

VISA OVERSTAYS: A GROWING PROBLEM FOR LAW ENFORCEMENT

HEARING BEFORE THE SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTH CONGRESS FIRST SESSION

OCTOBER 16, 2003

Serial No. 52

Printed for the use of the Committee on the Judiciary



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

U.S. GOVERNMENT PRINTING OFFICE

89-878PDF

WASHINGTON : 2003

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) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON THE JUDICIARY

F. JAMES SENSENBRENNER, JR., Wisconsin, *Chairman*

HENRY J. HYDE, Illinois	JOHN CONYERS, JR., Michigan
HOWARD COBLE, North Carolina	HOWARD L. BERMAN, California
LAMAR SMITH, Texas	RICK BOUCHER, Virginia
ELTON GALLEGLY, California	JERROLD NADLER, New York
BOB GOODLATTE, Virginia	ROBERT C. SCOTT, Virginia
STEVE CHABOT, Ohio	MELVIN L. WATT, North Carolina
WILLIAM L. JENKINS, Tennessee	ZOE LOFGREN, California
CHRIS CANNON, Utah	SHEILA JACKSON LEE, Texas
SPENCER BACHUS, Alabama	MAXINE WATERS, California
JOHN N. HOSTETTLER, Indiana	MARTIN T. MEEHAN, Massachusetts
MARK GREEN, Wisconsin	WILLIAM D. DELAHUNT, Massachusetts
RIC KELLER, Florida	ROBERT WEXLER, Florida
MELISSA A. HART, Pennsylvania	TAMMY BALDWIN, Wisconsin
JEFF FLAKE, Arizona	ANTHONY D. WEINER, New York
MIKE PENCE, Indiana	ADAM B. SCHIFF, California
J. RANDY FORBES, Virginia	LINDA T. SANCHEZ, California
STEVE KING, Iowa	
JOHN R. CARTER, Texas	
TOM FEENEY, Florida	
MARSHA BLACKBURN, Tennessee	

PHILIP G. KIKO, *Chief of Staff-General Counsel*

PERRY H. APELBAUM, *Minority Chief Counsel*

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

JOHN N. HOSTETTLER, Indiana, *Chairman*

JEFF FLAKE, Arizona	SHEILA JACKSON LEE, Texas
MARSHA BLACKBURN, Tennessee	LINDA T. SANCHEZ, California
LAMAR SMITH, Texas	ZOE LOFGREN, California
ELTON GALLEGLY, California	HOWARD L. BERMAN, California
CHRIS CANNON, Utah	JOHN CONYERS, JR., Michigan
STEVE KING, Iowa	
MELISSA A. HART, Pennsylvania	

GEORGE FISHMAN, *Chief Counsel*

ART ARTHUR, *Full Committee Counsel*

CINDY BLACKSTON, *Professional Staff*

NOLAN RAPPAPORT, *Minority Counsel*

CONTENTS

OCTOBER 16, 2003

OPENING STATEMENT

	Page
The Honorable John N. Hostettler, a Representative in Congress From the State of Indiana, and Chairman, Subcommittee on Immigration, Border Security, and Claims	1
The Honorable Linda T. Sánchez, a Representative in Congress From the State of California	3

WITNESSES

Dr. Nancy Kingsbury, Managing Director, Applied Research and Methods, General Accounting Office	
Oral Testimony	7
Prepared Statement	10
Mr. Kevin Tanner, Director, Foreign Terrorist Tracking Task Force, Federal Bureau of Investigation	
Oral Testimony	34
Prepared Statement	36
Ms. Theresa Papademetriou, Senior Legal Specialist, Library of Congress	
Oral Testimony	37
Prepared Statement	40
Dr. Susan Forbes Martin, Director, Institute for the Study of International Migration, Georgetown University	
Oral Testimony	45
Prepared Statement	41

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the Honorable Sheila Jackson Lee, a Representative in Congress From the State of Texas, and Ranking Member, Subcommittee on Immigration, Border Security, and Claims	63
--	----

VISA OVERSTAYS: A GROWING PROBLEM FOR LAW ENFORCEMENT

THURSDAY, OCTOBER 16, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:07 p.m., in Room 2141, Rayburn House Office Building, Hon. John N. Hostettler [Chairman of the Subcommittee] presiding.

Mr. HOSTETTLER. The Subcommittee will come to order. Today, we will hear from expert witnesses regarding the rapidly increasing population of illegal immigrants who have entered this country with valid visas issued by the Department of State or from visa waiver countries who remain in the United States in violation of the terms of their admission.

Aliens who violated the terms of their visas have participated in numerous attacks on the United States, beginning with the 1993 bombing of the World Trade Center, up to and including the September 11, 2001, attacks. Despite this fact, our laws and policies regarding visa overstays have changed very little over this period. This hearing is being held to assess how many visa overstays are currently residing in the United States as illegal aliens and the effect of this large population of illegal aliens on our national security and the safety of the American people.

In particular, the General Accounting Office, or GAO, will provide the Subcommittee with information on the significant problem of visa overstays and why that problem will not go away unless substantial efforts are made to control it. Estimates that the GAO has made available to me show that up to three million illegal aliens in the United States arrive with valid visas issued by the Department of State. Worse, the number of visa overstays being added to this cumulative total every year is around 300,000 illegal aliens, nearly double some prior published estimates of 150,000 visa overstays who become illegal aliens every year.

The Department of State has the primary responsibility to determine whether a person applying for a visa has a strong potential for violating the terms of that visa. Unfortunately, over the past 10 years or so, our State Department's foreign consular officers got into the practice of waiving personal interviews of visa applicants and accepting documents from third-party agencies. These loose practices have been described in detail in hearings before the Con-

gress regarding the failure to interview nearly all of the 9/11 terrorists before they were issued—each issued visas.

One of the results of those hearings was a transfer of primary responsibility for visa policies and regulations to the Department of Homeland Security. This Subcommittee may hold a future hearing to examine whether the Department of Homeland Security's new role is having an effect or whether visa issuance is still business as usual at our foreign missions.

Certainly, something needs to change, and soon, to dramatically reduce the number of visa overstays. If only one-tenth of 1 percent of these visa overstays are involved with or support terrorism, our current immigration system allows 300 supporters each year, or actual terrorists, to plan and carry out the next act of terrorism against our citizens on our own shores.

There is an inclination by some in the media and in the Congress to dismiss the problem of visa overstays. In fact, some cities have even chosen to extend financial support to visa overstays and other illegal aliens. That attitude, however, only encourages other aliens to come to our country and violate our laws. Be assured that aliens who overstay their visas are not unaware that they are violating our laws. Furthermore, when foreign visitors enter the United States, their visas and passports are checked by uniformed inspectors, reinforcing the serious legal nature of the visa and the terms and expiration dates stated on that visa.

So those 300,000 visa overstays, more or less, are not staying here because they don't know they aren't lawfully present. Probably most of them planned for their illegal overstay long in advance of their visa application. It's likely that most of them lined up contacts and prospective employers before they ever arrived. Meanwhile, our Federal agencies led by the Department of Homeland Security and the Department of State seem unable to come up with a strategy to stop this problem.

While this flood of uninvited overstays continues, Federal and State law enforcement are struggling with growing crime committed by illegal aliens, many of whom arrived with a visa and with no intent to return when the visa expired. As the Justice Department's Bureau of Justice Assistance has stated, quote, "Complex problems are associated with illegal aliens who commit crimes." Criminal aliens tend to be drug-oriented and violent, often preying on members of their own cultures. If deported, they frequently use new names to reenter the United States and establish residence in different cities.

Furthermore, criminal aliens do not confine their activities to border cities. Communities throughout this country are experiencing increasing alien involvement in drug importation and distribution, weapons smuggling, and violence against persons and property. The escalation in alien crime has placed added demands on State and local law enforcement personnel at the same time the States, counties, and cities are facing reduced tax revenues and competing demands for service.

I am hopeful that this hearing will help us to come to grips with how we can reinforce the efforts by the Department of Homeland Security and the Department of State to increase scrutiny in screening processes so that we can reduce the number of unwanted

visa overstays. In the face of the rising costs associated with aliens who overstay their visas, we simply cannot afford not to address this problem.

At this time, I turn to my colleague from California, Ms. Sánchez, for an opening statement for the minority.

Ms. SÁNCHEZ. Thank you, and with the chair's indulgence, I'd like to read the statement of my colleague, the Ranking Member on this Committee, Sheila Jackson Lee.

Mr. HOSTETTLER. Without objection.

Ms. SÁNCHEZ. The subject of this oversight hearing is visa overstays, a growing problem for law enforcement. An overstay is an alien who enters the United States lawfully for a temporary period of time and then remains longer without permission.

No one has been able to determine how many overstays there are in the United States. Typically, the number is estimated to be a fraction of the total population of unauthorized aliens in the United States. The total population figure that will be discussed at this hearing is from a report issued by the former Immigration and Naturalization Service on January 31, 2003. According to that INS report, seven million unauthorized aliens reside permanently in the United States as of the year 2000. In estimating the percentage of overstays in that population, INS applied the 33 percent figure from a previous report, which produced an overstay number for the year 2000 of 2.3 million.

It is a mistake to view all overstays as a law enforcement problem. Some overstays did not intend to violate the terms of their admission and will leave the United States voluntarily. For instance, a non-immigrant visitor can request an extension of his or her stay by filing a timely extension application. But the former INS and now the Department of Homeland Security has difficulty processing applications quickly. Consequently, many extension applications are not granted until after the admission period has expired. Technically, a person has violated the terms of his admission by overstaying for a single day, and according to immigration law precedent, is removable as an overstay even when a timely extension application was filed. Nevertheless, people in this category are not law enforcement problems.

Other non-immigrant visitors become overstays on account of an inability to understand American immigration documents. Non-immigrants are provided with two different time periods for their paperwork. The first is for the visa. A visa is a permit to apply to enter the United States which is issued by the Department of State. It does not entitle the holder to be admitted to the United States. It classifies the visit as business, tourism, et cetera, and is usually valid for multiple visits to the United States during a specified period of time.

The decision on whether to admit the alien is made by DHS. DHS also designates the period for which the alien will be admitted. The visa does not indicate the period of time authorized for the alien's visit. If DHS decides to admit the alien, it issues a second document, a formal I-94, an arrival-departure record, which sets forth the date, place of arrival, the class of admission which corresponds to the visa class, and the length of time the alien may remain in the United States.

The estimates of how many unauthorized aliens are in the United States and how many of them are overstays are just really educated guesses. No one knows how many unauthorized aliens live in the United States or how many of them are overstays. New entry-exit information systems, such as a US VISIT, may eventually provide accurate data on overstays, but it will be prospective information. It will only identify aliens who overstay after a non-immigrant admission recorded by the US VISIT system. It will not provide any information on how many overstays are already in the United States.

The collection of entry-exit data will not have enforcement value, either. Comprehensive entry-exit data will make it possible for DHS to produce accurate lists of overstays on demand, but what will DHS do with these lists? The entry-exit data will not include information on the location of overstays. It will tell DHS who the overstays are, but not where they are.

We cannot remove the 2.3 million overstays that are estimated to be living in the United States. We can reduce that figure to a more manageable level, however, by separating out the ones who would make substantial contributions to our country as lawful permanent residents. We need a legalization program that would allow hard-working, law-abiding individuals to come out of the shadows and the fringes of society.

Reducing the undocumented population would have many benefits. For instance, it would make it easier for us to identify the aliens in our midst who mean to do us harm. The wider availability of legal status for hard-working long-time residents would provide employers with a more stable workforce, improve the wages and working conditions of all workers, and curtail an underground labor market filled with smuggling, fraud, abuse, and other criminal activities.

We have nothing to lose by providing access to legalization for people who have established themselves as productive, desirable members of our society. Thank you.

Mr. HOSTETTLER. Thank you. The gentlelady yields back the balance of her time.

The chair now recognizes the gentlelady from California, Ms. Sánchez, for her opening statement.

Ms. SÁNCHEZ. Thank you, and I apologize.

Mr. HOSTETTLER. That's all right.

Ms. SÁNCHEZ. I feel like I have dual personalities right now. [Laughter.]

And I want to thank you, Chairman, for convening the oversight hearing today to hear testimony on visa overstays.

Visas are important immigration tools that allow foreign nationals to temporarily visit the United States. Visas allow these temporary visitors to legally enter this country and contribute to the enrichment of our schools, businesses, and governments. Visas give diplomats, health care professionals, entertainers, students, and loved ones, to name a few, an opportunity to come and visit and improve our many communities.

The reality of our immigration system is that it is not uncommon for foreign nationals to overstay their visas. The reason for overstays range from ignorance of immigration law, to bureaucratic

red tape while trying to get a visa extension, to intentional violations of the visa terms.

I believe that my colleagues on both sides of the aisle agree that our entire immigration system, including visa processing and monitoring, is in need of comprehensive reform. The solution to the visa overstay problem is not to have law enforcement personnel begin arresting and detaining minorities based on an assumption that they are immigrants who have overstayed a temporary visa. Likewise, the solution to the visa overstay problem is not subject to Muslims, Arabs—is not to subject Muslims, Arabs, or other minority groups to more burdensome visa terms or registration requirements.

In the post-9/11 era, our fears about future terrorist attacks have been used to justify immigration policies that endanger civil liberties and give overly broad powers to law enforcement. These are very real concerns that I hope our panel of witnesses can address in their testimony, and again, I thank the Chairman for being so kind with my time, and I will yield the balance—yield back the balance of my time.

Mr. HOSTETTLER. The gentlelady yields back her time.

The chair will now recognize the panel, and without objection, all Members can insert their opening statements into the record.

Today, we have Dr. Nancy Kingsbury. Since October 2000, Dr. Kingsbury has been the Managing Director for Applied Research and Methods at the General Accounting Office, where she is responsible for managing GAO's advanced analytic staff. Prior to this appointment, Dr. Kingsbury was an Assistant Comptroller General responsible for GAO's work on government-wide management issues, including human capital management and government-business operations, tax policy and administration, justice and immigration issues, and financial institutions and markets—very busy.

Dr. Kingsbury was appointed Director for Planning and Reporting in the General Government Division in July 1995, after serving as Director for Federal Human Resource Management Issues for 2 years. She has also served as GAO's Director for Air Force Issues from 1988 to 1993 and Director for Foreign Economic Assistance Issues from 1986 to 1988.

Prior to coming to GAO in 1984, Dr. Kingsbury served in a variety of positions in the Office of Personnel Management and as an official of the Peace Corps. Dr. Kingsbury holds a B.A. degree from the University of Miami at Florida, where she graduated summa cum laude with general honors. She attended the Johns Hopkins University as a Woodrow Wilson Fellow, where she received her M.A. and Ph.D. in experimental psychology and analytic methods in 1965 and 1968, respectively.

Mark A. Tanner is a member of the Foreign Terrorist Tracking Task Force, or FTTTF, Counterterrorism Division. The task force's mission is to, one, deny entry into the United States of aliens associated with or suspected of being engaged in or supporting terrorist activity; and two, supply information to locate, detain, prosecute, or deport any such aliens already present in the United States. In addition to the FTTTF, he provides information and coordinates other agencies of government with respect to the foreign terrorist presence in the United States.

Since Mr. Tanner became an FBI agent in 1983, he has held assignments as an investigator in the Charlotte, Jacksonville, and New York field offices and as a unit chief in the Information Management Division at FBI headquarters. Subsequently, he became the Assistant Special Agent in Charge of the FBI's Phoenix Division, responsible for the investigation of organized crime, drugs, and violent crime investigative programs in Arizona. Mr. Tanner then became the FBI's Deputy Chief Information Officer, after which he went to the FBI's Inspection Division, which provides internal consulting services to FBI executives toward improving the effectiveness and efficacy of FBI programs.

Ms. Theresa Papademetriou is a Senior Legal Specialist—did I get that close?

Ms. PAPADEMETRIOU. Yes, absolutely.

Mr. HOSTETTLER [continuing]. Western Law Division in the Directorate of Legal Research of the Law Library of Congress. She is responsible for the legal research and analysis of issues of European Union and Greek laws. She holds an LL.B. from the University of Athens, Greece, and acquired an LL.M. in international and comparative law from the George Washington University National Law Center, Washington, D.C., in 1995.

Ms. Papademetriou has authored a wide range of reports on issues involving the European Union, including European Union: Privacy and Personal Data Protection, The Safe Harbor Agreement 2002, and the European Union chapter on European Legal Cooperation Against Terrorism of 2002.

Dr. Susan Forbes Martin is the Director of the Institute for the Study of International Migration in the School of Foreign Service at Georgetown University. Dr. Martin directs the certificate program in Refugee and Humanitarian Emergencies, open to master's level students at the university.

A longtime expert on immigration and refugee policy, Dr. Martin came to Georgetown University after having served as the Executive Director of the U.S. Commission on Immigration Reform, a bipartisan panel appointed by the President and Congressional leadership. During this period, she also served as U.S. coordinator for the Binational Study on Migration between Mexico and the United States, a joint study with the Mexican government.

Prior to joining the Commission's staff, Dr. Martin was the Director of Research and Programs at the Refugee Policy Group. She has taught at Brandeis University and the University of Pennsylvania. She earned her M.A. and Ph.D. in American studies from the University of Pennsylvania and her B.A. in history from Douglass College, Rutgers University.

In addition to her work in the United States, Dr. Martin has conducted field-based research on refugee and migration issues in such countries as Mexico, Costa Rica, the Dominican Republic, Thailand, the Philippines, Hong Kong, Burundi, Ethiopia, Kenya, Somalia, Mali, Albania, and Serbia. I'm sure there's somewhere from A to Z that we've left out, but it's close. [Laughter.]

She served as Managing Editor of World Migration Report 2000, published by the International Organization for Migration and the United Nations. She is the author of Refugee Women and numerous monographs and articles on immigration and refugee policy.

She is also a founder and member of the board of the Women's Commission for Refugee Women and Children.

Ladies and gentlemen, I thank you very much for being here today. You each will have 5 minutes for an opening statement. Without objection, your full written testimony will be entered into the record.

Dr. Kingsbury, if you would please start.

**STATEMENT OF NANCY R. KINGSBURY, MANAGING DIRECTOR,
APPLIED RESEARCH AND METHODS, UNITED STATES GOV-
ERNMENT ACCOUNTING OFFICE**

Ms. KINGSBURY. Thank you very much, Mr. Chairman, and I am pleased to be here today to discuss our work on overstays. While our work is ongoing, my testimony today will focus on our results to date in three areas: The extent to which overstaying occurs, weaknesses in the current overstay tracking system, and potential impacts on domestic security.

I want to emphasize that our work does not include other aspects of immigration or domestic security unrelated to overstaying, but GAO has done a wide body of work in what we refer to in my testimony as a layered defense against the problems of terrorism and I think that that body of work will stand for itself outside of this hearing.

While the vast majority of overstays appear to be motivated by economic opportunities, the few who are potential terrorists could represent a significant threat to our domestic security. An effective strategy to address this risk requires consideration of this larger context of layered national defense, the key ingredients of which are intelligence, investigation, and information sharing.

To summarize the results of our analysis to date, we found that overstaying is significant and may be understated by the Department of Homeland Security's recent estimate of 2.3 million. The current system for tracking foreign visitors has a number of weaknesses, and these two challenges make it more difficult to ensure our domestic security. Improving the overstay tracking system and, thus, improving the ability to utilize intelligence, investigation, and information sharing could contribute to improved domestic security.

There is currently no direct method for estimating the overstay population. DHS based an estimate, as Ms. Sánchez said, coming out of the 2000 Census and reached a 2.3 million figure. It is likely that this estimate understates the true number of overstays. The starting point for the DHS estimate did not include short-term overstays, and the method used to arrive at the one-third estimate, which was based on analysis of arrival and departure records in the early 1990's, would not have included many Mexican and Canadian visitors who overstayed their periods of admission and settled here. The graphic that we have displayed over there illustrates what we feel is covered and not covered by the DHS estimate. We were able to identify two much smaller sources of data that at least appear consistent with DHS's proportional estimate that overstays are about a third of the illegal immigrant population, or possibly higher.

There is a system currently in place that requires that visitors from most countries who enter the United States illegally—excuse

me, legally through ports of entry register their arrival using a special form, which is called the I-94 form. Half of the form is to be filled out on arrival and the second half kept by the visitor and turned in upon departure. Over the years, our work has shown that there are significant weaknesses in the system that make it difficult, if not impossible, to actually confirm departure or to identify or track foreign visitors who overstay.

First, as noted in passing earlier, many Mexicans and Canadians who cross legally into the U.S. are not required to fill out the I-94 form.

Second, once here, a visitor may have his or her period of admission extended or immigration status changed and these changes are not updated or integrated with the data on arrivals and departures.

Third, even when forms are filled out, the information provided on arrival, such as destination address, is often not accurate at the outset or not reliable because it changes and is not updated.

And fourth, collection of departure forms is incomplete, so confirmation of departure is unreliable.

Of course, these weaknesses do not address the much broader problems that occur because visitors may enter the country with false identities or may enter the country illegally at locations other than ports of entry.

Inability to identify and track overstays limits prevention and enforcement options. Despite large numbers of overstays, current efforts to locate and deport them are generally limited to criminals, illegal immigrants who fraudulently obtain employment in critical homeland security-related occupations, such as airport workers, or through special efforts, such as the domestic registration program recently implemented under the National Security Entry and Exit Registration System, or NSEERS. DHS statisticians told us that for fiscal year 2002, the risk of arrest for all overstays was less than 2 percent, and for persons not in the targeted groups, it was considerably lower.

DHS has recently begun two initiatives intended to remedy some of the weaknesses we have discussed. As a part of NSEERS, an effort has begun to register visitors at ports of entry to the U.S., to conduct interviews with registered visitors while they are here, and to have government inspectors register departures. However, this initiative did not cover most visitors because it focuses on persons born in only eight countries, nor does it routinely contemplate actual observation of departures.

The U.S. Visitor and Immigrant Status Indicator Technology, or US VISIT system, is a new automated tracking system intended to improve entry-exit data. The first phase of US VISIT now being rolled out uses passenger and crew manifest data as well as biometrics to verify foreign visitors' identities at airports and seaports. Additional phases will link US VISIT data to other systems that contain data about foreign nationals.

Ultimately, if successfully designed and implemented, US VISIT could avoid many weaknesses associated with the current system. However, our recent report on US VISIT emphasized the challenges faced by the program and the importance of mitigating risks and aggressively managing the project. At this point, important as-

pects of defining the program's operating environment are not yet decided and its facilities needs are unclear and challenging. As these decisions are considered, we believe that evaluating US VIS-IT's program design against the weaknesses we have discussed here could be important to ensuring its success.

As noted earlier, the majority of overstay are stimulated by economic considerations, but the overstay issue still presents risks for domestic security. In examining this issue, we reviewed data from DHS's recent effort called Operation Tarmac, to establish the legal status of workers at 106 airports and thereby to identify illegal workers in secure areas. These kinds of efforts are thought to reduce the nation's vulnerability to terrorism because security badges issued on the basis of fraudulent documentation constitute security breaches, and overstay and other illegal immigrants working in such facilities might be hesitant to report suspicious activities for fear of drawing authorities' attention to themselves.

Operation Tarmac identified more than 4,000 illegal immigrants who had misused identity documents to obtain airport jobs and security badges. A substantial number of the cases we examined in detail from 14 of those airports were overstay.

This example illustrates the weaknesses in DHS's current overstay tracking system and the magnitude of the overstay problem make it more difficult to ensure domestic security.

And with that, Mr. Chairman, I'll conclude my statement and look forward to the questions.

Mr. HOSTETTLER. Thank you, Dr. Kingsbury.

[The prepared statement of Dr. Kingsbury follows:]

GAO

United States General Accounting Office

Testimony

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

For Release on Delivery
Expected at 1:00 p.m. EST
Thursday, October 16, 2003

HOMELAND SECURITY

Overstay Tracking Is a Key Component of a Layered Defense

Statement of Nancy R. Kingsbury, Managing Director,
Applied Research and Methods



GAO
Accountability Integrity Reliability

Highlights

Highlights of GAO 04-1701, a testimony to Subcommittee on Immigration, Border Security, and Claims, Committee on the Judiciary, House of Representatives

Why GAO Did This Study

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

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

www.gao.gov/igfr/10/04/04-1701

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

October 2003

HOMELAND SECURITY

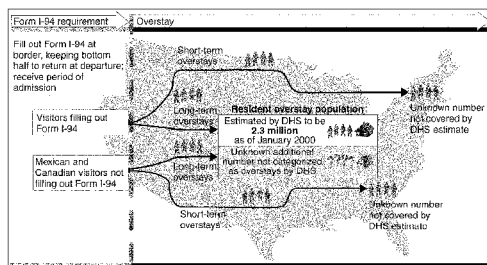
Overstay Tracking Is a Key Component of a Layered Defense

What GAO Found

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

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

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



Sources: GAO and A1 Explosion.

Mr. Chairman and Members of the Committee:

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

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

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

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

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

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

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

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

Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Watch lists have been improved somewhat since 9/11, but further improvements are needed. For example, earlier this year we reported that the State Department “with the help of other agencies, almost doubled the number of names and the amount of information” in its Consular Lookout and Support System.⁶ We also reported that “the federal watch list environment has been characterized by a proliferation of [terrorist and watch list] systems, among which information sharing is occurring in some cases but not in others.”⁷

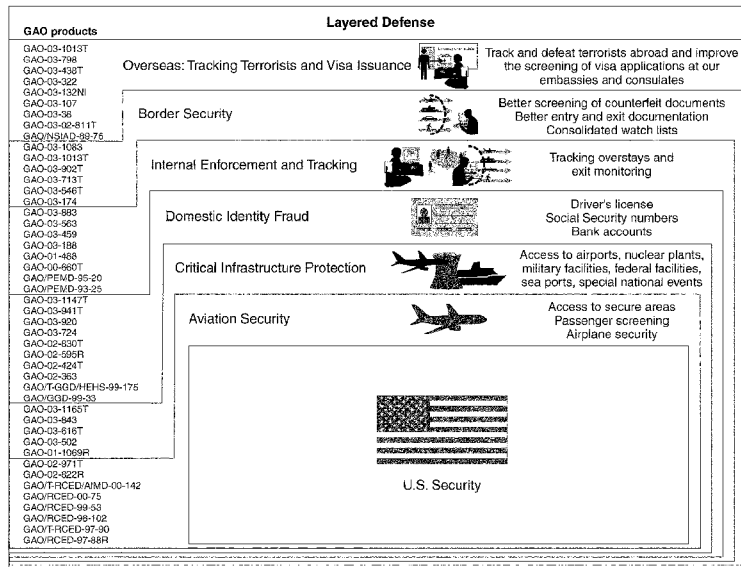
In this testimony today, we focus primarily on an overstay’s illegal presence within the United States and the potential consequences for domestic security. Viewed in terms of individuals, the overstay process can be summarized as aliens’ (1) legally visiting the United States, which for citizens of most nations is preceded by obtaining a passport and a visa and requires filling out Form I-94 at the U.S. border; (2) overstaying for a period that may range from a single day to weeks, months, or years; and, in some cases, (3) terminating their overstay status by exiting the United States or adjusting to legal permanent resident status (that is, obtaining a green card).⁸ Beyond that, the overstay process can be viewed more broadly in the context of our nation’s layered defense. For example, figure 1 illustrates many issues in this defense that we have analyzed in numerous reports—ranging from overseas tracking of terrorists to stateside security for critical infrastructure locations and aviation.

⁶U.S. General Accounting Office, *Border Security: New Policies and Increased Interagency Coordination Needed to Improve Visa Process*, GAO 93-1013T (Washington, D.C.: July 15, 2003), p. 3.

⁷U.S. General Accounting Office, *Information Technology: Terrorist Watch Lists Should Be Consolidated to Promote Better Integration and Sharing*, GAO 03-322 (Washington, D.C.: Apr. 15, 2003), p. 28.

⁸In general, aliens who are present illegally in the United States are prohibited from obtaining green cards by adjusting, while here, to permanent resident alien (legal immigrant) status. There are exceptions; for example, this prohibition was waived for certain aliens who applied for such adjustment between 1994 and 2001 under §245(i) of the Immigration and Nationality Act.

Figure 1: The Layered Defense for Domestic Security



Sources: GAO and Air Explosion.

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

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

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

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

a. Visitors filling out Form I-94 who

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

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

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

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

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

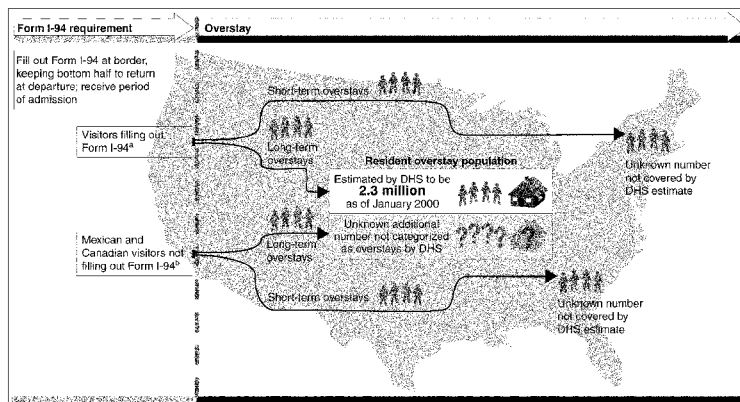
¹⁰As we noted previously, the majority of Mexican and Canadian visits do not require Form I-94.

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

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

These groups are illustrated in figure 2.

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



Sources: GAO and Art Espinosa.

^aDuring fiscal year 2001, nearly 33 million visits were tracked by I-94 arrival forms. Of these tracked visits, 14 percent (about 4.6 million) were by Mexican and Canadian citizens.

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

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

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

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

¹¹We identified challenges and potential weaknesses in INS's previous estimates of overstays in U.S. General Accounting Office, *Illegal Immigration: INS Overstay Estimation Methods Need Improvement*, GAO/TEM-96-29 (Washington, D.C.: Sept. 26, 1995). We note that INS's previous estimates were higher than 1/3. INS testified in 1999 that overstays constituted 49 to 50 percent of that population (see Michael D. Cronin, Acting Associate Commissioner, Programs, Immigration and Naturalization Service, Testimony Regarding Nonimmigrant Overstays before the Subcommittee on Immigration and Claims, House Judiciary Committee, U.S. Congress, Washington, D.C., March 18, 1999).

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

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

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

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

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

Unresolved Tracking System Weaknesses Heighten the Overstay Problem

I-94 Tracking System Weaknesses Limit Control Options

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

- **Failure to update the visitor's authorized period of admission or immigration status.** We reported earlier this year that DHS does not "consistently enter change of status data . . . [or] integrate these data with those for entry and departure."³⁵ DHS told us that linkage to obtain updated information may occur for an individual, as when a consular official updates information on an earlier period of admission for someone seeking a new visa, but DHS acknowledged that linkage cannot be achieved broadly to yield an accurate list of visitors who overstayed.
- **Lack of reliable address information and inability to locate visitors.** Some visitors do not fill in destination address information on Form I-94 or they do so inadequately. A related issue that we reported in

³⁵U.S. General Accounting Office, *H-1B Foreign Workers: Better Tracking Needed to Help Determine H-1B Program's Effects on U.S. Workforce*, GAO 03-583 (Washington, D.C., Sept. 10, 2003), p. 5. See also U.S. General Accounting Office, *Immigration Benefits: Several Factors Impede Timeliness of Application Processing*, GAO-01-488 (Washington, D.C., May 4, 2001).

2002 is DHS's inability to obtain updated address information during each visitor's stay; such information could be a valuable addition to the arrival, departure, and destination address information that is collected.³⁶

- **Missing departure forms.** We reported in 1995 that "airlines are responsible for collecting . . . departure forms when visitors leave [by air] But for some visitors who may have actually left the United States [there is no] record of the departures."³⁷ DHS acknowledges that this is still a concern, that the situation is analogous for cruise lines, and that noncollection is a larger problem for land exits.

Our recent work has also drawn attention to identity fraud, demonstrating how persons presenting fraudulent documents (bearing a name other than their own) to DHS inspectors could enter the United States.³⁸ Visitors whose fraudulent documents pass inspection could record a name other than their own on their I-94 form.

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

³⁶U.S. General Accounting Office, *Homeland Security: INS Cannot Locate Many Aliens because It Lacks Reliable Address Information*, GAO-03-188 (Washington, D.C.: Nov. 21, 2002).

³⁷U.S. General Accounting Office, *Illegal Immigration*, GAO/TEM-95-20, p. 2. See also U.S. General Accounting Office, *Illegal Aliens: Despite Data Limitations, Current Methods Provide Better Population Estimates*, GAO/TEM-93-25 (Washington, D.C.: Aug. 5, 1993).

³⁸Our investigators have tested DHS inspectors by using counterfeit driver's licenses and fictitious names to enter the United States from Barbados, Canada, Jamaica, and Mexico; DHS did not question the authenticity of the counterfeit documents (see U.S. General Accounting Office, *Security: Counterfeit Identification and Identification Fraud Raise Security Concerns*, GAO-03-1147T (Washington, D.C.: Sept. 9, 2003).)

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

More generally, the lack of an accurate list limits prevention and enforcement options. For example, accurate data on overstayes and other visitors might help define patterns to better differentiate visa applicants with higher overstay risk. And without an accurate list and updated addresses, it is not possible to identify and locate new overstayes to remind them of penalties for not departing. Such efforts fall under the category of interior enforcement: As we previously testified, "historically . . . over five times more resources in terms of staff and budget [have been devoted to] border enforcement than . . . [to] interior enforcement."¹⁶ Despite large numbers of overstayes, current efforts to deport them are generally limited to (1) criminals and smugglers, (2) employees identified as illegal at critical infrastructure locations, and (3) persons included in special control efforts such as the domestic registration (or "call in" component) of the NSEERS program (the National Security Entry and Exit Registration System).¹⁷ DHS statisticians told us that for fiscal year 2002, the risk of arrest for all overstayes was less than 2 percent.¹⁸ For most other overstayes (that is, for persons not in the targeted groups), the risk of deportation is considerably lower.

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

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

¹⁶U.S. General Accounting Office, *Homeland Security: Challenges to Implementing the Immigration Interior Enforcement Strategy*, GAO-03-553T, statement by Richard M. Stana before the Subcommittee on Immigration, Border Security, and Claims, House Committee on the Judiciary, U.S. Congress (Washington, D.C.: Apr. 10, 2003), p. 1.

¹⁷NSEERS domestic registration has required selected groups of aliens from a number of countries to register with immigration authorities; for a subset of these countries, special registration at the point of entry is required for arriving visitors.

¹⁸They calculated this by counting arrests for all legal visitors and overstayes, including the targeted groups, and dividing by DHS's estimate of the resident overstay population.

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

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

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

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

DHS has begun two initiatives intended to remedy some of the weaknesses we have discussed. DHS recently began, as part of NSEERS, an effort to register visitors at points of entry (POE) to the United States, conduct intermittent interviews with registered visitors while they are here, and have government inspectors register departures. But the POE effort does not cover most visitors because it focuses on persons born in only eight countries.²⁵ Moreover, NSEERS procedures do not involve inspectors’ observing departures—for example, registration occurs not at airport departure gates but at another location at the airport. Also, inspectors do not generally accompany registrants to observe their boarding.²⁶

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

²⁵The eight NSEERS POE registration countries are Iran, Iraq, Libya, Pakistan, Saudi Arabia, Sudan, Syria, and Yemen. Seventeen additional countries (listed in appendix II) are included in the NSEERS domestic registration component of this program.

²⁶It is also possible for NSEERS registrants to exit without registering, although there are penalties for doing so.

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

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

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

Overstay Issues May Complicate Efforts to Ensure Domestic Security

Tracking System Weaknesses Encourage Overstays and Hamper Some Counterterrorism Efforts

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

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

Table 1: Overstay and Other Immigration Status Data on 9/11 Terrorists			
Hijacker group	Immigration status issue	Entries	Change-of-status applications
6 pilots* and apparent leaders	2 prior overstays, ^b	18 total	3
	1 out-of-status student ^c	(1 to 7 entries each)	
13 other hijackers	2 overstays	13 total	0
		(1 each)	
Total = 19 hijackers	4 overstays total; 5 violations (including overstays and the out-of-status student)	31 total (from 1 to 7 entries each)	3 total (0 to 1 each)

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

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

*Pilots or co-pilots. (Three were both pilots, or co-pilots, and apparent leaders.)

^bThe two prior overstays had remained here beyond their authorized period of admission. They accrued days of overstay.

^cViolated terms of student visa by not attending school.

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

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

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

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

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

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

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

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

²⁶U.S. General Accounting Office, *Homeland Security: INS Cannot Locate*, GAO-03-188.

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

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

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

In the large majority of these cases, identity fraud or counterfeit IDs were involved; without fraud or counterfeit documents, illegal workers would not have been able to obtain the jobs and badges allowing them access to secure areas.³⁹

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

Conclusion

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

³⁹Efforts to combat domestic identity fraud are part of our nation's layered defense, and we have testified that "identity theft is a major facilitator of international terrorism" (see U.S. General Accounting Office, *Identity Fraud: Prevalence and Links to Alien Illegal Activities*, GAO-02-530T (Washington, D.C.: June 25, 2002), p. 9).

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

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

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

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

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

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

^aExcludes many Mexicans and Canadians who, visiting for business and pleasure, are exempt from Form I-94 procedures.

^bIncludes cases in which no departure form could be matched to the arrival form (including some departing visitors who had lost their departure forms and filed out another form that could not be matched to their arrival form).

^cIncludes some departing visitors who had extended their stay or adjusted their status.

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

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

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

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

^aIncludes cases in which no departure form could be matched to the arrival form (including some departing visitors who had lost their departure forms and filed out another form that could not be matched to their arrival form).

^bIncludes some departing visitors who had extended their stay or adjusted their status.

^cExcludes many Mexicans or Canadians who, visiting for business and pleasure, are exempt from Form I-94 procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

GAO's Mission

The General Accounting Office, the audit, evaluation and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

**Obtaining Copies of
GAO Reports and
Testimony**

The fastest and easiest way to obtain copies of GAO documents at no cost is through the Internet. GAO's Web site (www.gao.gov) contains abstracts and full-text files of current reports and testimony and an expanding archive of older products. The Web site features a search engine to help you locate documents using key words and phrases. You can print these documents in their entirety, including charts and other graphics.

Each day, GAO issues a list of newly released reports, testimony, and correspondence. GAO posts this list, known as "Today's Reports," on its Web site daily. The list contains links to the full-text document files. To have GAO e-mail this list to you every afternoon, go to www.gao.gov and select "Subscribe to e-mail alerts" under the "Order GAO Products" heading.

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are \$2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. General Accounting Office
441 G Street NW, Room LM
Washington, D.C. 20548

To order by Phone: Voice: (202) 512-6000
 TDD: (202) 512-2537
 Fax: (202) 512-6061

**To Report Fraud,
Waste, and Abuse in
Federal Programs**
Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm
E-mail: fraudnet@gao.gov
Automated answering system: (800) 424-5454 or (202) 512-7470

Public Affairs

Jeff Neilligan, Managing Director, NeilliganJ@gao.gov (202) 512-4800
U.S. General Accounting Office, 441 G Street NW, Room 7149
Washington, D.C. 20548

PRINTED ON  RECYCLED PAPER

Mr. HOSTETTLER. Mr. Tanner.

STATEMENT OF MARK A. TANNER, DIRECTOR, FOREIGN TERRORIST TRACKING TASK FORCE, FEDERAL BUREAU OF INVESTIGATION

Mr. TANNER. Thank you, Chairman Hostettler and other Members of the Subcommittee. It's with pleasure that the FBI comes to you today and offers these remarks with regard to the significant problem of visa overstays and its impact on our counterterrorism efforts.

The Department of Justice and the FBI has been charged by the President, with the support of the Congress, to protect the Amer-

ican people from the continuing threats of terrorism and crimes therewith. It's within the context of these post-9/11 times that I offer these remarks.

As represented in the GAO report, which has been the focus of this hearing, there are a number of foreign visitors to the U.S. who fail to leave as required by their respective visas. The quality and completeness of data with respect to those visas is important to the effectiveness and efficiency of our ability to do our jobs. The enormous numbers of visitors to the U.S. and avenues of entry and exit makes it inordinarily difficult, if not impossible, to account for each entry.

Nonetheless, the Department of Justice and the FBI, in partnership with other law enforcement agencies, the intelligence community, and the Defense Department, have devised and implemented processes and specialized operational units to mitigate this risk.

One such specialized organization is the Foreign Terrorist Tracking Task Force, of which I am the Director. Foreign Terrorist Tracking Task Force is a mouthful, so I'll call it "F-tray-F", is what we refer to it as. The participants in FTTTF include the Department of Defense, the Department of Homeland Security, Bureau of Immigration and Customs Enforcement (BICE), and Customs and Border Protection, the Department of State, Immigration—I mean, Office of Personnel Management, and Department of Energy and Social Security Administration and Central Intelligence Agency. To date, we have also established liaison with the Australians, the Canadians, and the United Kingdom.

The mission of FTTTF, as stated in Chairman Hostettler's remarks, is to keep foreign terrorists and their supporters out of the U.S. and develop means that lead to their removal, detention, prosecution, or other legal process. To accomplish this mission, the Foreign Terrorist Tracking Task Force has coordinated and facilitated information sharing agreements with our participating agencies, as well as public and proprietary companies who have data that help us locate persons in the U.S. Quality and completeness of this data directly affects the efficiency and effectiveness of our efforts.

Among the sources of data are the I-94s, which are the focus of this study and GAO's report. The I-94 is collected by the Bureau of Immigration and Customs Enforcement, are completed by the foreign traveler. It's recognized that the quality of the data on the I-94 is not as complete as we would like. The fact—that factor is compensated by our use of other government data and public and proprietary data sources to effectively determine the accuracy or the inaccuracy of the I-94 data.

In addition to supporting specific criminal investigations of terrorist, FTTTF has supported the Department of Homeland Security's National Security Entry-Exit Registration System, commonly known as NSEERS, and we have vetted over a quarter of a million NSEERS registrants to try to help DHS locate those that are absconders.

The newly created Terrorist Screening Center, as required by Homeland Security Presidential Directive Number 6, will further enhance our capabilities to keep terrorists out of the country or locate them when they are in-country. HSPD Number 6 requires that the Terrorist Screening Center provide information to support

screening processes at all opportunities. Such information will be made accessible, when appropriate, to State, local, tribal, and territorial authorities to support their screening processes and enable them to identify and assist in the location of terrorists. Additional mechanisms will be hosted to support appropriate private sector organizations and foreign governments that are helping us in the war on terrorism.

Efforts such as these and the cooperation between the Department of Homeland Security, the Department of Justice, and other law enforcement agencies significantly mitigate the risk imposed by the visa overstay problem. It bears noting, however, that at this critical point of risk mitigation is to keep terrorists and their supporters out of the U.S., and that is best done at the visa applicant process and the border inspection process. The Terrorist Screening Center will seek to improve that capability. The recent GAO study, of course, suggests there is need for improvement in this regard.

In the event that someone penetrates the border, either legally or illegally, and comes to our attention after they're in this country, FTTTF and the Terrorist Screening Center will work to locate them. Whether or not there is an accurate record of their lawful and timely departure is important to us, but we must assume they are still in this country or they may have gotten here undetected. We will take the same vigilant activities to try to locate their presence. The fact that they are able to overstay their visa authority affects the timing of their plans, but not their intent. As you may well appreciate, our mission requires that we remain as vigilant about serious criminal activities of foreign visitors during their lawful stay as well as subsequent overstays.

Thank you, and I look forward to your questions.

Mr. HOSTETTLER. Thank you, Mr. Tanner.

[The prepared statement of Mr. Tanner follows:]

PREPARED STATEMENT OF MARK TANNER

Chairman Hostettler, Ranking Member Jackson-Lee, and Members of the Subcommittee, the Federal Bureau of Investigation is pleased to have the opportunity to appear before you today to discuss the important issue of nonimmigrant aliens who overstay their lawful admission and their relationship to terrorism. The Department of Justice and the FBI have been charged by the President, with the support of Congress, to protect the American people from the continuing threats of terrorism and the crimes associated therewith. It is in the context of our post-9/11 world that we present our views and concerns to the Subcommittee today.

As represented in the GAO report, which is the focus of this hearing, the number of foreign visitors to the U.S. who fail to leave as required by their respective visa is significant. The quality and completeness of government information concerning an individual's correct identity, location and status has a direct impact on the effectiveness and efficiency of our efforts to locate them. The enormous number of visitors to the U.S. and avenues of entry and exit makes it inordinately difficult, if not impossible, to accurately account for each entrant. Nonetheless, the Department of Justice and the FBI, in partnership with other law enforcement agencies, the intelligence community, the defense community and foreign nations are devising and have implemented processes and specialized operational units to mitigate the risks imposed by such overstays.

One such specialized organization is the Foreign Terrorist Tracking Task Force or FTTTF. The participants in the FTTTF include the Department of Defense, the Department of Homeland Security's Bureaus of Immigration and Customs Enforcement and the Customs and Border Protection, the State Department, the Social Security Administration, the Office of Personnel Management, the Department of Energy, and the Central Intelligence Agency. To date, we also have established liaison with Canada, Australia, and the United Kingdom. The mission of the FTTTF is to

provide information that helps keep foreign terrorists and their supporters out of the U.S. or leads to their removal, detention, prosecution or other legal action. To accomplish this mission, the FTTTF has facilitated and coordinated information sharing agreements among these participating agencies and other public and proprietary companies to assist in locating terrorists and their supporters who are, or have been, in the U.S. The quality and completeness of the data directly impacts our efficiency and effectiveness.

Among our sources of data are the I-94s, which were a focus of the GAO study. The I-94 is collected by the Bureau of Immigration and Customs Enforcement, after being completed by a foreign traveler. It is recognized that the quality of data on the I-94, which is self-reported, is rarely complete. This factor is compensated, by our use, when appropriate, of other sources of confirming data. These additional data sources, increase the quality and therefore usefulness of our efforts. For example, as terrorist subjects are identified by law enforcement or the intelligence community, the FTTTF typically searches other sources of data to assist in developing investigative leads. If there is an I-94 record for that same subject, it may be compared to other government, public, and proprietary sources of data in order to verify or refute its accuracy, with our ultimate goal to locate the individual.

In addition to supporting the specific investigations of terrorists, FTTTF has supported the Department of Homeland Security's National Security Entry/Exit Registration System (NSEERS) by vetting over a quarter of a million NSEERS registrants in order to assist in the location of absconders.

The newly created Terrorist Screening Center, as required by Homeland Security Presidential Directive - 6, will further enhance our capabilities to keep terrorists and their supporters out of the U.S. or locate them. HSPD-6 requires that the Terrorist Screening Center provide information to support screening processes at all opportunities. Such information will be made accessible when appropriate to State, local, territorial, and tribal authorities to support their screening processes and otherwise enable them to identify, or assist in identifying such individuals. Additionally, mechanisms will be hosted, to the extent permitted by law, to support appropriate private sector organizations and foreign governments' cooperation with the U.S. in the war on terrorism.

Efforts such as these, and the cooperation between the Department of Homeland Security, the Department of Justice, and other law enforcement agencies significantly mitigate the risk imposed by the visa overstay problem. It bears noting, however, that the critical point of risk mitigation is to keep terrorists and their supporters out of the U.S. The earliest opportunity that the government has to encounter and identify terrorists and criminals is during the visa application process or at their initial border inspection. The recent GAO study suggests there is room for improvement in the current processes.

In the event that someone penetrates the border or comes to law enforcement attention for serious criminal activities after their legal entry, the FTTTF and Terrorist Screening Center will work to locate them. Whether or not there is an accurate record of their lawful and timely departure, we must assume they may still be in the U.S. or have returned undetected, and thus we remain vigilant in our efforts to locate them. The fact that they are able to overstay their visa authority, affects the timing of their plans, but not their intent. As you can well appreciate, our mission requires that we remain as vigilant about serious criminal activities by foreign visitors during their lawful stay, as during any subsequent overstay.

Mr. HOSTETTLER. Ms. Papademetriou.

**STATEMENT OF THERESA PAPADEMETRIOU, SENIOR LEGAL
SPECIALIST, LIBRARY OF CONGRESS**

Ms. PAPADEMETRIOU. Good afternoon, Mr. Chairman and Members of the Subcommittee. I would like to thank you very much for giving me the opportunity to present to you my testimony on the European Union's approach on the issue of visa overstays. With your permission, I would like to make a few remarks for the Subcommittee.

The European Union currently has 15 members, and as of May 1, 2004, 10 more members will be added. While issues on immigration fall within the jurisdiction of the European Union, the maintenance of public order and public security and the safeguarding of internal security belongs to the member states.

In general, the European Union's approach regarding illegal immigration is multifaceted. However, I'm going to limit my remarks on two mechanisms that have the potential to assist the national authorities of the member states in controlling the illegal aliens which remain within their territory. The first is the Schengen Information System, which is a comprehensive database and it has been already in place, and the second one is the Visa Information System, which is still under preparation and further discussion.

The Schengen Information System was established on the basis of the so-called Schengen Convention in 1995 with the objective to assist the member states in safeguarding the public order and public security. In brief, it contains data on wanted persons and stolen objects.

The data that are input into this system include data relating to aliens who are reported because they have been denied entry in the territory. In this case, the national authorities are going to prepare a report based on the fact of whether the alien actually poses a threat to public policy or public security.

Data relating to aliens who have been subject to deportation proceedings or against whom there is evidence of an intention to commit a crime.

Data relating to persons who have been disappeared or the persons who, for their own security, are in need of protection.

Data relating to persons or vehicles, provided, though, that this is permitted under the national law of the member state, for the purposes of discrete surveillance or checks. Such a report could be made in order to prosecute criminal offenses and for the prevention of threats to public security in the following two instances: Where there are real indications to suggest that the person intends to commit serious offenses; or under an overall evaluation of the person concerned, in particular of previous offenses committed, there is a possibility or a reason to suspect that the person will also commit other crimes.

Discussions are currently underway to update this system in light of the enlargement and also to expand the categories of data that are going to be inserted and to allow additional authorities to have access to the system. It has also been suggested that the storage and the transfer of biometric data, including fingerprints, should be included.

The proposed Visa Information System will be an additional tool for the European Union in an effort to harmonize the rules of the member states regarding a uniform system of visas. It will operate as an online system, and it comprises two parts. It has a central identification system, which is going to be under the responsibility of the European Commission, and a national identification system, which is going to be operated by the member state.

The system will contain information on visas issued based, of course, on the information provided by the applicant. The question as to whether it is going to contain information on visas denied is still under further discussion. Electronic photos will also be stored and travel documents will be scanned and stored. Thus, any subsequent manipulation of the travel document could be easily detected by comparing the document with the image stored. Among the biometric identifiers that have been reviewed for possible use, such as

iris scanning and others, fingerprint has been considered as the best solution for this database. There are also plans for the eventual connection of all consular offices.

At this point, please allow me to give you an example of how this system is going to operate in place. When an individual visits the consular office outside the EU to be issued a visa, the consular office will enter the data based on the information provided by the applicant, along with the scanning and storing of travel documents. In case, at a later stage, the same individual goes to another consular office, and based on the information provided or retrieved from the system, the Consul General will be able to detect fraud in case that there is fraud, and also may refuse a visa in case that the alien has been visa shopping.

In conclusion, both systems have certain advantages. While the Schengen Information System has a broader scope than the Visa Information System in terms of data inserted and also access rights of individuals or competent authorities, it is limited because insertion, input of data depends on whether such an act is permitted by the national law of the member states and whether an individual, and actually, an individual must be in violation of the law or pose a threat to domestic security and public order. On the other hand, the Visa Information System is only limited to those aliens who seek a visa to enter a member state of the European Union. In reality, even with these two systems, which actually in the future they're going to be interlinked, a number of illegal aliens will still remain undetected.

Thank you, and I'm looking forward to questions.

Mr. HOSTETTLER. Thank you, Ms. Papademetriou.

[The prepared statement of Ms. Papademetriou follows:]



Testimony of

Theresa Papademetriou
Senior Legal Specialist
The Law Library of Congress

on

The European Union

at an oversight hearing on

VISA OVERSTAYS: A GROWING PROBLEM FOR LAW ENFORCEMENT

before the

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

October 16, 2003

LAW LIBRARY OF CONGRESS

EUROPEAN UNION

OVERSTAY OF VISA AND LAW ENFORCEMENT AUTHORITIES

Immigration issues, such as conditions of entry and residence, measures to counter illegal immigration and illegal residence, and issues related to border control fall within the competence of the European Union. On the other hand, matters related to maintaining law and order and safeguarding the internal security fall within the ambit of the Member States.

In order to secure the right of persons to move freely within the EU borders, the Council of the European Union, which is one of the primary institutions of the EU responsible for adopting legislation, has the power, based on the mandate by the Amsterdam Treaty, to adopt measures related to the free movement of persons within the Community borders along with "directly related flanking measures" on external border control, asylum and immigration, and measures to prevent crime. The flanking measures specifically relate to:

- rules on crossing the external borders including, establishing the standards and procedures that Member States must follow in carrying out checks on persons at such borders
- rules on visas for periods of no more than 3 months, including the list of countries whose nationals must be in possession of visas when crossing the borders
- measures establishing the conditions under which third country nationals may freely travel within the territory of the Member States for no more than 3 months.¹

The smuggling and trafficking of human beings have also been discussed in connection with illegal immigration. The EU has adopted two key legal instruments to address this issue: a framework decision adopted in July 2002 on combating trafficking of human beings and a pending proposal for a Council decision to conclude on behalf of the European Community of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons and Supplementing the United Nations Convention Against Transnational Organized Crime.²

Within the borders of the EU, there are a large number of illegal residents. The European Commission, another primary institution that has the right to initiate legislation and to supervise the correct implementation of EU legislation, has identified three possible groups, those who have: entered with a valid visa or residence permit but have overstayed; entered based on valid travel documents when their nationality has been exempted from a visa requirement for a short stay; and had proper residence and work permits and simply overstayed their period of legal residence. Eventually their residence becomes illegal. There is no assessment of the approximate number of illegal immigrants in each of the different groups.³

A legal framework for illegal immigration issues, such as the issuing of visas, border controls,

¹ Amsterdam Treaty, articles 61, 62 and 63.

² COM/2003/0512 final

³ Proposal for a Comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union OJ C 142/6/14/2002.

illegal entry and stay, and the trafficking of human beings is in force and is binding for all European Union Members, including the new Members. The Schengen Convention⁴ also contains a number of binding rules on illegal immigration and border control. Introduction of new rules are not warranted, since according to the European Commission's opinion, the existing framework suffices to deal with the issue of illegal immigration. The Commission has also often urged the Member States to implement the EU rules in this area, since successful combat against illegal immigrations presupposes correct and timely implementation and enforcement of the existing regime by the Member States.⁵

Illegal immigrants may go for a long period completely undetected within the borders of the European Community in the absence of an EU-wide system to track their whereabouts. However, the role of the Schengen Information System (SIS) must be stated in this respect as a useful tool in keeping records of those who violate the laws and regulations in a Member State and those who are considered a threat to national security and public policy. The SIS consists of a national function and a technical support function. Each Member is responsible for issuing alerts on aliens based on the information provided by the Schengen Agreement and inserting them in the database.

Currently, 13 Member States and two non-Member States (Norway and Iceland) participate in the SIS. However, the SIS is a system that was created initially with a small number of participant countries, and thus, its current capabilities are not sufficient to handle the increase in Member States after the EU enlargement. Based on the most current, available developments in information technology, the EU has introduced the concept of a second generation SIS and provided funds from the general EU budget to accomplish this task. Future EU Member States are required to use the system, so during the application process, applicants have to transpose the Schengen *acquis* into their domestic legislation.

The SIS is a hit/no hit system that allows the Member States to exchange information in order to supervise the free movement of persons and the maintenance of public security and to assist the Members in the fight against organized crime. In June 2003, the Justice and Home Affairs Council reiterated again that the functions of the SIS system must be expanded to include new categories of persons included, as well as additional authorities to get access to the system. Moreover, it was suggested that the storage, transfer, and possible querying of biometric data, especially photographs and fingerprints, be inserted in the system. An eventual link of the SIS system and the Visa Identification System (VIS) that is planned to be introduced will likely be a more effective tool of recording those aliens who pose a threat to security and justice.⁶

It should be emphasized that the EU's approach to combat illegal immigration focuses on tackling various aspects. In an effort to deal effectively with this issue, the EU has paid particular attention to combat the problem of illegal immigration at its roots. The EU plan comprises pre-frontiers measures, such as a common visa policy, border control policy and return policy for illegal immigrants. The latter issue is a matter that falls within the responsibility of the Member States. The Members have signed a number of re-admission agreements with third countries.

⁴ Convention implementing the Schengen Agreement of June 14, 1985, between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany, and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on June 9, 1990 OJ L 23/19 (9/22/2000).

⁵ *Supra* note 3.

⁶ Justice and Home Affairs Council Meeting, Luxembourg, 5-6 June 2003 (9845/03 (press 150)).

The European Commission has paid considerable attention to the issue of illegal immigration, which has acquired new dimensions, especially since the events of September 11, 2001, in the US and the enlargement of the EU from the current fifteen Members to 25, as of May 1, 2004. Based on work previously prepared by the European Commission, a comprehensive plan was adopted in February 2002 to combat illegal immigration at the EU level.

The plan identified six areas where action is deemed necessary:

- visa policy
- infrastructure for information exchange, cooperation and coordination
- border management
- police cooperation
- criminal penalties for those who facilitate illegal immigration
- return and re-admission policy.

Visa Policy

The EU views a common visa policy as one of the key instruments to prevent illegal immigration. Illegal immigration along with other criteria such public policy and security concerns, external relations, and reciprocity were used in adopting the Regulations listing third-country nationals who must possess a visa when crossing the external borders and those whose nationals are exempt from that requirement. The list of countries was updated recently.⁷

The so-called Santiago Action Plan that comprises the recommendation of the European Councils of Lacken and Seville, along with the comprehensive plan to fight illegal immigration and trafficking of human beings, have paid particular attention to the establishment of common new information system. This is the Visa Information System (VIS), which will complement the existing rules on visas and could be a major step in harmonizing the policies of the Members States on this issue. As envisaged, the VIS will operate as a common electronic online system which could complement the concept of security documents in order to create a dual identification process based on secured documents and a corresponding database. The database will include information on the visa applicant, along with a picture, and documents to be scanned and stored. The system will be used to prevent fraud, visa shopping, and contribute to internal security. The VIS comprises a Central Visa Information System (C_VIS) and a National Visa Information System (N_VIS). A feasibility study carried out by the Commission provides the technical and financial aspects of the this program. Three options have been reviewed that could be used as biometric identifiers: iris scanning, facial recognition and fingerprinting. The Commission recommended fingerprinting as the best identifier to be included in a database. The consular posts are going to be connected to the VIS system. Thus, in practice, when an individual visits a consular office outside the EU to be issued a visa, the consular office will enter the data in the system, especially when the visa is refused. Subsequently, if the same individual visits another consular office, based on the information retrieved from the database, the consular will also be able to refuse entry to this individual.⁸

⁷ Communication from the Commission to the European Parliament and the Council in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents COM/2003/323 final.

⁸ *Id.*

This is still far from being implemented. Further development of the program will depend on a number of factors decided by the Council, such as choice of identifier to be stored and processed in the system. Other issues involve allocation of community funds and especially the burden on the national budgets to fund the national parts of the VIS system and especially training and equipping the consular posts abroad. The Commission has entered €10 million euros in the preliminary draft budget for 2004 to finance the initial phase of development of the VIS. Further development of the VIS system to cover the additional needs is estimated for the period 2004-2006 at close to €140 million euros.⁹

The Commission considered the option of integrating in the central part of the VIS the Schengen Information System II. The Commission also intends to present proposals of adding biometric to EU passports, along with a photograph in the visa and residence permit. It has also been suggested that this system could be supplemented by introducing a central register of aliens. No further progress could be found on this issue.

Gathering of Information, Intelligence, and Analysis

With regard to enhancing the cooperation and coordination of the Member States and law enforcement agencies, it was that a technical support facility be established in order to assist in information gathering, analysis, and dissemination. There are already a number of formal and informal networks such as the Center for Information Exchange (CIREFI) under which, on a monthly basis, Members exchange information on current trends in migratory flows. The Early Warning System which has been established since 1999 is used for the transmission of information on illegal migration and facilitator networks. However this is still at an embryonic stage. By the end of 2003, the Commission plans to introduce a proposal establishing an information and coordination network in conjunction with the early warning system. Moreover, the Commission is examining the creation of a European Migration Observatory which could monitor and carry out comparative analysis of both legal and irregular migratory flows.

Border Management

The external borders are still seen as the “weakest link” which can affect the internal security of the Members in particular in an area without borders. The Member States are responsible for conducting checks at border crossing points in accordance with the rules of the Schengen Convention so that persons, and vehicles are free to enter or leave the Schengen area.

The current rules on external borders are principally based on the Schengen Convention¹⁰ and Title IV of the Treaty on European Community. The Schengen Agreement, which was signed in 1985 by Germany, France, and the Benelux countries, has been incorporated into the founding EU Treaties. The participating states include: Austria, Belgium, Denmark, Finland, Germany, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Portugal, and Sweden and non-EU members Iceland and Norway. Ireland and United Kingdom have opted out of certain provisions. Both exercise control on persons entering from other Member States. Member States are also allowed to exercise controls on persons entering their territory either from Ireland or the United Kingdom. An important feature of the Schengen Agreement is

⁹*Id.*

¹⁰Convention Implementing the Schengen Agreement of June 14, 1985, between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on June 9, 1990. OJ L 23/19 (9/22/2000).

the lack of internal border controls among its members. In practical terms, this principle is expected to fully apply to everyone, regardless of nationality, as of May 1, 2004. At the external borders, EU citizens are requested to show ID cards or passports, while third country nationals enter by showing a valid visa or a passport.

Since March 26, 1995, checks and surveillance at the external borders are governed by certain uniform rules laid down in the Schengen Convention. Articles 7 and 47 of the Schengen Convention require that the Member States cooperate closely in the area of border controls. Two kinds of cooperation pertaining to checks and surveillance are currently followed by Member States: the exchange of liaison officers and bilateral police cooperation agreements between the Member States with the objective of fighting illegal immigration and organized crime.

Initial steps have been taken to facilitate the creation of a European border guard which will be entrusted to complement the actions of the Members in managing their external borders. A number of pilot projects have been initiated to enhance further cooperation between the border guard services of Member States. The Commission also intends to submit a proposal for the creation of a Border Management Agency based on the experience gained by the Common Unit of External Border Practitioners. This unit was created in June 2002. It is composed of the heads of border control services of the Members and Norway and Iceland to coordinate the measures related to border control.

Police Cooperation

Under the Schengen Agreement, police forces of the Members are required to provide mutual assistance and a direct information exchange between police services, cross-border surveillance, and pursuit of suspects. A European police force, Europol, has been established, and its role is to provide support to Member States in the prevention, investigation, and analysis of the crimes involved.¹¹ To this end, Europol operates and maintains a computerized database. Its mandate was expanded as of January 2002, to include additional forms of crime, such as organized crime and trafficking of human beings.

¹¹Europol Convention of July 26, 1995, on establishment of a European Police Office, OJ C316/2 (1/27/1995).

Mr. HOSTETTLER. Dr. Martin.

STATEMENT OF SUSAN FORBES MARTIN, DIRECTOR, INSTITUTE FOR THE STUDY OF INTERNATIONAL MIGRATION, GEORGETOWN UNIVERSITY

Ms. MARTIN. Thank you. I'm very pleased to be here to testify and to see the Committee dealing with the issue of overstays. I must admit it's also a bit discouraging since the first time I testified before this Committee on the overstay problem was almost 10 years ago, and my testimony, I must admit, is quite similar to what I had to say before. Mr. Smith no doubt remembers.

The aim of immigration policy and its implementation as I see it is dual, to facilitate the entry of those foreign nationals whose presence in the United States we want, and to identify and deter the admission of those whom we don't want to be in our countries, for whatever set of purposes. And I think the balancing between facilitation and prevention and control, I think, is a very, very delicate one and one that requires a great deal of attention.

I agree very much with the point that Mr. Tanner ended with, that if those who pose security risks are already here, we have, in effect, lost a lot of the battle in that prevention of entry is certainly far superior to trying to find the needle in the haystack after people are already admitted to the country. And those who do want to do harm to the country will, as he mentioned, as well, be able to do it within a period of legal stay, if that's really their intent. So the overstay problem in terms of the security risks, I think we need to keep in some perspective on that.

As my colleagues have mentioned from the GAO and FBI, overstayers, though, are a large proportion of those who are here illegally or without authorization for their stay at any given time. I'm looking at overstay in the broader context, not just a visa overstay, but of those who have entered with inspection, been admitted into the U.S., but then don't leave when they're supposed to, or work in violation of the terms of their entry.

Though a very large and significant part of that population, it's also necessary to keep in mind that they are a very, very small percentage of the total number of foreign visitors who enter the United States each year, with 500 million entries and exits from the United States, 300 million of those being entries and exits of foreign nationals, 30 million coming in on visas. The numbers of overstayers are really quite a small part of that total, and so again, the balancing of facilitation and control is absolutely essential.

Still, overstay does undermine the rule of law. It makes a mockery in some respects of our legal immigration system and, therefore, I think serious attention must be given to it.

In 1994, the Commission on Immigration Reform recommended the development and implementation of an electronic arrival and departure control system to be implemented immediately in airports, potentially over the long-term at land border ports of entry. In 1996, the Congress did pick up on that recommendation and it became a part of immigration law. Because of the great difficulties, though, of implementing an entry-exit control system on the land border ports of entry, the deployment of the entire system was, I think, very unfortunately delayed way beyond a reasonable period of time.

There are models for electronic arrival and departure systems for those coming into the country at airports. Australia has a very good system of electronic travel authorization that applies particularly to people coming without visas, so they haven't been prescreened by consular affairs officers. But the electronic system allows for a running of their names, passport number, date of birth, other information against a lookout system that will identify people and prevent them from even getting onto an airplane if they pose a security threat.

So there are models. I believe many of them are being integrated into the US VISIT system and that's quite beneficial. But it's beneficial, I think, not so much an entry-exit system will allow the identification of the specific person and finding where that person is in the country to pick them up. I think it's unrealistic to expect it to have that effect.

It's valuable because it provides extremely useful information that we can use, intelligence that we can use in doing a better job of prevention, in giving the officers who are making decisions on visas and on inspections at ports of entry the trend analysis that's necessary in order to really determine who may be likely to overstay, who may pose a threat, who might be likely to be coming for work purposes. And I would hope that in developing US VISIT that that analytic capacity and the ability to actually look at the data and not just collect it will be a required part of the implementation. Too often in the immigration system, we've collected information and allowed it to just stay in storage rooms and in boxes or in computers and never used it and exploited its value in terms of being able to prevent the things that we don't want to happen.

So let me, just to summarize, overstay is a significant part of the unauthorized population, but a small part of the total number of foreign visitors who enter and exit each year. We can develop much more effective systems for entry and exit. In my testimony, I also mention the much greater use we should be making of commuter systems and frequent traveler systems to get people in and out with information collected but not with delays in their arrival. And ultimately, the real value of such systems is to be able to prevent entry, develop the information systems necessary in order to keep up with the trends in movements and thereby make our country much safer than it is today. Thank you.

Mr. HOSTETTLER. Thank you, Dr. Martin.

[The prepared statement of Dr. Martin follows:]

PREPARED STATEMENT OF SUSAN MARTIN

Immigration policies aim to facilitate the entry of foreigners whose presence is desired, and to identify and deter the entry of unwanted foreigners. Since September 11, policymakers as well as the general public have questioned whether current policies and practices are capable of meeting these twin challenges. All of the terrorists suspected of blowing up the World Trade Center and the Pentagon entered the United States on valid visas. They resided and studied in this country and several European countries with little danger of apprehension—even though several had overstayed their permission to remain.

Overstay has been a persistent problem in managing immigration policies. Some perspective is needed, however, in assessing the scale and nature of the problem. Overstays represent a significant proportion of the unauthorized migrants currently in the United States. The most recent government estimates are that about one-third of the long term unauthorized population is composed of overstayers. If the best estimates of the number of long-term unauthorized migrants are correct, about 2.5 to 3 million unauthorized migrants are overstayers. About 125,000–150,000 overstayers are added to the long term unauthorized population each year. How many persons overstay their visas for shorter terms is unknown, but it is likely to also number in the hundreds of thousands per year.

Yet, even though a significant proportion of the unauthorized population, the overstayers are still a small proportion of the more than 30 million persons who enter the United States each year on visas. And, they are an even smaller proportion of the almost 300 million foreign visitors who entered the country in FY 2002 alone. Moreover, the vast majority of overstayers pose no security threat to the United States, remaining in the United States for family or work reasons.

This is not to suggest that we should understate the problems posed by overstays. For a legal immigration system to function, there must be an ability to manage entries and exits in a way that ensures respect for the rule of law.

Current mechanisms for determining who has overstayed visas are inadequate. For most of those arriving by air, entry-exit tracking involves a foreign national completing the I-94 form and presenting it to the inspector upon arrival. When leaving the US, the foreign national returns the departure part of the form to the airline for transmission to the Department of Homeland Security, but compliance has been spotty. Those entering and exiting the US at land borders are also supposed to turn in I-94s forms, but many do not. In any event, I-94 forms are completed by hand and they cannot be used to track the departure of specific persons until the data are entered into a computer. If the number on the departure form is not clearly readable, which may be the case after weeks or months in the country, it may be very difficult to complete the matching process.

In 1994, the US Commission on Immigration Reform recommended the development of an electronic arrival and departure record system for all visitors coming into the country through air and seaports of entry. The Commission explained that computerizing arrival and departure information would “make determination if individual passengers have left the country prior to their required departure date easier than labor-intensive paper form matching to determine if individual visa holders have departed or overstayed the terms of their visa.” The Commission concluded that “exit controls are now one of the weakest parts of the inspections process.”

Congress in 1996 required the INS to develop a new system to record the entries and exits of all foreign visitors by October 1, 1998. The legislation required deployment of the system at air, sea and land ports of entry and exit. The universal entry-exit tracking system required in 1996 legislation was opposed by neighboring countries and U.S. border states for fear it would slow trade and tourism. The US Senate voted three times to repeal the requirement. The principal opposition was to its deployment at land borders, which see far more crossings each day than airports. If each person has to be checked on entry and exit, cross-border commuting, trade, and tourism could be hampered.

Since September 11, more serious attention has been paid to the entry-exit control systems. To date, in the absence of a functioning universal entry-exit program, the administration has used ad hoc systems, generally aimed at specific, profiled populations. The National Security Entry-Exit Registration System (NSEERS) focuses on nationals of about thirty countries. NSEERS presently is composed of a registration program conducted at various ports-of-entry and a Special Registration program for certain foreign nationals already in the country. Although first established under the authority of the Immigration and Naturalization Service, due to the reorganization into the Department of Homeland Security, NSEERS is now overseen by the Bureau of Citizenship and Immigration Services (BCIS).

In testimony given before the Senate Committee on Finance, a senior INS official stated that the NSEERS program “promotes several important national security objectives:

- It allows the United States to run the fingerprints of aliens seeking to enter the U.S. or present in the U.S. against a database of known terrorists.
- It enables the INS to determine instantly whether such an alien has overstayed his/her visa.
- It enables the INS to verify that an alien is living where he said he would live, and doing what he said he would do while in the United States, and to ensure that he is not violating our immigration laws.¹

He further testified that as of January 23, 2003, “NSEERS has led to the identification and apprehension of 7 suspected terrorists.”²

There is reason to be concerned, however, about the targeting of Arab and Muslim foreign nationals for registration. The Special Registration program implicitly assumes that citizens of the stated countries are believed to be more likely to be participating in terrorist activities than those of other countries (even ones with known terrorist organizations operating within their territories). There was little consultation with Arab and Islamic communities prior to the implementation of the registration system, leading to an increase in tensions between members of these commu-

¹ Johnny Williams, Executive Associate Commissioner for Field Operations, U.S. Immigration and Naturalization Service, Statement before the Senate Committee on Finance regarding Combating Terrorism: Protecting the United States (January 30, 2003), <http://www.immigration.gov/graphics/aboutus/congress/testimonies/2003/Williams.pdf>.

² *Id.*

nities and government officials. Yet, cooperation of the Arab and Islamic communities in the United States is a key ingredient in the intelligence gathering needed to identify actual threats. To the extent that the Special Registration makes such cooperation harder to achieve, it may harm national security and reduce the likelihood of apprehending terrorists.

The Administration has announced its intention to move forward with a universal entry-exit program, US-Visit (United States Visitor and Immigrant Status Indicator Technology), by the beginning of 2004. The new system will allow for automated capture of basic information about each arriving and departing passenger. According to DHS, it eventually will collect information on date of arrival and departure; nationality; classification as an immigrant or non-immigrant; complete name; date of birth; citizenship; sex; passport number and country of issuance; country of residence; U.S. visa number, date and place of issuance (where applicable); alien registration number (where applicable); and complete address while in the United States. It will also allow for recording of biometric information, such as a photograph and fingerprint. The system will be introduced at air and sea ports of entry and then extended to the land ports of entry, which have far more crossings each day. It will cover all phases of a person's visit to the United States, from pre-arrival screening by consular officers through departure from the country.

Introducing an electronic entry and exit system at airports and seaports should be relatively straightforward, even for persons who are able to enter without a visa. Other countries have working entry-exit systems in operation. For example, Australia issues an Electronic Travel Authority (ETA) after checking traveler's information collected at the time passage is booked with an airline. The electronic system enables the first security check to be done well in advance of international movement. Then, when a person arrives at check-in, the airline can check electronically to find out if the individual is cleared to board. The final inspection is done on arrival in Australia. When the person departs, the electronic system automatically records this event as well.

The land border implementation will be far more difficult without adversely affecting valued and legitimate border crossings. Given the very large number of such events each year, the small number of overstayers and even smaller number of persons who pose security threats, it is essential to balance the harm that may arise from overstays with the harm that may be done by unduly slowing down travel across the land borders. Efforts to facilitate admissions must be given as much attention as those to control entries and exits.

Pre-enrollment of frequent travelers can support both facilitation and control, allowing commuters and other frequent border crossers an expeditious method of entering and exiting, while allowing greater time and attention to be paid to visitors about whom the authorities have less information. Expansion of the existing commuter programs should be given high priority. The Secure Electronic Network for Travelers Rapid Inspection (SENTRI) identifies border crossers who pose little risk to border security, verifies their low-risk status through extensive record checks, and screens approved participants and their vehicles each and every time they enter the United States. Frequent commuters apply and pay a fee for the program. Names, digitized photographs, and vehicle information come up on an Inspector's screen just before the vehicle arrives at the Inspection site. Upon reaching the booth, the driver stops, reaches out the window and swipes an electronically coded PortPass card through a magnetic stripe card reader. Participants in the program generally wait no longer than three minutes behind other cars to enter the U.S. at the busiest time of day. Technically, the system combines security pre-screening with biometrics and fast crossing/inspection. It acts as an effective entry-exit system in allowing information to be collected on any abuses, such as overstay, while still facilitating rapid admissions.

A further point to make about entry-exit control systems involves the use of the data collected. The biggest benefit of such systems is not the identification and tracking of a specific individual who has overstayed, given the difficulty of finding a person who has determined to disappear. *Prevention* of the admission of persons who are likely to overstay, with particular attention to those who also pose a security threat, remains the most effective way to protect U.S. borders. Once someone has overstayed their visa for some period of time, it is very difficult to find them and stop their actions. It is far better to prevent their entry, which requires good intelligence and look-out systems.

The benefit of the entry-exit control systems is to provide some of the intelligence needed to ensure better prevention and better facilitation. Analysis of the data collected through US-Visit will be essential to improving the management of our immigration system by giving more accurate information about the number of overstays, the classes of admission in which overstays take place, their duration, the character-

istics of overstayers, and other valuable factors helping to understand the overstay phenomenon. The analysis capability should be worked into the design and deployment of the system.

To summarize, persons who overstay their permission to remain in the United States are a significant part of the total number of unauthorized migrants but a small proportion of the millions of foreign nationals who enter the United States each year. Electronic systems for tracking entry and exit, combined with systematic and consistent analysis of the data collected, can be a valuable resource to improve management of US immigration programs. Every effort should be made in deploying such systems to ensure facilitation of legitimate movements across our borders in recognition of the many benefits accruing from the admission of foreign visitors.

Mr. HOSTETTLER. We will open up now with rounds of questioning from Members of the Subcommittee at 5 minutes, and Dr. Martin, I would like to start off by asking a question about one of the last points you made in your testimony with regard to the usefulness of a system to track entry and exit into the country in that you said it would not necessarily give us a tool that would allow us to apprehend the actual overstays, but to create an analytical model—I'm paraphrasing, if I get it wrong, let me know—but to create an analytical model whereby to make determinations in the future as to who may or may not be coming for the purpose as applied for the visa, who may or may not be intending to stay within the terms of their visa.

Let me see if I get this right. Are you suggesting that if there is a country or some other—some other flag that can be raised that says, we have certain folks from a particular country that come on a regular basis and it is our experience that folks from that country tend to overstay their visa, and so that would be a form of an analytical model that we might deny entry of another person because previous persons have created a model of overstay, if I can say that?

Ms. MARTIN. Well, I certainly wouldn't want the analytic framework to be as gross as nationality, because I think then we really miss the nuances in the migration experience. But certainly, if there is a country where there's a visa waiver, and there are very, very high levels of overstay coming out of that country, then you might want to reexamine whether the visa waiver is appropriate. Or if you know that the overstays are associated with certain socio-economic characteristics, gender, age, various different other things, it may help you decide who gets a more thorough screening and where the scrutiny really needs to be.

My concern is that without that information and, for example, interviewing everyone for a visa, the consular officers will probably not be spending enough time on the people whom they really need to concentrate on and too much time on the people whom we know are much less likely to be a serious risk.

Mr. HOSTETTLER. So let me go on with that. You mentioned socio-economic, gender, and other, and you said nationality might not be. Would race be a—

Ms. MARTIN. Again, I don't think that any race characteristic of that sort is particularly useful as a way of making those determinations. I think it has to be much more precise. My problem with the NSEERS program as it's been implemented based on broad nationality and religious views. I think that it makes us more complacent in terms of looking at other places where terrorism may be a threat. We know it's not limited just to the 30

countries or so that are part of NSEERS. It also means that if terrorists change the profile, and it's easy to do if, for example, you're only worrying about young men. Unfortunately, there have been suicide bombers who are young women. You just shift those characteristics. So it has to be much, much more specific than nationality, race, religion as the basis or else you're not doing a very good job from the security point of view or from the facilitation one.

Mr. HOSTETTLER. Let me ask one more question. If it is too specific, then isn't it easier to change the profile of the individual? I mean, if we get down to very specific things like you're saying, without taking these other things into consideration, doesn't it get much easier to change from one specific group to another type of specific group?

Ms. MARTIN. Yes, but at least the analysis will be based on some data and some actual patterns of what have been the prior experiences. Too often today, consular officers, again to use them as an example, are basing it on hunches, on presuppositions, on things that are not very concrete, and I think that that creates many more mistakes than having a much more precise picture of where the concerns are and where the threats are.

Mr. HOSTETTLER. Very good. Thank you.

Dr. Kingsbury, you have pointed out that there is a little risk for visa overstay from law enforcement, from coming face to face with law enforcement. Why do you say that in your testimony?

Ms. KINGSBURY. I don't think I said it. Well, I mean, most of the people who overstay are not terrorists and they're not criminals, so from that point of view, that's not the only thrust of it. But our basic premise is that better information, as Susan said, does allow you to at least fact-base some patterns, some ways of looking at the pattern of people coming in and out of this country that hopefully would make both consular officials and border inspectors make better decisions.

Mr. HOSTETTLER. My time has run out. The Chairman recognizes the gentlelady from Texas.

Ms. JACKSON LEE. I yield to the distinguished lady from California.

Ms. SÁNCHEZ. No, go ahead.

Ms. JACKSON LEE. All right, and I want to thank the distinguished gentlelady, Congresswoman Sánchez, for being so kind in representing me this afternoon, and I thank you for your indulgence, Mr. Chairman. We have several hearings. In fact, to the witnesses, we have a homeland security hearing going on right now, and I'm a Member of that committee, dealing specifically with border issues, so I thank you for your indulgence and I will ask questions and be asked for a polite excuse.

Dr. Martin, thank you very much, and to the other witnesses as well. Let me—I think this is an opportunity to be educated and to determine where we can be problem solvers, so let me lay out just a few problems that I want the record to capture.

First of all, I hope to engage the Chairman—I know our time is weaning—waning, excuse me, not weaning, our time is waning in this session and I have spoken to the Chairman about the CASE Act that I have proposed that deals with the question of smuggling illegal persons who are then victimized over the border, the respec-

tive borders of Northern and Southern border, because our borders are very, very large, and I think that is an issue this Committee should address.

Additionally, I think as we look at overstays, we have to do it in the backdrop of the new circumstances and atmosphere of 9/11. While we discussed the overstays, some of whom are harmless, but, of course, it is in many instances to those concerned about illegal immigration offensive, but some of them are harmless inasmuch as they are seeking to be here for opportunity, is that we have the contrast of the undermining of our status and friendship in the United States and around the world with the harsh way that we are granting visas to those who do want to come for goodwill.

So we have an enormous backlog in our consular offices in regions like the Arab region, in states that are friendly, such as Qatar, where we have an enormous relationship with that country and the respect for the United States. They just this past weekend opened up a complex called Education City sponsored by the Emir and Sheik Imuza, his wife, that has all American universities—Texas A&M, Cornell, Virginia Commonwealth, the Rand Corporation—on this massive campus to help educate their students and to help create opportunities for our students, as well.

So I am struck by the duplicity and the imbalance that we are speaking of to talk about visa overstays with an idea that that is the only problem that we're facing. So in the context of those remarks, I'd like to ask Dr. Kingsbury, does she have exact numbers of the visa overstays in Europe? That would be helpful as a comparison, and again, let it be clear that Europe has a multitude of countries and certainly has a substantially different immigration policy. But let me just ask that pointed question. Do you have that number for us?

Ms. KINGSBURY. We have not looked at that issue.

Ms. JACKSON LEE. Well, let me ask you to do so, if you would, so that we have a basis of comparison, and that would be very helpful.

Let me also ask, the key to a successful inspection process in this country is to balance the security and law enforcement needs against the needs of commerce and tourism, which is the very point that I was making. Do you, again to you, know how they have managed to balance that in the European countries?

Ms. KINGSBURY. No. As I say, we have not done any work in European countries.

Ms. JACKSON LEE. Mr. Chairman, I think that would be very helpful to us, particularly coming from the GAO, which is an independent and certainly nonpartisan investigatory and oversight tool that we, as Members of Congress, have the ability to utilize.

Let me also say that I'm interested in Dr. Martin's comments on this, and then I'd ask for Ms. Papademetriou—am I close enough?

Ms. PAPADEMETRIOU. That's correct.

Ms. JACKSON LEE. A beautiful Greek name, is that correct?

Ms. PAPADEMETRIOU. Yes.

Ms. JACKSON LEE. We have a lot of Papas in Houston. They cut off the other part. But if you would, if Dr. Martin would first comment, is this such a massive problem that in seeking solutions, should we not balance some of the concerns that I've just ex-

pressed, and then if you know the questions about Europe and the questions about Europe in terms of its balancing, I'd appreciate those questions being answered. Dr. Martin first, please.

Ms. MARTIN. Thank you. Yes, clearly, there has to be a balancing in terms of looking at the cost-benefit analysis of what we do for facilitation of the foreign travel that we want and benefit from and what we put in place in order to control and prevent unlawful activities. And again, I go back to the fact that prevention has to be the first priority, that it's steps that are taken as far away from our shores as possible to identify people who might be threats. That comes back to having good intelligence with regard to who the threats are. I mean, I think ultimately September 11 was primarily a problem of lack of intelligence and the sharing of that intelligence with those who needed it to make decisions.

So what we should be spending our resources on as the first priority are the very things that we need in order to make it as difficult as possible for those that we don't want to come in to come in. We should not spend a lot of time on the people that we could pre-screen, we could pre-enroll in programs for frequent travel. We can make our borders work much, much more efficiently. Again, the Commission on Immigration Reform recommended developing and expanding commuter systems on the land borders 10 years ago. They are now starting to ratchet up, but not very much.

So I think we can do a lot of things that have the dual effect of both facilitating legitimate travel and preventing illegitimate entries at one and the same time and that's where I'd at least put the bulk of my resources, in something that accomplishes both goals at the same time.

Ms. JACKSON LEE. Chairman, I thank you for indulgence if I could ask Ms. Papademetriou to answer on the questions about Europe.

Ms. PAPADEMETRIOU. Yes. With regard to your first question, if I remember well, which was related to the number of illegal aliens who overstay—

Ms. JACKSON LEE. Overstays in Europe, if you had some numbers—

Ms. PAPADEMETRIOU. There are none—I checked that. There's no assessment as to the number, even approximate number, of people who have overstayed their visa. It is very hard to do so, even though there are certain informal and formal networks that are occupied with statistics. Still, there is no such a number.

Ms. JACKSON LEE. So there could be one million, it could be 500,000, it could be 10 million could be possible. And then what about—

Ms. PAPADEMETRIOU. This is also a growing phenomenon that is very troubling within the European Union, as well.

Ms. JACKSON LEE. What is the response as relates to Europe's ability to balance between commerce and tourism and this whole question of enforcement?

Ms. PAPADEMETRIOU. Well, first of all, I'd like to say that the European Union has the competence on the issues of visa policy. In that respect, it has issued directives and regulations that regulate the entry and exit of people who legally want to enter the European Union for travel purposes or for tourist purposes or for gain-

ful employment. So in that respect, the member states are required by law to adopt within their system all the laws and regulations regarding the entry, the lawful entry and exit of illegal or legal immigrants.

Ms. JACKSON LEE. Mr. Chairman, my time is up and I just want to thank you, and I hope that maybe even in 2004 we could have hearings on solutions. I think Dr. Martin has raised a point that I've been investigating, the whole issue of pre-approval so that we isolate those who have the criteria, the basis upon which we would believe they come to do us harm.

And she raised another point and what I think would be an excellent hearing. We are Judiciary and we are dealing with the immigration aspects, but I really think this question of intelligence is a key element to safety, even in the immigration arena, because the intelligence that we had on the 19 terrorists on September 11 was enormous. We didn't know how to interpret it, we didn't know how to use it, and, therefore, obviously tragedies occurred. Someone told me, never say never. Never say that we will prevent any sort of tragic terror act, and I will not say that today.

But I will say that I think it would be worthy of this Committee, besides the point that we are not the Intelligence Committee, to have hearings on how that impacted the knowledge or lack of knowledge of these particular persons, some of whom came in legally, some of whom were legal when this occurred, some of whom were visa overstays. But we do a disservice if we lump everybody together. I think the pre-approval process is worthy of our consideration and the intelligence question is also worthy of our consideration. I thank the distinguished Chairman.

Mr. HOSTETTLER. Your point is well taken.

The chair now recognizes the gentleman from Texas for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman. First of all, thank you for having a hearing on such an important subject. As you have pointed out, I think very few people are aware of the fact that visa overstayers account for such a huge proportion of the people who are in the country illegally. The estimate is between 25 and 40 percent. It's probably closer to 40 percent. But that's significant for a couple of reasons, I think.

First of all, the folks who overstay their visas are known to us, or at least will be known to us once we get the entry-exit system up and going, and so they are going to be easier to identify and, therefore, we have perhaps a better opportunity to do something about that problem compared to the rest of the illegal immigrants who are in the country. But it is a huge problem and it's good to point this out.

Dr. Kingsbury, I'd like to address my first question to you, and I thought your testimony and your written testimony, as well, was very interesting, because you basically say that the Department of Homeland Security has underestimated the number of visa overstayers in the country. Their estimate is 2.3 million, as I recall, and you pointed out that that does not—that the 2.3 million really only applies to people who are actually here as sort of permanent residents and have not been going back. It also does not include the longtime overstayers from Mexico and Canada.

I guess my question is, would it surprise you if, in fact, the number of visa overstayers was double what the estimate is, of 2.3 million? And the reason I say that, just to elaborate and sort of extrapolate to the larger number of illegal immigrants in the country, we are told that the total number of illegal immigrants in this country is eight to ten million, but that only includes people, as you said about the visa overstayers, who are here as permanent residents. If you were to say today, in other words, on this given day, including the people who are going back and forth and so forth, isn't it possible that the visa overstayers might be as many as twice, or would you want to guess how many more than the 2.3 million?

Ms. KINGSBURY. Well, we at GAO tend not to be in the business of guessing, but I think that there are—we have been talking to a lot of experts who do look at these issues and we're going to be doing some additional work to see if there's some way of better refining that estimate. I am prepared to say 2.3 million is on the real conservative side.

Mr. SMITH. Would it surprise you if there were four million illegal visa overstayers in the country or not?

Ms. KINGSBURY. I don't think it would surprise me, no.

Mr. SMITH. Okay.

Ms. KINGSBURY. But I don't know that that's the case.

Mr. SMITH. I know you don't know it, but it wouldn't surprise me. The fact that it's not outside the realm of possibility, I think says a lot. And if we apply that to the overall illegal immigration population, then we are looking at something close to 20 million illegal immigrants in the United States, not just the 10 estimated, when we include all the people who are here temporarily, as well.

But my point here is that the problem may be a lot bigger than anybody estimates, and I see you're nodding your head in agreement on that.

Ms. KINGSBURY. Well, it's certainly the basic reason why we think a better entry-exit recordkeeping system is very important.

Mr. SMITH. Right. Do you think we ought to do anything that we have not done in the way of legislation to impose additional sanctions on individuals who are visa overstayers, because as I say, they're known to us. It's easier to impose sanctions if we wanted to, and if so, what kind of sanctions would you recommend?

Ms. KINGSBURY. Well, there are sanctions existing in regulations that simply aren't enforced, and I think a starting point would be to enforce existing sanctions and see if that changes the situation. I'm not sure that there's a specific basis for additional legislation at this point.

Mr. SMITH. Okay, good. Ms. Papademetriou, your name is unusual but also familiar to some of us who have been on the Committee for many years. Are you any relation to the gentleman who has the same name who used to testify before the Subcommittee in years past?

Ms. PAPADEMETRIOU. No.

Mr. SMITH. Oh, you're not.

Ms. PAPADEMETRIOU. I think I have seen his name, though, because he has published a number of articles.

Mr. SMITH. Yes.

Ms. PAPADEMETRIOU. Dimitri Papademetriou?

Mr. SMITH. Yes, that's him.

Ms. PAPADEMETRIOU. Yes, I'm familiar, but I have never met him.

Mr. SMITH. Boy, I would have guessed you were related.

Ms. PAPADEMETRIOU. There's no connection.

Mr. SMITH. That's interesting. Anyway, thanks.

Dr. Martin, one last question addressed to you, and that is do you think that the visa waiver program today is being abused?

Ms. MARTIN. Of course. I mean, every program we have is being abused. It's relative to what, which becomes the issue, and the extent of abuse. We just don't know. And again, because of not having entry-exit controls and not knowing whether or not people that come in without visas leave again. That's why I think the Australian system is far superior.

Mr. SMITH. Do you consider that to be—do you consider the visa waiver program to be a weak link in our immigration chain, which is to say people can work the system? If the terrorists wanted to come into the United States, the way to do it is probably to go to a country, a visa waiver country so that they are not scrutinized as they would be if they applied from another country?

Ms. MARTIN. Well, I think the real problem isn't that they would go to a visa waiver country, because they still wouldn't be eligible unless they were a national. I think there may be a problem in terms of alienation of young Muslim citizens, second-generation citizens in Europe in particular, that may make them good prey for recruitment by terrorists, so that might be a problem.

I must admit, in looking at the issue, though, of visa waivers, I can't help but think in terms of visas being imposed on us in reciprocity for our imposing visas on others, and that always has to be looked at as part of the tradeoff. I remember when France imposed visas on U.S. citizens, the—perhaps it was just as well that it was difficult to travel there, but it created problems in terms of our business dealings with French companies.

Mr. SMITH. Right, but I think we could well argue with other countries that we had a greater reason to scrutinize and we are the ones who were attacked. They haven't been attacked. So maybe they'd be open to our doing something a little bit more than they do. I don't think it has to be exact reciprocity between our country and their country.

Ms. MARTIN. That's the basis for which we do the visa waiver, is that it's reciprocal.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. HOSTETTLER. I thank the gentleman from Texas.

The chair now recognizes the gentleman from California, Mr. Berman, for 5 minutes.

Mr. BERMAN. I think it's important to—just a couple of points in the last exchange. A person holding a passport from a country who goes to a visa waiver country and then seeks to come into the United States, the visa is not waived for that person?

Ms. MARTIN. No, absolutely not.

Mr. BERMAN [continuing]. There was an implication somehow that that was the loophole through which terrorists might come. I mean, yes, it's possible that there are people who are citizens of the

visa waiver countries who could come in on that, but it would not be going to a visa waiver country in order to get into the United States.

Ms. MARTIN. Correct.

Mr. BERMAN. I just came in for the last part of this, and I don't want to force you to repeat what you've testified or answered in previous questions, but the entry-exit system, when is that supposed to be—I mean, first of all, it'll never be totally in place, right, because there are some people who came before we tried to develop that system who won't be shown to have entered. Or is there something about our records that allow us to retrieve everyone who entered with a visa no matter how long ago they entered?

Ms. KINGSBURY. Well, I don't think those records would successfully identify people that have entered before, and as far as the US VISIT system is concerned, the first phase of that, which is simply to better utilize, I think, existing procedures now, is supposed to be in effect at major airports by the end of this year. But the full-blown US VISIT system is not scheduled to be implemented until the end of calendar year 2006 under the current schedule, and that's a very ambitious schedule. So we are several years away from a functioning system that will really do the kind of thing that the Australian system can do or that will really track most of the people who come in and out of this country.

Mr. BERMAN. Does that require at the time of entry the listing of an address in the United States?

Ms. KINGSBURY. The specific procedures have not actually been decided yet, so I don't know the answer to that factually, but I would hope so.

Mr. BERMAN. I am——

Ms. KINGSBURY. But there——

Mr. BERMAN. I am unclear of how the system, when fully implemented, will—it may very well tell us that somebody has not left——

Ms. KINGSBURY. And the system will have a record of that——

Mr. BERMAN [continuing]. By the time they are supposed to have left.

Ms. KINGSBURY [continuing]. Person's fingerprints and face. So the guys like Mr. Tanner will have a better starting point than they have now.

Mr. BERMAN. But in terms of location or interim reporting of whereabouts, none of that is determined in terms of the details of the system?

Ms. KINGSBURY. To our knowledge, the procedures have not been established. There are requirements on the books today that people in this country are supposed to report changes of address, but those requirements are not enforced.

Ms. MARTIN. If I could add on that, the requirement to report change of address is there. The capacity to receive that information and get it into a file is almost nonexistent. They stay in storage rooms. An electronic system might at least allow for the entry of data on it, but I can just imagine tourists entering 20 hotels' addresses. So there are problems in any type of system. Once somebody is admitted, it's much, much more difficult to have any knowledge or control over their whereabouts, and that's again why pre-

vention is so much more important than trying to locate somebody once they are in-country.

Mr. BERMAN. Another question that my colleague, Mr. Smith, asked presumed an extrapolation fact that said if you thought 2.3 million overstays was on the conservative side, and that you wouldn't be surprised if it was really four million, that somehow the remaining number would also be increased by a similar or even greater proportion, leaping to conclusions about 20 million—

Ms. KINGSBURY. It was a speculative question, with all due respect.

Mr. BERMAN. I mean—

Ms. KINGSBURY. We have no evidence that would go there.

Mr. BERMAN. Take a moment and tell me the method. Yesterday, I read an article that said 300,000 people are still coming in, and I can't remember now whether it was a month or a year, but I'll assume it was a year, across the borders illegally. What's the basis for any scientific assertion that that's approximately the number?

Ms. KINGSBURY. There are a variety of people who study this flow across our borders—

Mr. BERMAN. Give me an example of some of their methodology.

Ms. KINGSBURY. Well, I'm actually not familiar with those, but I know we have talked to a number of them and there are different views and different numbers out there. It's one reason why we didn't report that number in this testimony.

Ms. MARTIN. Most of the methodology uses census data and it's a residual. We know whom you can identify because you know who's here at a given point, how many births there are, how many deaths there are, and how many legal admissions there are, and, in effect, the people left over are often the ones. It's more complicated than that, but it's basically a residual number.

The best estimates that I—

Mr. BERMAN. That's interesting. So you have this very funny thing, where in the context of the debate on the census, the people who most vociferously argue that the census does not have a huge undercount are sometimes the same people who argue that it's the highest number of illegal immigrants is present, and the people who tend to want to talk about how huge the overcount is also minimize the number of illegal immigrants present.

Ms. MARTIN. That certainly happens. But in terms of the short-term people who are here, come and go within a year, the best estimates that I've seen—when I was directing the Commission, we tried to get some knowledge of it—is about a million per year who might be added to the total number of people here illegally, and those estimates are based on workforce numbers and what the capacity of the labor force is to absorb short-term people who might be coming for 3 months.

Mr. BERMAN. A million total? I will finish up, Mr. Chairman—

Ms. MARTIN. A million total. In addition to the eight, nine million people who are long-term unauthorized, every year, about a million may circulate through the labor market during the course of the year for short stays, return home, possibly come back the next year. I must admit I've never, ever seen any estimate that would get it up to 20 million. I think that that's way, way over.

If I just have 1 second, my first assignment when I got into the immigration field in the Select Commission on Immigration and Refugee Policy in 1980 was to come up with the estimate of how many people were here illegally, and I had the Census Bureau, I had all sorts of experts working on it. We looked at the high-end estimates, and if those had been correct, there would have been minus population in six Mexican states. [Laughter.]

Mr. BERMAN. I get it. We're not talking science here.

Ms. MARTIN. Right.

Mr. BERMAN. Could I ask one last question that will take a yes or no answer?

Mr. HOSTETTLER. Without objection.

Mr. BERMAN. Would any of you disagree with the assertion that the increase in money, staffing, and technologies utilized to stop illegal, unauthorized border crossings has resulted in a reduction in the number of unauthorized border crossings, or had any impact whatsoever on the ability of people to come over?

Ms. MARTIN. I don't think it's had a significant impact on reducing the numbers of people who come in illegally. It has actually increased the likelihood to stay for longer periods because it is more expensive and dangerous to come and go. I think it has had a tremendous, at least in California, tremendous effect on raising real estate prices in areas that used to have a lot of people coming over in urban areas, making it much more desirable places to live now that there aren't people traipsing across the property. It reduced a lot of the community tensions around illegal migration. But I don't think it's had a huge effect on reducing the actual numbers in the country illegally.

Mr. HOSTETTLER. I thank the gentleman.

We will now move to a second round of questions. I have a question for Mr. Tanner. I came from a meeting prior to this Subcommittee hearing that included families of 9/11, where either an individual or son had been victims. They had been injured as a result of one of the attacks, several parents of family members who perished in that day of tragedy.

And I'd like to ask you, Mr. Tanner, without giving any classified tactics or sources or anything like that, there seems to be a lot of sentiment today that I'm hearing that visa overstays are a small portion of the overall number of people that come to the United States. However, we believe that—actually, there's a draft report of the GAO report that, in fact, visa overstays constitute the second highest population of illegal immigrants in our country. So while the number of total people visiting the United States is small, it is a very large portion of the number of illegal immigrants in the country. And on September 11, three individuals of the 19 were in the country and had overstayed their visas.

So, Mr. Tanner, I'm wondering about this. In a perfect world where there are plenty of resources to acquire an individual who has overstayed their visas and you come across these three individuals and you might not have an idea that—you acquired them on September 1 and you might not know that September 11, they plan to fly planes into buildings, be with 16 of their colleagues to do that, but would you be able to give the Subcommittee an insight as to what the government has learned since 9/11 about talking to

immigrants, talking to individuals who did not commit terrorism but may commit terrorism? Is there any possible way that these three individuals may have given some insight as to what was going to happen on September 11 had we arrested and detained for visa overstay? Once again, in a perfect world where we have plenty of interior enforcement capabilities. Is there any way that we could have found something out pertinent to September 11?

Mr. TANNER. That's a tough—that's a theoretical question—

Mr. HOSTETTLER. And the reason I asked you is because we have a lot of people in Guantanamo Bay—

Mr. TANNER. Right.

Mr. HOSTETTLER [continuing]. That to understanding have not committed terrorist activity, but there are a lot of us that believe that they should continue to be detained there for a variety of reasons until we know for sure that they or a group that they're affiliated with does not want to commit terrorist activity in the United States or abroad.

So my question is not as—I hope it's not as a stretch as we might think, because we are today talking to people who we think for various reasons might want to do us harm. So in that context.

Mr. TANNER. It kind of relates to the point that Dr. Martin was making about having better intelligence and, to put it in different terms, like a street police officer who works a sector of the city, begins to have some knowledge of, you know, what's normal activities in the city and things that are kind of out of the norm, raise his suspicions, and he'll pay more closer attention—closer attention to those kind of activities where he'll develop reasonable suspicion, to become probable cause, to become, you know, a party to arrest or detain or whatever the lawful action is.

Similarly, the immigrant population, whether it be while they're applying for their visas or their arriving at border inspection or they've overstayed their legal authority to be here, the more information we have about them and their characteristics and their associations, the better we can identify those people who require more scrutiny than others.

I mean, the sheer numbers that we're dealing with, if it's 2.3 million or even 500,000, it's too many people to hire enough border inspectors to go out and locate them all every month, every quarter, every whatever period to try to get them into compliance. But those that are—the better data we have when they do come to our attention as a result of intelligence or through the course of our normal investigative activities, the quicker we can locate them, and then those people that are of interest, we can develop them as informants, assets, cooperating witnesses, or the like if they're not—if they don't actually intend to do harm but they have information of others that do intend to do harm. It makes us more efficient, more effective.

Mr. HOSTETTLER. Without objection, I want to continue on with one question. The issue of resources is an issue that this Subcommittee is going to tackle next year definitely, because my constituents and people across the country want Congress to get this right, and right now, we're not necessarily getting this right in the Federal Government. That's why we have these hearings and we

have millions of people who are in the country illegally. So we need to get the resources to do it right.

But my fundamental question is, Mr. Tanner, three people know that on September 11, they're going to fly planes into buildings. Now, we don't know that and the FBI doesn't know that. ICE as it is today doesn't know that. But they know it, and as you said, when the Federal Government arrests and detains these people, they know that something—they believe that something is up. And is there not this understanding, I mean, is there not a time whenever we've had—we've had al Qaeda, top agents in al Qaeda, the hierarchy of al Qaeda give us great insight and intelligence as to what may happen in the future, have we not? And I'm just speaking from reports of—published reports in the media. So the very highest level of al Qaeda operatives have given us insight and intelligence as to how they operate and to what they may be planning in the future.

And my question is, extrapolating from that, isn't it possible that three of the underlings might have given us some insight as to what happened, what was going to happen in the future?

Mr. TANNER. They might have, but I would suggest that if there was an understanding or if they really thought that we were going to intercept them when they overstayed their legal authority to be here, their plans would have been to act before that legal authority expired. So in my remarks, I said it's not their plans, but it's their, I mean, the timing of the overstay affects their planning, but it doesn't affect their intent. There are many people who come here on legal authority and act badly while they're here on legal authority. So this just gives them the convenience of time.

Mr. HOSTETTLER. One more thing. One of the parents of one of the men that perished in 9/11 said, this was their statement, that the sea of illegal immigrants in the United States allows—he believed allowed these folks to operate including visa overstays. Is that the experience of law enforcement in the United States?

Mr. TANNER. It's true. The longer they're here, the more they ingratiate themselves into society and become a, you know, less obvious. But that's where the efforts of the Foreign Terrorist Tracking Task Force and the Terrorist Screening Center are in place to try to mitigate that problem, because we periodically make queries of government data sources that we have available to us, public and proprietary data sources, so that if someone comes to our attention and they've gotten into this country by walking across the Canadian or the Mexican borders or they've come in here illegally, or legally and overstayed their authority to be here, we'd be alerted to their presence and be able to locate them and take appropriate law enforcement action.

Mr. HOSTETTLER. Thank you, and I want to thank all the members of the panel, all the witnesses for your appearance and your contribution to this very important issue. Without objection, all Members will have seven legislative days to enter remarks into the record as well as pose questions to members of the panel. If you would be willing to answer those questions, we would very much appreciate that.

All the business of the Subcommittee being concluded, we are adjourned.

[Whereupon, at 2:34 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF CONGRESSWOMAN SHEILA JACKSON LEE

The subject of this oversight hearing is, "Visa Overstays: A Growing Problem for Law Enforcement." An "overstay" is an alien who enters the United States lawfully for a temporary period of time and then remains longer without permission. No one has been able to determine how many overstays there are in the United States. Typically, the number is estimated to be a fraction of the total population of unauthorized aliens in the United States.

The total population figure that will be discussed at this hearing is from a report issued by the former Immigration and Naturalization Service (INS) on January 31, 2003. According to that INS report, 7 million unauthorized aliens resided permanently in the United States as of the year 2000. In estimating the percentage of overstays in that population, INS applied the 33% figure from a previous report, which produced an overstay number for the year 2000 of 2.3 million.

It is a mistake to view all overstays as a law enforcement problem. Some overstays did not intend to violate the terms of their admissions and will leave the United States voluntarily. For instance, a nonimmigrant visitor can request an extension of his stay by filing a timely extension application, but the former INS and now the Department of Homeland Security (DHS), has difficulty processing applications quickly. Consequently, many extension applications are not granted until after the admission period has expired.

Technically, a person has violated the terms of his admission by overstaying for a single day, and, according to immigration law precedent, is removable as an overstay, even when a timely extension application was filed. Nevertheless, people in this category are not law enforcement problems.

Other nonimmigrant visitors become overstays on account of an inability to understand American immigration documents. Nonimmigrants are provided with two different time periods for their paperwork. The first is for the visa. A visa is a permit "to apply to enter the United States" which is issued by the Department of State. It does not entitle the holder to be admitted to the United States. It classifies the visit as business, tourism, etc., and is usually valid for multiple visits to the United States during a specified period of time. The decision on whether to admit the alien is made by DHS. DHS also designates the period for which the alien will be admitted.

The visa does not indicate the period of time authorized for the alien's visit. If DHS decides to admit the alien, it issues a second document, a Form I-94 (Arrival/Departure Record) which sets forth the date, place of arrival, the class of admission (which corresponds to the visa class), and the length of time the alien may remain in the United States.

The estimates of how many unauthorized aliens are in the United States and how many of them are overstays are just educated guesses. No one knows how many unauthorized aliens live in the United States or how many of them are overstays. New entry/exit information systems such as U.S. VISIT may eventually provide accurate data on overstays, but it will be prospective information. It will only identify aliens who overstay after a nonimmigrant admission recorded by the U.S. VISIT system. It will not provide any information on how many overstays are already in the United States.

The collection of entry/exit data will not have enforcement value either. Comprehensive entry/exit data will make it possible for DHS to produce accurate lists of overstays on demand. But, what will DHS do with these lists? The entry/exit data will not include information on the location of the overstays. It will tell DHS who the overstays are but not where they are.

We cannot remove the 2.3 million overstays that are estimated to be living in the United States. We can reduce that figure to a more manageable level, however, by separating out the ones who would make substantial contributions to our country as lawful permanent residents. We need a legalization program that would allow hardworking, law-bidding individuals to come out of the shadows.

Reducing the undocumented population would have many benefits. For instance, it would make it easier for us to identify the aliens in our midst who mean to do us harm. The wider availability of legal status for hardworking, longtime residents would provide employers with a more stable workforce, improve the wages and working conditions of all workers, and curtail an underground labor market filled with smuggling, fraud, abuse and other criminal activities. We have nothing to lose by providing access to legalization for people who have established themselves as productive, desirable members of our society.

Thank you.

