

Written information submitted by:

Sharon K Snyder, DHS, Office of Academic Engagement

**Written testimony of ICE Homeland Security Investigations Executive Associate Director James Dinkins, CBP Office of Field Operations Acting Deputy Assistant Commissioner John Wagner, and NPPD Office of Biometric Identity Management Deputy Director Shonnie Lyon for a House Committee on Homeland Security, Subcommittee on Border and Maritime Security hearing titled “Visa Security and Overstays: How Secure is America?”**

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## **Introduction**

Chairman Miller, Ranking Member Jackson Lee, and distinguished Members of the Subcommittee. Thank you for the opportunity to discuss the efforts of the Department of Homeland Security (DHS) to prevent the exploitation of our non-immigrant visa system by terrorists and criminals. Every day, Federal, state, local and tribal government officials verify the identities of individuals for a variety of purposes to determine whether they pose a risk to the United States and whether they meet the requirements for a specific Government benefit or credential. Aliens who violate their immigration status and overstay their authorized period of admission implicate critical areas of the Department’s mission to protect national security and promoting the integrity of our immigration system.

## **DHS Overseas Presence and Coordination with the U.S. Department of State (DOS)**

Stopping threats before they reach our shores is one of our Department’s most important priorities. ICE’s Office of International Affairs has personnel in 75 offices in 48 countries who collaborate with international 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 many other

violations. Additionally, ICE facilitates the repatriation of individuals with final orders of removal, returning violators and those unlawfully present to their home countries.

Effective border security requires broad information sharing and cooperation among U.S. agencies. In October, 2006, ICE entered into a memorandum of understanding (MOU) with the DOS Bureau of Consular Affairs in order to exchange visa and immigration data. The agreement has allowed ICE and DOS to exchange information contained in each other's electronic databases pertaining to foreign persons seeking entry into the United States. This exchange of information allows DOS Consular Affairs personnel to query and access ICE and CBP immigration violator records contained in ICE's Enforcement Integrated Database. DOS Consular Affairs personnel can then take into consideration prior immigration violations when adjudicating visa applications for foreign persons who have applied to enter the U.S. The exchange of information between DOS and ICE also allows ICE enforcement personnel to query the DOS Consular Consolidated Database (CCD) and access visa application information for foreign persons who are being investigated by ICE.

In January 2011, ICE signed an MOU outlining roles, responsibilities, and collaboration between ICE and the DOS Bureaus of Consular Affairs and Diplomatic Security. The MOU governs the day-to-day operations of ICE agents conducting visa security operations at U.S. embassies and consulates abroad. To facilitate information sharing and reduce duplication of efforts, ICE and DOS conduct 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, meetings, training, and briefings, and engage in regular and timely information sharing. ICE continues to evaluate the need to screen and investigate additional visa applicants at high-risk visa-issuing posts beyond the 19 such posts at which the agency currently operates. ICE will continue to conduct joint site visits with DOS to identify locations for deployment based on emerging threats. We look forward to continuing to report back to you with updates on this process.

In addition, CBP uses advance information and a select overseas footprint to address concerns long before they reach the physical border of the U.S. Using their Automated Targeting System (ATS), CBP leverages all available advance passenger data, including the Passenger Name Record (PNR) and Advance Passenger Information System (APIS) data, United States-bound travel reservations, Electronic System for Travel Authorization (ESTA) applications, visa applications, passenger manifests, previous crossing information, intelligence, and law enforcement information, as well as open source information in its anti-fraud and anti-terrorism efforts at the National Targeting Center (NTC). Immigration Advisory Program (IAP) officers work in partnership with foreign law enforcement officials, to evaluate potential risks, including possible overstays and then work in coordination with commercial air carriers to issue no-board recommendations to the airline to keep suspected high-risk or inadmissible passengers from traveling to the United States. In FY 2012, CBP made more than 9,500 no board recommendations to carriers.

The NTC vetting process for international passengers continues while the flight is en route to the United States in order to identify any travelers who, although not necessarily national security

risks, may need a more thorough inspection at the first port of entry upon arrival in the United States.

## **DHS Visa Security Program**

The Homeland Security Act directs DHS to assist in the identification of visa applicants who seek to enter the United States for illegitimate purposes, including criminal offenses and terrorism-related activities. The visa adjudication process often presents the first opportunity to assess whether a potential nonimmigrant visitor or immigrant poses a threat to the United States. The Visa Security Program (VSP) represents ICE's front line in protecting the United States against terrorists and criminal organizations by preventing foreign nationals who pose as a threat to national security from entering the United States.

ICE deploys trained special agents overseas to high-risk visa adjudicating posts in order to identify potential terrorist and criminal threats before they reach the United States by conducting targeted, in-depth reviews of individual visa applications and applicants prior to visa issuance, and making recommendations to consular officers to refuse or revoke visas when warranted. DHS actions complement the consular officers' screening, applicant interviews, and reviews of applications and supporting documentation.

In March 2010, the NTC within CBP implemented a program to conduct continuous vetting of valid U.S. nonimmigrant visas. Recurrent vetting ensures that changes in a traveler's visa status are identified in near real-time, allowing CBP to timely determine whether to provide a "no board recommendation" to a carrier, to recommend that DOS revoke the visa, or to notify the appropriate domestic ICE office regarding individuals determined to be within the United States. Since the program's inception, DOS has revoked more than 4,852 visas based on requests from CBP on information uncovered after a visa was issued.

In support of the VSP, ICE Homeland Security Investigation (HSI) and CBP in collaboration with DOS have initiated an automated pilot program to enhance ongoing visa security efforts. The Pre-Adjudicated Threat Recognition Intelligence Operations Team (PATRIOT) initiative is the automated screening of visa application information against DHS holdings prior to interview. The process includes in-depth vetting of applicants identified as having potential derogatory information, who may be of investigative interest, or ineligible to receive U.S. visas. The PATRIOT initiative takes a risk-based approach and uses interagency resources from ICE, CBP, DOS and the Intelligence Community to identify national security, public safety and other visa concerns. In 2012 ICE Visa Security Program special agents screened more than 1.3 million visa applicants in collaboration with the DOS. In 2014, VSP will enhance visa vetting by increasing automated data exchange with DOS and CBP's National Targeting Center so that the flow of online visa information to DHS systems will be automated and information will be sent back to DOS also using an automated interface. ICE will leverage modernization efforts to increase investigations of visa applicants who pose the greatest threats to national security such as terrorism, counter-proliferation and export violations, and human rights and war crime violations.

## **Student and Exchange Visitor Program**

The Student and Exchange Visitor Program (SEVP) is funded by fees collected from nonimmigrant students, exchange visitors, and participating schools. It manages information on nonimmigrants whose primary reason for coming to the United States is to study at U.S. institutions certified for inclusion in the Student and Exchange Visitor Information System (SEVIS) database. SEVIS tracks nonimmigrant students, exchange visitors, and their dependents during their authorized stays in the United States.

Over the past several months, DHS has taken steps to upgrade SEVIS. Earlier this month, DHS implemented a technological solution that ensures that CBP inspectors at our ports of entry have the most current information regarding a student visa holder's status at the time of their entry and exit from the United States. On a daily basis CBP's TECS database will be updated with a record of individual status changes to an individual's I-20. Thus, if that individual presents them-self for inspection before a CBP Officer, the officer would see that there was a status indication change and the I-20 should be checked / validated via SEVIS to assist in a proper admissibility decision. These improvements will be supplemented later this month through a system upgrade that improves SEVIS's interface with ADIS (Arrival Departure Information System), which displays critical travel data such as the I-94 Admission Number, Passport Expiration Date and Visa Expiration Date data. This upgrade will automate the lookout for SEVIS violators and improve communication between the two systems in order to better identify overstays using internal reporting capabilities and security control remediation for authorized users including CBP Inspectors. An additional upgrade allows DOS to also access and record information in SEVIS records, which further enhances our situational awareness of foreign students.

SEVIS contains the records of more than 1.1 million active nonimmigrant students, exchange visitors, and their dependents, as well as information on approximately 10,000 SEVP-certified institutions. SEVP regulates schools' eligibility to enroll nonimmigrant students for academic and vocational training purposes, and manages participating schools as well as students in the F (academic) and M (vocational) visa classifications and their dependents. DOS manages the Exchange Visitor Program for nonimmigrants in the J visa classification, which enables foreign nationals to come to the United States to teach, study, conduct research, demonstrate special skills, or receive on-the-job training for periods ranging from a few weeks to several years.

SEVP is responsible both for certifying schools and for withdrawing certification from non-compliant schools. The certification process supports the law enforcement functions of furthering national security and protecting the integrity of our nation's borders by providing consistent, comprehensive oversight while preserving the Nation's tradition of welcoming nonimmigrant students and exchange visitors. SEVP collects, maintains, and provides information to interagency partners so that only legitimate nonimmigrant students and exchange visitors gain entry to, and remain in, the United States. The SEVP program provides timely information to support the Department's mission and facilitates the sharing of data with our federal partners. Additionally, the data maintained by SEVP in SEVIS supports the DOS's Bureau of Consular Affairs visa process by providing advanced electronic data on nonimmigrant visa applicants prior to visa issuance.

The nonimmigrant student and exchange visitor programs that bring F, J, and M visa holders to the United States are of immense value to all countries involved, as they serve to strengthen relations between our Nation and others while fostering intercultural understanding. These programs produce economic benefits as well with the U.S. Department of Commerce estimating that nonimmigrant students, exchange visitors and their dependents contributed more than \$21 billion to the U.S. economy through their expenditures on tuition and living expenses during the 2011-2012 academic year.

SEVP has been working diligently to address the Government Accountability Office (GAO) recommendations contained in a report issued last fall entitled “Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight Functions.” As part of this effort, SEVP has partnered with the Federal Aviation Administration (FAA) to ensure proper certification for flight schools. As a result of this collaboration, SEVP has issued new guidance clarifying that all flight schools must have final FAA Part 141 certification and has completed identifying and notifying all flight schools that do not meet this standard that they will be withdrawn. Additionally, even prior to the GAO recommendation to focus more on risk, SEVP has also taken on several risk-management initiatives to identify and analyze programmatic risk over the past two years. This includes the development of a school risk scorecard, a risk-informed compliance methodology, and an analysis of characteristics associated with high-risk schools.

## **The Counterterrorism and Criminal Exploitation Unit**

The Counterterrorism and Criminal Exploitation Unit (CTCEU) is the first national program dedicated to the enforcement of nonimmigrant visa violations. Each year, the CTCEU analyzes records of hundreds of thousands of potential status violators after preliminary analysis of data from SEVIS and the Overstay Analysis Unit (OAU) along with other information. After this analysis, CTCEU determines potential violations that warrant field investigations and/or establishes compliance or departure dates from the United States. Between 15,000 and 20,000 of these records are analyzed each month and, since the creation of the CTCEU in 2003, over two million such records have been analyzed using automated and manual review techniques.

Today, through the CTCEU, we proactively develop cases for investigation in cooperation with SEVP and OAU. These programs enable our agents to access information about the millions of students, tourists, and temporary workers present in the United States at any given time, and to identify those who have overstayed or otherwise violated the terms and conditions of their admission. ICE special agents and analysts monitor the latest threat reports and proactively address emergent issues. This practice, which is designed to detect and identify individuals exhibiting specific risk factors based on intelligence reporting, including travel patterns, and in-depth criminal research and analysis, has contributed to the Department’s counterterrorism mission by initiating or supporting high-priority national security initiatives based on specific intelligence.

In order to ensure that the potential violators who pose the greatest threats to national security are given priority, ICE uses intelligence-based criteria, developed in close consultation with the intelligence and law enforcement communities. ICE assembles the Compliance Enforcement

Advisory Panel (CEAP), which is comprised of subject matter experts from other law enforcement agencies and members of the Intelligence Community, who assist the CTCEU in keeping targeting methods in line with the most current threat information. The CEAP is convened on a tri-annual basis to discuss recent intelligence developments and update the CTCEU's targeting framework, in order to ensure that the nonimmigrant overstays and status violators who pose the greatest threats to national security are targeted.

To further strengthen the nation's enforcement efforts concerning overstays and other status violations, DHS is currently assessing various approaches to sharpen the focus of programs that address vulnerabilities exploited by visa violators.

## **Overstay Analysis Unit**

DHS is focused on enhancing its vetting initiatives across the full mission space of homeland security by providing real-time biometric functions to its front line operational components, while continuing to set government leading biometric policies and standards. To this end, the OAU analyzes biographical entry and exit records stored in the National Protection and Programs Directorate's (NPPD) Office of Biometric Identity Management (OBIM) Arrival and Departure Information System (ADIS) to further support DHS's ability to identify international travelers who have remained in the United States beyond their authorized periods of admission. The Department's Automated Biometric Identification System (IDENT) and ADIS provide person-centric information by searching biometric and biographic data against Government databases to establish and confirm the identities of individuals that DHS has already encountered. OBIM supports DHS components by providing matching services against its databases and returning any linked information when a match is made as they vet those identities of individuals already encountered by DHS to identify known or suspected terrorists, national security threats, criminals, and those who have previously violated U.S. immigration laws.

The OAU analyzes and validates two types of nonimmigrant overstay records: out-of-country overstays (OCO) and in-country overstays (ICO). OCO records pertain to visitors who stayed beyond their authorized admission period and subsequently departed the country. The OAU validates these violations based on their reported departure dates and creates biometric and biographic lookouts for these subjects. The lookouts are posted in two separate databases: the OBIM Automated Biometric Identification System (IDENT) Secondary Inspection Tool and CBP's TECS, respectively, to alert and notify DOS consular officers and CBP officers of a subject's violation before he or she is granted a visa or re-entry to the United States. ICO records pertain to visitors with no evidence of departure or adjustment of status upon expiration of the terms of their admission. The OAU reviews and validates these ADIS system identified violations based upon ICE identified categories of interest.

The OAU makes overstay and status violation referrals from three unique sources, which apply respectively to typical overstay violators, admitted watch list subjects, and Visa Waiver Program (VWP) violators. The first source, nonimmigrant overstay leads, is used to generate field investigations by identifying foreign visitors who violate the terms of their admission by remaining in the United States past the date of their required departure. The second source, admitted watchlist leads, monitors records for individuals who, at the time of admission to the

United States, were the subject of a watch list record containing derogatory information that did not render the individual inadmissible to the United States but did warrant monitoring their visit.

The third source is CTCEU's Visa Waiver Enforcement Program (VWEP). Visa-free travel to the United States builds upon our close bilateral relationships and fosters commercial and personal ties among tourist and business travelers in the United States and abroad. The VWP, the primary source of nonimmigrant visitors from countries other than Canada and Mexico, currently allows eligible nationals of 37 countries<sup>1</sup> to travel to the United States without a visa and, if admitted, to remain in the country for a maximum of 90 days for tourist or business purposes. Prior to the implementation of the VWEP in 2008, there was no national program dedicated to addressing overstays within this population. Today, ICE regularly scrutinizes a refined list of individuals who have been identified as potential overstays who entered the United States under the VWP. One of the primary goals of this program is to identify those subjects who attempt to circumvent the U.S. immigration system by obtaining travel documents from VWP countries.

## **Creation of the Office of Biometric Identity Management**

The *Consolidated and Further Continuing Appropriations Act, 2013* (Public Law 113-6) enacted on March 26, 2013, transferred the core of United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program staff to stand up OBIM under NPPD. Biometric identity management plays a critical role in supporting the DHS mission to secure the nation, and this office will leverage its experience and expertise to provide biometric and associated biographic identity verification and analysis services to current and existing customers within DHS, and with our Federal, state, local, the Intelligence Community and foreign partners.

The Act also aligns operational capabilities and realizes efficiencies by transferring US VISIT's overstay analysis functions to ICE and moves entry/exit policy and operations to CBP. As the lead entity within the Department responsible for biometric identity management services, OBIM is focused on improving biometric and associated biographic data sharing through system interoperability with the Departments of Defense, Justice, and State towards a "whole of government" approach to identity services, and with trusted international partners to increase national and global security. By storing, matching, and analyzing biometric data, linked to biographic information, OBIM provides homeland security decision makers with person-centric, actionable information on immigration violators, criminals, and known or suspected terrorists to enhance the Nation's safety and resiliency.

Biometric information sharing between the Federal Bureau of Investigation's Criminal Justice Information Services (FBI-CJIS) and OBIM is the foundation of the use of IDENT/Integrated Automated Fingerprint Identification System (IAFIS) interoperability under Secure Communities. Through the use of IDENT/IAFIS interoperability under Secure Communities, aliens—including those who have overstayed or otherwise violated their immigration status—who are encountered by law enforcement after arrest for the commission of a crime may be identified as immigration violators when fingerprints are submitted to IAFIS. Once individuals are identified, ICE officials determine what enforcement action is appropriate and consistent with ICE's enforcement priorities. Currently, the use of this technology is deployed to 3,181 jurisdictions in 50 states, five Territories, and the District of Columbia.

## Conclusion

DHS has made significant progress in preventing terrorists from exploiting the visa process. Technological advances have created an opportunity for law enforcement to identify and mitigate national security and public safety threats on an efficient basis that otherwise would have required hundreds of employees. These new technologies enable us to address these threats in a more cost-effective and expeditious manner than ever before. We will continue to work closely with our international, federal, state, local, and tribal partners to combat visa fraud and protect the integrity of our visa security system.

Thank you again for the opportunity to testify today and for your continued support of the Department and its law enforcement mission. We would be pleased to answer any questions at this time.

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<sup>1</sup> The list of designated VWP countries can be found at 8 C.F.R. 217.2, with the most recent designation being that of Taiwan in October 2012. The Taiwan Relations Act of 1979, Public Law 96–8, Section 4(b)(1), provides that “[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.” 22 U.S.C. 3303(b)(1). Accordingly, all references to “country” or “countries” in the Visa Waiver Program authorizing legislation, Section 217 of the Immigration and Nationality Act, 8 U.S.C. 1187, are read to include Taiwan. This is consistent with the United States’ one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

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