a third of its market share in international travel, even as Europe has seen its share increase. Gary Locke, the Secretary of Commerce nominated to become U.S. ambassador to China, has said in talking about visa delays that "the United States often makes it too difficult for foreign company executives to enter here to do business—a shortcoming that has had a tangible cost for American businesses by shutting out some of their best customers." The United States has increasingly lost its attractiveness as a location for international business, scientific, and even religious conventions because too many participants cannot obtain visas in a timely fashion. One example cited in the forthcoming U.S. Travel report – Houston lost the 2014 World Petroleum Congress to Moscow, at a cost of 9,000 visitors and $10.7 million in revenue for the city.

There also appears to be an increasing flow of talented Indians and Chinese who were educated at U.S. universities returning home; fewer are seeking visas to work in the United States, and more are taking their American degrees and returning home.[8] Much of this is no doubt driven by increased economic opportunities in those countries, but visa and immigration issues appear to play a role as well. In a highly competitive global economy, the United States simply cannot afford to drive people away through measures that are not needed for enhanced security.

And I want to emphasize that many of the people who get caught up in the security review process are exactly the sort of people the United States wants here. They are mostly educated, reasonably well off people who have chosen to come to the United States to study, or to work, to visit or to do business. Many of them only trigger the security review because they have returned home for a visit, or due to the death of family member, after years of living legally in the United States. Yet as a result of the current security review process, we have thrown many of them into a nightmare worthy of Kafka. They are never told why their visa applications are delayed, only that they are subject to "administrative processing"; they are given no timetable for how long that processing will take; if they have questions, they are told to either check a website that tells them nothing or call a hotline that tells them nothing. And this experience can go on for many months.

What amazes me about many of these individuals is how little anger or bitterness they express towards the United States. They are frustrated of course, and saddened by the inability of our government to do a better job of distinguishing between friends and enemies. But they love the United States for the opportunities it has offered them in their lives, and they want nothing more than to return.

[8] Miriam Jordan, "Long Prized Tech Visas for U.S. Entry Lose Cachet," *Wall Street Journal*, May 7, 2011.

Conclusion

Alan Bersin, the commissioner of Customs and Border Protection at DHS, observed in a recent speech that "security and the facilitation of trade are two sides of the same coin. Each reinforces the other. We can secure *and* expedite legitimate trade and travel through risk segmentation." The same applies to the visa process. Through effective use of intelligence, screening and data analysis, we can better identify and scrutinize the small number of individuals who may pose a security threat to the United States, without disrupting the timely issuance of visas for the vast majority of those we want to come to this country.

It is time to move past worn-out notions that delays in visa processing are necessary for security. They are not. Delays are simply costs with no benefits. It is possible for the U.S. government to do better on both security and facilitation, and Congress and the administration should work together to make this happen as quickly as possible.

Thank you, and I would be happy to respond to your questions.

Edward Alden is the Bernard L. Schwartz senior fellow at the Council on Foreign Relations (CFR), specializing in immigration, visa policy and U.S. economic competitiveness. Mr. Alden is the author of *The Closing of the American Border: Terrorism, Immigration and Security Since 9/11*. He was the project director for the *Independent Task Force on U.S. Immigration Policy*, which was co-chaired by former Florida governor Jeb Bush and former White House chief of staff Thomas F. McLarty.

---

s

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

Mr. Alden, in your written testimony, you state unnecessary visa delays do great damage to the United States' reputation. That is page 3, first sentence. Correct? Are you saying that the opinions of foreign countries should take precedence over the safety of Americans?

Mr. ALDEN. No. Actually what I am worried about is the opinions of people who have come to the United States, have worked in the United States, often in the high technology and other sectors, and

want to be part of this country and its economy. So it is not the opinions of foreign governments. I think that is irrelevant. It is the impression we leave with skilled would-be immigrants who are thinking do I want to come to the United States or do I want to stay home in India or in China or do I want to go to Europe? If I am a talented individual, where do I want to work? That is where we hurt our reputation. I am not worried about what foreign governments think. I am worried about what individuals who can contribute——

Mr. GALLEGLY. From foreign countries.

Mr. ALDEN. From foreign countries. But many of them have contributed greatly to our economy and continue——

Mr. GALLEGLY. But isn't the word "unnecessary" a little subjective?

Mr. ALDEN. I don't think so because my understanding is that we have the capability, due to improvement in information management, to do more effective security screening with fewer delays. I think our goal should be both security and facilitation. It is not an either/or question.

Mr. GALLEGLY. Mr. Donahue, has the State Department headquarters established specific reasons which has communicated to all the embassies and consulates for which a request for establishment of a VSU at the visa-issuing post overseas may have been refused?

Mr. DONAHUE. Thank you for the question, Mr. Chairman.

We have not established any specific guidelines. We certainly support and we work very hard working with our VSU or ICE colleagues to establish new offices in all the places that we have jointly agreed they should be. The NSDD-38 requires that an Ambassador or a chief of mission at a post makes a determination about all people that come. And these chief of missions, whether they are State Department or they are a member of another agency—come from another agency or they come from the military, they come from the Hill, they come from the private sector—and they are tasked with the responsibility to ensure that every member of their mission is secure and is doing the most effective job for the U.S. Government. They have to make that decision.

That being said, we work very closely with ICE in their presentations for their NSDD-38, but everyone going out to the post, no matter what the agency is, including State Department officials—there must be an approval from the chief of mission for that person to come out to post.

Mr. GALLEGLY. Would you ever see a situation where State would ever deny a request that would enhance national security?

Mr. DONAHUE. I cannot imagine what that would be, sir.

Mr. GALLEGLY. Ms. Kephart, in your opinion, should aliens whose visas are revoked on terror or national security grounds be allowed to access the Federal courts to appeal their revocation?

Ms. KEPHART. You know, when you are dealing with national security cases, you are dealing with national security information. The issue is a longstanding one. This is the same issue that the National Security Unit at the legacy Immigration and Naturalization Service dealt with too in cases pertaining to those currently in the United States who are seeking removal of—and the national se-

curity information there. I don't think it is ever a good idea to put, number one, State's authority to issue a visa at stake. It is a discretionary issue. The courts have decided this again and again in the circuits, and it is not up for judicial review according to four of our circuits.

Furthermore, you are dealing with national security information, as I said, and putting that system into chaos is not a good idea from a national security perspective at all.

Mr. GALLEGLY. Thank you.

I see my time has expired, but can I just add one additional question at the end? Do you think that part of this process, should they ever get into the courts, that it could force the Government to release classified information that might be very important and in our national security?

Ms. KEPHART. Right. I didn't state it clearly enough, but when I was referring to national security information, I was referring to classified information. Yes, sir.

Mr. GALLEGLY. Okay, that is fine. Thank you very much, Ms. Kephart.

Ms. Lofgren?

Ms. LOFGREN. Thank you, Mr. Chairman.

I think we might actually have more agreement than I thought when the hearing began because, as I understand it, when someone comes and applies for a nonimmigrant visa, the State Department is going to run it through your CLASS database, but you are only going to run it through the TECS database, if you have got a Homeland Security person there stationed abroad. Is that correct?

Mr. DONAHUE. It is partially correct. Many of the TECS files are transferred over to the CLASS database, and so we check a lot of the records against records that are in TECS. But I think you need to see it in the larger process because, first of all, under the current process, after the visa issued, that record is then reviewed in a recurrent vetting process, something that was recommended by Ms. Kephart. We have a recurrent vetting process that looks at all of the visas that are extant and checks to see is there any other data in——

Ms. LOFGREN. Well, I think that is a good idea.

Mr. DONAHUE [continuing]. Any sources. And I receive every day numerous requests to revoke, and we do revoke. In fact——

Ms. LOFGREN. Well, in your testimony, you indicated you have never—I mean, when Homeland says don't do this, you never once have failed to follow that.

Mr. DONAHUE. That is right.

Ms. LOFGREN. So that is a piece of good news.

Here's a question. The GAO report—one thing that kind of jumps out is that the ICE agents are not necessarily receiving language or country-specific training, and that might not matter in some countries, but I think it would be very material in some other countries.

And so when I go abroad and I visit with consular officers and I look at how this goes, one of the questions I have always had is couldn't we break down the bureaucratic barriers. I think we ought to run every applicant through the TECS system. You know, you got a DHS person sitting next to a State Department person. They

are all on the same team. I mean, why don't we have the State Department just run the names through, and then if there is value added to the law enforcement people, they have got unique training for that. But if the database is in the U.S., if you don't have a DHS agent with the language skills so they can't actually do the interview, I am wondering what is the value of having a person without the language skills stationed in a place, for example, in Yemen.

Mr. COTE. Congresswoman, we do actually have language-capable VSU personnel overseas, and during our recruiting process, we do recruit for the language capabilities.

Ms. LOFGREN. So in every case, we wouldn't send an officer over unless they spoke the language of the country they are being stationed in?

Mr. COTE. Not at every post, but there have been some instances where the post has required language training, and we have sent people to language training——

Ms. LOFGREN. I wonder if you could just, you know, after the hearing, give me a list of the agents and the language capabilities and where they have been sent and the instances where we have a match and the exceptions to that. That would very interesting to me.

Mr. COTE. We will provide that.

Ms. LOFGREN. Mr. Alden, you have had an opportunity, I think, to take a look at the legislation that has been discussed. Do you have any views on whether the bill accomplishes what you think needs to be done in terms of security as well as efficiency?

Mr. ALDEN. I think to echo some of the comments that you have made, I think the real issue is what the VSP agents are doing in the embassies where they are located. And the GAO report highlighted the need to get a better handle on that. If all we are talking about is running names against additional databases, this can be done from the United States. It can be done at a fraction of the cost.

Ms. LOFGREN. It would be a lot cheaper.

Mr. ALDEN. A lot cheaper than putting people in the embassies. So the question is are we talking about the development of more of an elite corps so individuals with real language training, local law enforcement contacts, much like the FBI attaches or the CIA station personnel that we have abroad? If we are talking about the development of that sort of capability, then I can see it adding a lot in terms of what Ms. Kephart talked about in trying to identify indicators of terrorist travel.

What I don't see—and I am happy to be corrected—is that DHS has a plan for developing that type of capacity. It seems to be more just getting an ICE agent in place.

Ms. LOFGREN. Well, I think we are going to get a report on that subsequent to this.

Mr. ALDEN. And I think it is important to try to clarify that.

Ms. LOFGREN. It just seems to me that we ought to break down the barriers between the two Departments to have access to the database. That is just to me a simple thing. And once we do that, assuming that we have got our technology in place—you know, if there is a problem with somebody, it would be nice to know it before we issue a visa and not issue the visa. That is a lot better than

revoking. Obviously, if you find out later and you need to revoke, you do, but the earlier you catch it, the better of you are going to be, it seems to me. That is a suggestion I would make, and I think to some extent this is a system that has worked as envisioned and maybe could be expanded with some interagency collaboration.

And I see my time is up, Mr. Chairman. So I will yield back.

Mr. GALLEGLY. I thank the gentlelady.

The gentleman from Florida, Mr. Ross?

Mr. ROSS. Thank you, Mr. Chairman.

Mr.—it is Cote? I appreciate that.

Let me ask you about the security process, I mean, the screening process. Do you have an opinion as to whether the screening process—I mean, we have got the 2004 intel requirements that they have in-person interviews. Do you think that the best place to do the screening is in the United States or at the consular office?

Mr. COTE. I think that the best approach is to have a layered approach, and the layered approach starts with initial screening with databases and information sharing between the agencies that are involved in the national security process.

Mr. ROSS. Go ahead. I would assume, though, that you would think that we should have an in-person interview at least in the consular office.

Mr. COTE. Absolutely. We believe that there is no finer capability of not having law enforcement-trained person, boots on the ground so to speak, there to be able to look at documents, do interviews, collaborate with our State Department colleagues and other law enforcement agencies at post, along with bringing the law enforcement expertise to that process.

Mr. ROSS. And if we had had that in place prior to September 11th in 2001, we probably would have prevented a major catastrophe.

Mr. COTE. I think it would have certainly enhanced the process, yes.

Mr. ROSS. Now, I know the GAO has issued a report, and according to the report, over one-quarter or about 5 of 19 posts of the VSP are located at embassies and consulates that are ranked outside of the top 50 risk posts identified by DHS and State. Do you know what decision-making process was followed to place the VSP agents at these locations instead of high-risk locations?

Mr. COTE. Well, we have to start out by looking at how they are ranked, and out of the over 200 visa issuing posts, they are ranked as far as risk is concerned. I can tell you that all the VSU's are within the top 100, and I think as far as getting the expansion of the program out there at least initially, we wanted to get to any one of those posts that we could get to as quickly as possible to secure the posts and work with our colleagues there. So the highest-risk posts are still our goal.

Mr. ROSS. And in furtherance of that goal, what is being done, can you say, to enhance that strategic plan?

Mr. COTE. Our 5-year strategic deployment plan is still in place. It is consistent with what we plan to do going forward and having the opportunity and the resources to do that, we will. It is one of our top priorities.

Mr. ROSS. Thank you. I also note that the report indicated that since the establishment of the program in 2003, the VSP tracking system did not collect accurate comprehensive data on VSP performance measures such as the time spent by VSP agents on visa security activities or investigations, training provided to consular officers, and assistance and liaison activities provided by VSP agents. In fact, the GAO recommended that the Department of Homeland Security ensure that the VSP tracking system collects reliable data on all performance measures to accurately evaluate and report on VSP performances.

Do you think that the Department of Homeland Security needs to improve the tracking of the VSP activities and performance?

Mr. COTE. We concurred with the majority of that. Since the report, we have put into place a new tracking system that has those measures put into it, and we are tracking all the recommendations that the GAO report had.

Mr. ROSS. You are. Good.

Mr. COTE. We are.

Mr. ROSS. Ms. Kephart, do you think that the Visa Security Program should be expanded?

Ms. KEPHART. Yes, absolutely. The additional positive that the VSP provides—and the DHS OIG report from 2008 makes this very clear—is that it adds a layer of on-site investigative expertise that would not otherwise exist. So you can have not only an analysis of individual cases, but you can have an analysis of ongoing methods that are developing in terrorist travel. You cannot have that necessarily by simply a technology check. I agree with Ranking Member Lofgren that you need to make TECS available across the board, but that technology access is only the base for an investigation. You need to have folks on board to actually conduct those investigations, and the DHS OIG report has a very good example—anecdotal—of terrorist affiliations amongst three people that were only discovered because VSP was on site.

Mr. ROSS. Thank you.

I see my time is up and I yield back.

Mr. GALLEGLY. I thank the gentleman.

The gentlelady from Texas, Ms. Jackson Lee?

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

Could I ask Mr. Donahue to move the time clock? Because I cannot see it. Just a little bit over. There we are. Thank you very much. And the Chairman knows I always want to comply with the time clock.

Let me thank both the Ranking Member for raising some of the questions that she raised.

But I would out of personal privilege like to acknowledge the Ambassador from Kenya who had the privilege of studying at the University of Texas Medical Center some 30 years ago, which I think indicates the kind of people that do come to the United States. But he now serves as the Ambassador to the United States from Kenya, and I would like to acknowledge him this afternoon and thank him for his presence here.

Let me just ask Mr. Cote.

Mr. COTE. It is Cote, Congresswoman.

Ms. JACKSON LEE. It is Cote, okay. I was tempted to say it but did not see an accent.

But in any event, is it just your assessment in the position that you had that most of the people seeking to come into the United States, if you look globally of coming for a productive purpose, when you look at visas across the board in your work?

Mr. COTE. I would that would be correct.

Ms. JACKSON LEE. Mr. Donahue, what has been your assessment? I am not sure how long you have been in your position, but in dealing with visas, what have you seen is the landscape?

Mr. DONAHUE. I would agree with that assessment. I have been doing it for 28 years and the vast majority of people applying for visas are coming for positive reasons.

Ms. JACKSON LEE. And, of course, most will say it only takes one and we understand that. We have gone over and over again as to what happened with 9/11. We know that many of the individuals were there with visas and some of them—I think the term that we have heard—had "clean skin," had no records, so that even as they were issued overseas, there was no derogatory information that might have generated their presence at least on some.

Maybe Mr. Cote has something he was trying to respond to?

Mr. COTE. No, Congresswoman.

Ms. JACKSON LEE. How in the instance of the 9/11 when some might have had clean skin—I know there are different terminologies—would the enhanced Visa Security Program under the legislation that we are presently sort of having a hearing for—where would that have helped?

Mr. COTE. You are asking me?

Ms. JACKSON LEE. Yes, sir.

Mr. COTE. It is not absolutely certain, but I think with the enhanced screening process and the 100 percent vetting that we do from where they applied for the visas, I think there is a possibility that it could have been uncovered. Bringing law enforcement and the intelligence community information that we do now to that process, I think there would be a good possibility that it could have been uncovered prior to issuance.

Ms. JACKSON LEE. But what you are saying is there is also that kind of cooperation to a certain extent right now.

Mr. COTE. Cooperation with the State Department?

Ms. JACKSON LEE. Yes.

Mr. COTE. Yes. We do cooperate.

Ms. JACKSON LEE. And with intelligence. I mean, you look broadly at the applicant.

Mr. COTE. At the visa security posts that we are at, we look in depth at all those applications that we believe could be a national security risk.

Ms. JACKSON LEE. And I know, Mr. Donahue, there is an intent by this bill to expand those VSU units. What do you think? Is there any great enhancement on what you are doing and these units in terms of the cost and other issues that we have to be concerned about?

Mr. DONAHUE. Well, first of all, I would like to say that since 9/11, we have really changed the way——

Ms. JACKSON LEE. You have.

Mr. DONAHUE [continuing]. We do things and especially in the last year, that instead of having static databases, we are looking for that person who previously we didn't know. And that is where we certainly appreciate the support that we receive from ICE and from the other intelligence and law enforcement communities to help us find that person, that unknown character. We can build databases of bad people all——

Ms. JACKSON LEE. And I don't mean to cut you off, but I need to let this other point—I do want to bring to the attention of the Committee that a gentleman from—a Saudi student attempted a terrorist terror plot. He was caught because of a combined effort but was not caught earlier. And I don't know if this VSU unit would have helped him because he had no derogatory elements to his background.

So I think the question I want to raise is that we need a system of cooperation. The question is, are the VSU units the best, and is it good to remove the judicial review? Because I think overall the grand number of people that come into the United States want to do good. I want to weed out the ones who do not.

And I would just like to finish on this point. Do you have any comment about removing the judicial review aspect to an individual whose visa has been denied?

Mr. GALLEGLY. Would you like to try to respond to that very quickly?

Mr. DONAHUE. We have just received this bill recently. We have not sent it through the interagency process. We would be glad to take it for the record.

Ms. LOFGREN. Would the gentlelady yield?

Ms. JACKSON LEE. I would be happy to yield, if the gentleman would yield me an additional minute.

Mr. GALLEGLY. An additional 30 seconds.

Ms. LOFGREN. I just want to make clear for the general public we know that right now revocation of visas outside the United States is not subject to judicial review, and I don't think anybody is suggesting that that be changed.

Mr. DONAHUE. And we thank you for that.

Ms. LOFGREN. The question is what happens constitutionally to someone who is in the U.S.

Ms. JACKSON LEE. Correct.

Ms. LOFGREN. I thank the gentlelady for yielding.

Ms. JACKSON LEE. My point was the judicial review component to the legislation.

Ms. LOFGREN. I knew that but I just wanted to make sure the public understood.

Ms. JACKSON LEE. And if you can comment on that.

And I would finally say that terrorism is something we have to be concerned about, but we need to balance the visa system to ensure that we still have a welcoming door for those who want to come and help and do well in the United States as this country has been based upon.

I yield back.

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

I would ask unanimous consent to enter into the record a letter of support on H.R. 1741, the "Secure Visas Act," from ACT! for America.

Hearing no objection, that will be the order.

[The information referred to follows:]

May 10, 2011

Representative Lamar Smith
Chairman, House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Smith:

On behalf of *ACT! for America*, its 160,000 members and 560 local chapters nationwide, I write to you today in strong support of H.R. 1741, the Secure Visas Act of 2011 – legislation tremendously important to our national security.

We wholeheartedly agree with you that "visa security is critical to America's national security" and that "terrorists will continue coming to the U.S. legally if we do not tighten our visa security process." *ACT! for America* applauds you for taking on this serious matter by once again introducing the Secure Visas Act. We included the proposal on our list of "high priority legislation" during the last Congress and we proudly do so again.

As we have witnessed numerous times, terrorists – specifically those espousing radical Islamic ideologies – have used loopholes within our U.S. visa process to gain access to our nation for hostile purposes. From the 9-11 terrorists who killed 3,000 people on American soil, to Abdul Farouk Abdulmutallab, who sought to blow a U.S. airliner out of the sky on Christmas Day, to Khalid Ali-M Aldawsari, a Saudi Arabian student who was charged with attempting to use a weapon of mass destruction in the U.S. – all have used the U.S. visa process to gain access to our nation. There is clearly a problem that must be addressed and addressed quickly.

Passage of the Secure Visas Act will require the Department of Homeland Security to increase the number of visa security units overseas to areas designated as 'highest risk' for terror threats. More importantly, the legislation will allow an expedited removal process for suspected terrorists already here in the U.S.

Please be assured that *ACT! for America's* 160,000 national grassroots advocates will work to ensure that this important proposal is passed into law as quickly as possible.

Thank you for all of your efforts to make our nation safe and secure.

Sincerely,

Brigitte Gabriel

Brigitte Gabriel
President and Founder, ACT! for America

Mr. GALLEGLY. I want to thank our witnesses particularly for your patience in waiting almost 2 hours for us to get started. I know your time is valuable, and we all respect that. And I really appreciate that, plus the excellent testimony you gave today. We are all grateful for that.

Without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witnesses, which we will forward and ask the witnesses to respond as promptly as possible so their answers can be made a part of the record of the hearing.

Without objection, all Members will have 5 legislative days to submit any additional materials for inclusion in the record.

And with that, again I thank the witnesses for not only your patience but your excellent testimony, and with that, the hearing stands adjourned.

[Whereupon, at 4:30 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Statement for the Record

House Subcommittee on Immigration Policy and Enforcement

"H.R. 1741 the 'Secure Visas Act'"

May 11, 2011

The National Immigration Forum works to uphold America's tradition as a nation of immigrants. The Forum advocates for the value of immigrants and immigration to the nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

The National Immigration Forum opposes the Secure Visas Act as written. Current law sufficiently provides the government with power to deny or revoke visas on national security grounds.

The Secure Visas Act would erase an important check on the action of ageucy officials by doing away with judicial review of visa revocations. Judicial review by an immigration judge is critical to ensuring justice is reached for visa holders who are in the United States and face deportation if their visa is revoked. Section 2(b)(3) of the Secure Visas Act would remove the safeguard of judicial review and would give unchecked power to the Secretary of Homeland Security to revoke any visa on any ground. Without judicial review, an agency official, acting in error or even acting unlawfully, could order a visa revoked and the visa holder would have no recourse.

The current visa system includes rigorous background and security checks for applicants. Even after a visa is granted, the government has the power to revoke it for security or other concerns. There is no reason to believe that the elimination of all judicial review of visa revocations would increase our nation's security or deter terrorism.

They key to thwarting terrorist attacks is to gain the proper intelligence about threats from individual seeking to do this country harm, and to make sure that intelligence is in the hands of government officials who can prevent those individuals from entering the U.S. The Secure Visa Act does nothing to further that goal. There is no demonstrated need for the elimination of judicial review, and we oppose it.

50 F Street, NW, Suite 300, Washington, DC 20001 | T 202-347-0040 F 202-347-0058 | www.immigrationforum.org