

# BORDER SECURITY OVERSIGHT, PART III: BORDER CROSSING CARDS AND B1/B2 VISAS

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## HEARING

BEFORE THE  
SUBCOMMITTEE ON NATIONAL SECURITY  
OF THE  
COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRTEENTH CONGRESS  
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## **BORDER SECURITY OVERSIGHT, PART III: BORDER CROSSING CARDS AND B1/B2 VISAS**

**Thursday, November 14, 2013,**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON NATIONAL SECURITY  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 10:03 a.m., in Room 2154, Rayburn House Office Building, Hon. Jason Chaffetz [chairman of the subcommittee] presiding.

Present: Representatives Chaffetz, Gosar, Bentivolio, Tierney, Speier, Lujan Grisham, and Welch.

Also Present: Representatives Lynch and Kelly.

Staff Present: Brien A. Beattle, Majority Professional Staff Member; Molly Boyd, Majority Parliamentarian; Lawrence J. Brady, Majority Staff Director; Daniel Bucheli, Majority Assistant Clerk; John Cuaderes, Majority Deputy Staff Director; Jennifer Hemingway, Majority Deputy Policy Director; Mitchell S. Kominsky, Majority Counsel; Laura L. Rush, Majority Deputy Chief Clerk; Sang H. Yi, Majority Professional Staff Member; Jaron Bourke, Minority Director of Administration; Devon Hill, Minority Research Assistant; Peter Kenny, Minority Counsel; and Julia Krieger, Minority New Media Press Secretary.

Mr. CHAFFETZ. The committee will come to order.

I would like to begin this hearing by stating the Oversight Committee mission statement: We exist to secure two fundamental principles: first, Americans have a right to know that the money Washington takes from them is well spent and, second, Americans deserve an efficient, effective Government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold Government accountable to taxpayers, because taxpayers have a right to know what they get from their Government. We will work tirelessly in partnership with citizen watchdogs groups to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

That is the mission statement of the Oversight and Government Reform Committee.

I want to welcome everybody to today's hearing, which is entitled Border Security Oversight, which is our third in a series, Border Crossing Cards and B1/B2 Visas.

I would also like to welcome Ranking Member Tierney, other members of this subcommittee, and those in the audience who are

joining us today and those able to watch the proceedings via television.

Today's proceedings are the third in a series of hearings designed to assess U.S. border security efforts, as well as challenges in obtaining operational control, particularly of the Southwest border.

On June 27th of this year, the subcommittee received testimony from officials at Customs and Border Protection, Immigration and Customs Enforcement, and the Government Accountability Office. During that hearing, the subcommittee learned about the variety of emerging threats to U.S. border security, ranging from increasing number of what are called OTMs, also known as Other than Mexicans, coming across the Southwest border. When I visited the Eloy Detention Facility in Arizona, OTMs accounted for more than 900 inmates out of nearly 1600.

New challenges at our border include drug cartels, use of ultra light aircrafts and tunnels. We heard about potential fraud in the asylum application process, while at the same time we are seeing a 434 percent increase in the last five years in the Credible Fear category in the request for asylum and flaws in the Government's issuance and administration of the B1/B2 and the entry/exit program, which, despite the law, we still don't have.

Back in the 1990s, there was a law mandating that we implement an entry/exit program. We still don't have an entry/exit program. In fact, yesterday the Judiciary Committee also held a hearing about the lack of an entry/exit program.

In light of testimony this subcommittee has received, it is imperative to examine the potential flaws in our immigration system, especially the process and procedures relating to the issuance and enforcement of border crossing cards and the B1/B2 visas.

B1 and B2 cards are non-immigrant visas for persons who want to enter the United States temporarily for business, a B1; tourism, pleasure, or visiting, a B2; or combination of both purposes, often referred to as a B1/B2.

According to the Department of State, more than 5.3 million B1/B2 non-immigrant visas were issued in the fiscal year 2012. That is a one-year number. In 2008, the number of B1/B2 visas issued by the Department of State has skyrocketed. In 2008, the State Department issued 3.5 million B1/B2 visas, representing an approximate 55 percent increase in the issuance of these visas from 2008 to 2012. Likewise, the State Department issued 1.3 million border crossing cards in fiscal year 2013, continuing to issue millions of border crossing cards over the last three years. By my best calculation, and I would appreciate the panel's clarification here, we have issued—when you get a border crossing card, it is good for 10 years. We have nearly 9 million of these cards that are out there. That is a lot of cards. And without an entry/exit system, and questions about how you verify and then how you enforce this are the questions in part that we have to deal with today.

Now, we were issuing a lot of cards during the Bush Administration, but as best we can tell, we are now issuing approximately more than 300,000 cards per year under the Obama Administration. I would like to understand why that is. Why this sudden increase, dramatic increase, by 300-plus thousand more of these cards going out the door each year. And when you get a card, it

lasts for 10 years. We want to have some clarification and some understanding. If those numbers are not accurate, you take issue with those, I would like to know. I have been seeking this information and, quite frankly, it has been frustrating because I have sent most of you hear this panel letters to your organizations seeking clarification and, for the most part, getting a fairly incomplete answer.

Let me go back to my prearranged comments.

Border crossing cards are only issued to applicants who are citizens and residents of Mexico and “must demonstrate that they have ties to Mexico to compel them to return after a temporary stay in the United States.” Today I am interested in learning what the standard is for determining what types of ties are considered strong enough to qualify for a border crossing card.

On July 17th, 2013, this subcommittee received testimony about rampant fraud in the asylum application process. Likewise, various reports, including from the Government Accountability Office, have previously identified the risk of potential fraud in the application and use of B1/B2s and border crossing cards. I hope we will discuss what steps the Department is taking to prevent fraudulent applications and the use of B1/B2s and the border crossing cards. GAO went out of its way to point out some flaws. We would like to know what sort of progress you have made over the years on this.

Integrity in the issuance of the B1/B2 and border crossing cards is critical, and the enforcement of the law is just as important. But reports of visa overstays remain a challenge. In Mr. Woods’ written testimony today, submitted to this committee, he wrote “In fiscal year 2012, the CTCEU received 38,355 B1/B2 violator leads.” An automated vetting process closed nearly 24,325 cases, but still leaves “14,010 potential violators.” In other words, the subcommittee is being told right now, in terms of just B1/B2 violators, there are approximately 14,000-plus violations, and yet very limited resources and personnel in order to be able to enforce that. These are questions that we have on this committee.

I have serious questions about fraud and the process and the potential lack of enforcement. Do we know where these B1/B2 violators are? What are we doing on the enforcement side of thousands of violators?

On April 2nd, 2013, members, including myself, Mr. Bentivolio, who is here with us, traveled to Yuma and Nogales, Arizona to see for ourselves what was happening. I visited the Eloy Detention Facility in Arizona, as did Mr. Bentivolio, and we were briefed by prison and ICE officials. We also visited various ports of entry in Yuma, Nogales, Naco, and other places.

Based on our conversations with Customs and Border Patrol officers in Yuma, Nogales, and Naco, they had concerns about serious flaws in the issuance and enforcement of the B1/B2 and the border crossing card. I was also told the asylum applicants have received notice to appear for a court date before an immigration judge. When I visited with the ICE officers, they told me that if they apply for the asylum and the administrative judge believes they have reason to go before the judge and hear their case out, in Phoenix, if you, today, go through that process, there are only three judges, and guess what? Your court date is going to be in 2020. In the meantime, what do these people do? We have given no assess-

ment as to whether or not they have credible fear. But guess what? They are going to get free health care; they are going to get free education; and they are probably going to apply for a worker card, just because they stepped foot into the United States and said I have some credible fear. And we don't have a process in order to go through and assess that, at least in Phoenix, until 2020. That is what I was told.

We also heard concerns from officers on the ground on the Southwest border that Customs and Border Patrol does not currently have a fully-implemented outbound exit capability to maintain data on exit from the United States into Mexico.

All of these statistics, personal accounts, and new reports point to an alarming trend that suggests there may be serious flaws in our legal immigration system, in addition to showing where some of the newest threats may be emerging. We hope to not only discuss the potential flaws in the system, but solutions.

I want to emphasize that I commend and support the hard work and dedication of our law enforcement officers, Customs and Border Patrol, ICE, State, the Department of Justice. We have a lot of really good men and women who every day work on this issue. They care about the Country; they care about doing the right thing. They are working hard in very difficult conditions. We want to make sure that they are well compensated. Just introduced a bill to help with ICE, particularly, and their compensation. I think the union is very excited about that.

I have a number of things I want to add to this, but my statement is getting a bit long, so let me yield to the gentleman from Massachusetts, Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chaffetz, and thank all the witnesses for being here today.

This hearing is the third in a series of subcommittee hearings focused on the immigration system of this Country, and I thank the chairman for his commitment to the topic.

Our Country continues to debate the need for serious reform for our Nation's immigration laws. I hope, similarly, that the chairman will encourage his leadership to undertake serious consideration of reform, if not this year, then early next year. There are many ways that we can deal with a lot of the issues that were brought up in the opening statement of the chairman by taking on serious consideration of reform, and I hope we do that.

Our focus today is on border crossing cards and B1 and B2 visas, more commonly known as business and tourist visas. These visas allow tourists and business visitors from around the world to enter the United States for legitimate purposes, such as seeking medical treatment. Border crossing cards allow certain Mexican nationals to enter the United States temporarily if they stay within a certain distance from the border and help support border communities.

However, as with other types of visas, these programs can be abused. Border crossing cards can be used fraudulently to allow unauthorized persons to enter the United States. Tourists can overstay their period of admission. And as we all well know, four of the 9/11 hijackers entered the United States and overstayed their visas.

In May this year, we learned that one person arrested after the Boston Marathon bombings had been able to return to the United States on an expired visa. It is imperative that the departments and the interagencies continue to improve their collective efforts to protect our Country against public safety and national security threats.

Today's hearing seems to be focused on a broader topic: the challenges with identifying and taking action against all visa overstays. So as we consider this important topic, it is important to first seek to understand the nature and the scope of the problem, and to avoid any rhetoric that often substitutes for serious discussion.

First, contrary to some of the rhetoric, visa overstays appear to be a shrinking problem. According to Robert Warren, who is the preeminent demographer and the former Director of Statistics at the Immigration and Naturalization Service for nearly a decade, and John Robert Warren, the professor at the University of Minnesota, the number of annual non-immigrant visa overstays in the United States has dropped 73 percent over nearly a decade.

There is a chart that we have, if you could put it up. Thank you. [Chart.]

That chart indicates that visa overstays, while still an ongoing challenge for enforcement, is a shrinking problem. The study is important not only for its result, but because its office developed a methodology for estimating overstays that is widely accepted and used by other entities such as the Pew Hispanic Center.

Second, identifying visa overstays seems to be largely a data collection problem. We are talking about a problem of record collecting and record keeping, essentially matching records of people who enter with records of people who leave. As far back as 2003, the Government Accountability Office, GAO, has reported that the department lacked an accurate list of visa overstays. The GAO has reported that the data on overstays has inherent limitations due to the challenges of collecting departure information, particularly at the United States land ports of entry. The reason for that: our border control systems are simply not geared towards the exit side as much as they are towards the entry side. I look forward to learning more about how the entry/exit system can be improved in light of these challenges.

Nonetheless, on April 2011, the General Accountability Office reported that the Department of Homeland Security's arrival and departure information system contained 1.6 million unmatched records. While the Department reviewed and resolved 863,000 records, it prioritized just over 1900 cases based on public safety or national security concerns. In 266 cases the individuals just could not be located. This may seem a small figure relative to the number of border crossings and potential overstays, but it is important nonetheless and shows the importance of pre-screening and vetting.

This is not a problem that will be solved by more guides or guns and gates, as we often hear from the context of border security. The solution will require sound strategy, interagency coordination, and proper oversight, which is the role of this subcommittee.

The Department appears to have taken some steps to improve the exit/entry system, and the Senate-passed comprehensive immi-

gration reform bill would require the Department to take additional steps, including stepped up enforcement. It is a shame that the speaker has so far refused to take up consideration of this and other related measures, and again we hope that that situation will change.

Thank you, Mr. Chairman.

Mr. CHAFFETZ. I thank the gentleman.

Does any other member wish to make an opening statement? The gentleman from Massachusetts, Mr. Lynch, is recognized.

Mr. LYNCH. Thank you, Mr. Chairman. I want to thank the ranking member, as well, for convening this hearing.

This hearing will examine the many challenges we have to address as part of a wider immigration reform: the tracking of those who enter legally, but overstay their visas. Congress has long mandated the establishment of an effective system to ensure that those who come here temporarily actually leave when their visas expire. Unfortunately, carrying out this requirement has proven to be a challenge both for the Department of Homeland Security, as well as its predecessor organization, the Immigration and Naturalization Service.

Today, approximately 40 percent of undocumented immigrants currently in the U.S. originally entered with valid visas. While I understand that a study by the Center for the Immigration Studies found that the number of yearly visa overstays has dropped dramatically over the last 10 years, it is important that we fully understand what is working right and what is not working. Ultimately, though, only a comprehensive reform of our immigration system will give us the sustainable results that the American people need and deserve.

Indeed, I believe, as Mr. Tierney mentioned, the Senate version of the immigration bill does contain language to address this problem; however, the speaker's recent statement makes the adoption of that language highly unlikely.

Ultimately, we need to address every aspect of this issue. This means reforming our legal immigration system so it will work better, addressing the status of the estimated 11 million undocumented persons currently here; taking on the employers who exploit undocumented workers; and making our borders secure, more effective, and better tracking those who enter.

I would like to thank our witnesses for coming. I look forward to this hearing and their testimony on the steps they have taken and need to take to ensure a more effective entry and exit system.

Thank you, Mr. Chairman. I yield back.

Mr. CHAFFETZ. I thank the gentleman.

Does any other member wish to make a statement? Otherwise, members will have seven days to submit opening statements for the record.

Now, I would now like to recognize our panel. Mr. John Wagner is the Acting Deputy Assistant Commissioner in the Office of Field Operations at U.S. Customs and Border Protection; Mr. John P. Woods is Assistant Director for National Security Investigations Division at the U.S. Immigration and Customs Enforcement; Mr. Edward J. Ramotowski is Deputy Assistant Secretary for Visa Services at the U.S. Department of State; and Mr. Juan Osuna is

Director of Executive Office for Immigration Review at the United States Department of Justice.

I thank you four gentlemen for being here. Pursuant to committee rules, all witnesses will be sworn in before they testify. If you would please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witnesses respond in the affirmative.]

Mr. CHAFFETZ. Thank you. You may be seated.

Let the record reflect that the witnesses all answered in the affirmative.

In order to allow time for discussion, we would appreciate it if you would limit your verbal comments to five minutes. We are pretty generous with that in a hearing like this. Your entire written statement will be made part of the record and there may be times during this hearing where we ask for additional information. If you agree to provide us that information, it too will be entered into the record as best we can.

I thank you gentlemen. We will start with Mr. Wagner. You are now recognized for five minutes.

#### **STATEMENT OF JOHN WAGNER**

Mr. WAGNER. Thank you, Chairman Chaffetz, Ranking Member Tierney, distinguished members of the subcommittee. Thank you for the opportunity to appear today to discuss border crossing cards and B1/B2 visas.

In concert with our partner, CBP works to ensure that any risk factors where document deficiencies are addressed before boarding a commercial conveyance to the United States and all land border travelers are properly credentialed and risk-assessed before admitted into the United States.

I would like to begin today by discussing the important steps we have taken to enhance security at the land borders, while facilitating legitimate travel and trade.

The Western Hemisphere Travel Initiative, also known as WHTI, was fully implemented in June of 2009. Prior to WHTI, a person could use one of thousands of different documents with varying levels of security to demonstrate both their identity and citizenship status. Today we have limited that number to a handful—such as the U.S. passport card, border crossing cards, lawful permanent resident cards, trusted traveler cards, and enhanced driver's licenses—that all have stringent physical security features—radio frequency identification, or RFID chips, and biometrics in our databases.

The use of travel documents with RFID allows us to verify the photograph of the traveler and validate it against the issuing database in real time. It also allows quick and efficient querying of law enforcement databases and terrorist indices. For non-U.S. citizens, these travel documents also allow us to confirm the fingerprint biometrics taken at time of issuance against the traveler presenting the document. At the land border, this is typically done in a secondary inspection environment.

Since the implementation of WHTI, over 23 million RFID WHTI-compliant documents have been issued. Our query rates of these documents, of the travelers crossing the border, has risen from about 5 percent to over 97 percent today. So when a traveler arrives at the land border, they are all subject to inspection by a CBP officer. The officer will review the results of the database queries, compare the photograph on file with the traveler, review the travel document authenticity, and question the person to determine the purpose and intent of their travel. This is a risk assessment to determine whether any further inspection is necessary based on concerns for national security, identity, customs, agriculture concerns, and, for visitors, any indications that they may not comply with the terms of their admission.

At the Southwest land border, a citizen of Mexico presenting a B1/B2 visa in the form of a border crossing card may be admitted by CBP for a limited visit to the United States. They are able to stay up to 30 days within the geographic border zone. The border zone was established in 1953 to promote the economic stability of the border region by allowing for freer flow of travel for Mexican visitors with secure documents. Today, the zones are within 25 miles of the border in California and Texas, 75 miles in Arizona, and 55 miles in New Mexico. These zones were determined based on the distance of major economic centers from the border.

Now, while we do not record the exit from the U.S. of these travelers, a preliminary review of our entry data shows that roughly 90 percent of all border crossing cardholders do in fact return to Mexico, as they do have subsequent entries into the United States during a certain time period thereafter.

If the citizen of Mexico intends to travel beyond the border zone, they must first go through a secondary inspection at the port of entry, where a CBP officer will interview the person regarding the purpose and intent of their travel, perform additional database queries, compare the fingerprints electronically against the fingerprints taken by Department of State during the BCC issuance and against the biometric watch lists. The person must also demonstrate ties to Mexico, such as proof of residence or employment in Mexico. At the conclusion of the interview, CBP will issue the traveler an I-94 admission document with the duration of their authorized visit to the United States. This is a similar inspection process that would occur had the same individual arrived at an airport in the U.S.

BCC restrictions are reinforced through the staffing of checkpoints on major highways and interstates by U.S. Border Patrol agents who verify travelers' documents. If a traveler is encountered outside of the border zone area without proper documentation, he or she is found in violation of the terms of their admission.

Other travel documents that are authorized in lieu of a passport at the land border are trusted traveler program cards such as Nexus, Sentry, and Global Entry. CBP has worked with the Government Printing Office to ensure the physical security of these cards and the inclusion of RFID chips to ensure that they are validated and queried upon each arrival in the U.S. As you are aware, these programs allow for expedited processing of low-risk travelers,

allowing CBP officers to refocus their efforts on travelers we know less about.

So, in conclusion, CBP also operates and monitors a visa hotlist, a tool to re-vet previously issued visas against lookout records to identify persons whose eligibility for a visa or entry to the United States has changed since issuance of that visa. Relevant information that is uncovered is passed to Department of State, ICE, or other agencies, as appropriate. This continuous re-vetting by CBP has resulted in revocation of over 3,000 visas by Department of State since this inception in March of 2010.

Visa and document security is a critical element of CBP's later approach to securing our borders. CBP, in cooperation with our Federal partners, foreign counterparts, and the travel industry continue to apply innovative solutions to enhance current efforts to mitigate threats to our Country.

Thank you for allowing me the opportunity to testify today, and I look forward to answering your questions.

[Prepared statement of Mr. Wagner follows:]

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TESTIMONY OF

JOHN WAGNER  
Acting Deputy Assistant Commissioner  
Office of Field Operations

U.S. Customs and Border Protection  
Department of Homeland Security

BEFORE

House Committee on Oversight and Government Reform, Subcommittee on National Security

ON

“Border Security Oversight, Part III: Border Crossing Cards and B-1/B-2 Visas”

November 14, 2013  
Washington, DC

Chairman Chaffetz, Ranking Member Tierney, and distinguished Members of the Subcommittee, thank you for the opportunity to appear before you on behalf of the dedicated men and women of U.S. Customs and Border Protection (CBP) to discuss our efforts to detect and deter nonimmigrant visa violations, while securing and facilitating legitimate international travel. We appreciate the Subcommittee's leadership and your continued efforts to ensure the security of the American people.

As the unified border security agency of the United States, CBP is responsible for securing our Nation's borders while facilitating the flow of legitimate international travel and trade that is so vital to our Nation's economy. Within this broad responsibility, our priority mission remains to prevent terrorists and terrorist weapons from entering the United States. We recognize that those who pose a national security or public safety threat may seek to violate immigration laws, by way of overstaying the authorized period of admission, in order to remain in the United States.

To detect and deter fraudulent visa activity and nonimmigrant status violations, CBP works in close partnership with our Federal partners, including U.S. Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), and the Department of State (DOS). We also work closely with state and local law enforcement, the private sector, and our foreign counterparts to improve our ability to identify and address risks, including potential overstays at the earliest possible point.

In concert with our partners, CBP strives to ensure that those seeking to visit the United States for short term business or pleasure are appropriately vetted, and any document deficiencies are addressed before boarding a flight or other conveyance bound for the United States, and before admission at a United States port of entry (POE).

CBP processes nearly one million travelers each day as they enter the United States. CBP and its partners work daily to address risk at multiple stages: the initial application to travel and pre-departure targeting; the arrival at a POE; and finally, the exit or departure from the United States.

#### *Application to Travel to the United States*

In general, foreign nationals wishing to travel to the United States need to either apply for a visa from DOS at a U.S. Embassy or Consulate, or a travel authorization from CBP via the Electronic System for Travel Authorization (ESTA). CBP and the National Counterterrorism Center play an important role in each of these processes.

#### *Nonimmigrant Visa Process*

Travelers seeking nonimmigrant visas (NIVs) to temporarily travel to the United States must apply to DOS under specific visa categories, including those for business, pleasure, study, and employment-based purposes. Visitor visas include nonimmigrant visas for persons who seek to enter the United States temporarily for business (the B-1 visa), pleasure (e.g., tourism) (the B-2 visa), or a combination of both purposes (B-1/B-2 visas). The U.S. government desired to increase its ability to facilitate legitimate travel to the United States while simultaneously reduce the risk of issuing a visa to a known or suspected terrorist (KST). The Kingfisher Expansion (KFE) program leverages technology to provide speed and accuracy to the visa adjudication

process. KFE reviews 100% of all visa applicants to identify any connections to terrorism by comparing applicant data to classified data holdings. In addition, KFE enables classified collaborative terrorist dossier containing input from multiple federal partners. As of 15 June 2013, the State Department uses KFE to vet all visa applicants. In most instances, the DOS consular officer will interview the visa applicant to determine eligibility. In every case, DOS vets visa applicants through a number of systems. DOS consular officers then adjudicate the visa application. Applicants for B-1 and B-2 visas must demonstrate that they have ties to their home country that would compel them to return after a temporary stay in the United States.

In order to identify persons whose eligibility for a visa or entry to the United States has changed since the issuance of that visa, CBP operates and monitors the "Visa Hot List," a tool to re-vet previously issued visas against lookout records containing derogatory information. Relevant information that is uncovered is passed to DOS, ICE, or other agencies as appropriate. This continuous re-vetting by CBP has resulted in the revocation by DOS of more than 6,300 visas since the program's inception in March 2010, including 3,814 referrals that were matches to records in the Terrorist Screening Database (TSDB). In addition, NCTC's Kingfisher Expansion program also conducts recurrent vetting by continuously comparing visa applicant biographic data against NCTC's classified holdings.

To further enhance visa-screening efforts, ICE, CBP and DOS are collaborating on an automated visa application screening process that broadens the scope for identifying potential derogatory information prior to visa adjudication and issuance, and synchronizes reviews of the information across these agencies. The program is presently being piloted at 20 posts overseas where ICE officers assigned to the Visa Security Program are able to monitor the efficacy of the program. This process can be used as a precursor to, and in conjunction with, the current DOS Security Advisory Opinion (SAO) and Advisory Opinion (AO) programs. The joint program leverages the three agencies' expertise, authorities, and technologies, including CBP's Automated Targeting System (ATS), to vet visa applicants prior to the adjudication of their applications by DOS. This program significantly enhances the U.S. Government's anti-terrorism and anti-fraud efforts by improving the existing visa-application process and denying inadmissible applicants the ability to travel to the United States. Since the program began in pilot in January 2013, over 2.2 million visa applications have been screened and 1,386 have been identified for consular officer review for SAOs, AOs or refusal, including 1,013 for security related reasons.

#### *Electronic System for Travel Authorization (ESTA)*

The Visa Waiver Program (VWP) allows citizens of participating countries<sup>1</sup> to travel to the United States without a visa for stays of 90 days or less, if they meet all requirements. Visitors

<sup>1</sup> The 37 countries currently designated for participation in the Visa Waiver Program are: Andorra, Australia, Austria, Belgium, Brunei, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, South Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan, and the United Kingdom. With respect to all references to "country" or "countries" in this document, it should be noted that the Taiwan Relations Act of 1979, Pub. L. No. 96-8, Section 4(b)(1), provides that "[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan." 22 U.S.C. § 3303(b)(1).

traveling to the United States by air or sea and intending to apply for admission in accordance with the VWP must first apply for travel authorization through CBP's online application system, ESTA. Through this process, CBP incorporates targeting and database checks to identify individuals who are ineligible to enter the United States under the VWP and those who may pose an overstay risk, or who may present a national security or criminal threat if allowed to travel. CBP also continuously reviews ESTA applications for new derogatory information, to identify persons whose eligibility for entry into the United States has changed since the ESTA authorization was initially approved.

#### ***Traveling with a B-1/B-2 Nonimmigrant Visa***

The issuance of a B-1/B-2 pleasure or business nonimmigrant visa allows the bearer to apply for admission at any designated air, land or sea POE but does not guarantee admission to the United States. Aliens admitted to the United States may travel in a B-1/B-2 status. These nonimmigrant visas can be issued to individuals of any nationality, who may generally stay up to six months and travel anywhere within the United States.

It is important to clarify the difference between the visa expiration date and the length of time a visitor is granted permission to remain in the United States. A visa is issued to a traveler by a DOS consular officer at an American embassy or consulate; it authorizes the individual to travel to a United States POE within a specific period of time, to apply for admission in the stated nonimmigrant classification, such as a visitor for business or pleasure. The traveler must apply for admission on or before the expiration date of the visa. While some visas may be used only once, others authorize multiple uses. CBP officers are authorized to admit a traveler into the United States if the individual is admissible, or determine that the traveler is inadmissible. If a visitor is admitted to the United States, the CBP officer will determine the length of the traveler's stay in the United States. On the passport admission stamp or paper Form I-94, the CBP officer records both the date admitted and the date by which the visitor must depart the United States; the length of time between the admission date and the required departure date is known as the *period of admission* (which in certain circumstances may be extended).

Importantly, there are circumstances that can serve to void or cancel the period of visa validity. If a visitor violates the terms of his or her admission, by overstaying the date of his or her authorized stay, the visa becomes void per Section 222(g)(1) of the Immigration and Nationality Act (INA). If a person engages in activities inconsistent with the visa classification (such as engaging in unauthorized employment), on the next application for admission, the traveler could be found to be inadmissible to enter the United States; and processed accordingly.<sup>2</sup> If in the case of an applicant who files an application for an extension of stay or a change of status before the expiration of his period of admission, pursuant to Department of Homeland Security (DHS) policy, the alien is considered not to have overstayed in that event. In any event, the burden of

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Accordingly, all references to "country" or "countries" in the Visa Waiver Program authorizing legislation, Section 217 of the Immigration and Nationality Act, 8 U.S.C. 1187, are read to include Taiwan.

<sup>2</sup> See INA § 235(b)(1) and 8 C.F.R. § 235.3 (regarding processing procedures).

proof is upon the applicant that he/she is eligible to enter the United States under the classification for which they applied admission.<sup>3</sup>

#### *National Targeting Center*

CBP leverages all available advance passenger data, including the Passenger Name Record (PNR) and Advance Passenger Information System (APIS) data, previous crossing information, intelligence, and law enforcement information, as well as open source information in its visa security efforts at the National Targeting Center (NTC). Starting with the earliest indications of potential travel, including United States-bound travel reservations, ESTA applications, visa applications, and passenger manifests, and continuing through the inspection and arrivals process, the NTC is continually analyzing information gleaned from these sources using CBP's Automated Targeting System (ATS).

With pre-departure targeting support from the NTC, the CBP Regional Carrier Liaison Group (RCLG) in Miami, New York, and Honolulu, and Immigration Advisory Program (IAP)<sup>4</sup> officers work in partnership with foreign law enforcement officials to evaluate potential risks, including possible overstays, presented by non-watchlisted travelers, and then work in coordination with commercial air carriers to issue no-board recommendations to the airline to keep suspected high-risk passengers from traveling to the United States. In FY 2012, CBP identified 9,506 passengers who were inadmissible to the United States and were denied boarding at foreign departure locations and has already identified 5,212 thus far in FY 2013. The NTC vetting process for international passengers continues while the flight is en route to the United States in order to identify any travelers who, although they may not be national security risks, may need to be referred for a more thorough inspection at the POE upon arrival in the United States.

#### *Admission to the United States*

In accordance with the Immigration and Nationality Act<sup>5</sup> and other federal laws applicable at the border, all persons arriving at a POE to the United States are subject to inspection by CBP officers. If a traveler qualifies for an exemption to the inspection requirement, the examination continues for other laws and regulations that CBP enforces.<sup>6</sup> CBP officers conduct the immigration, customs, and agriculture portions of the inspection and examination process.

For all nonimmigrants, the CBP officer must determine why the individual is coming to the United States, what documents are required, and how long the individual should be permitted to stay in the United States. A traveler seeking to enter the United States but who is not a U.S. citizen, national, or Lawful Permanent Resident is generally required to present a valid passport and valid U.S. visa, unless the traveler qualifies for an exemption to the visa requirement listed in 8 C.F.R. § 212.1. Exceptions to the visa requirements exist for, among others, nationals of

<sup>3</sup> See INA § 214(b).

<sup>4</sup> The IAP is currently operational at eleven airports in nine countries including Amsterdam, Doha, Frankfurt, London Heathrow and Gatwick, Madrid, Manchester, Mexico City, Panama City, Tokyo, and Paris.

<sup>5</sup> See INA § 235, codified at 8 U.S.C. § 1225.

<sup>6</sup> See 8 C.F.R. § 235.1 (noting requirements for individuals such as members of NATO forces).

countries designated under the VWP and certain citizens of Canada.<sup>7</sup> Travelers entering the United States under the VWP by air or sea must have a valid passport and an approved ESTA. The ESTA must be obtained prior to travel to the United States.

Canadian citizens must present a valid passport when entering the United States by air. But Canadian citizens arriving to the United States from Canada, Mexico, the Caribbean or Bermuda, by land or sea, are not required to do so and may instead present one of the following travel documents: Enhanced Driver's License (EDL), Trusted Traveler Card (NEXUS, SENTRI or FAST), or approved documentation such as an Enhanced Tribal Card or Secure Certificate of Indian Status.

#### *Border Crossing Cards (BCC)*

While citizens of Mexico are generally required to present both a passport and U.S. visa when applying for admission, an exemption from the passport requirement exists when a Mexican citizen presents a valid Border Crossing Card (BCC) at a land or sea port of entry. A BCC, which is a form of B-1/B-2 nonimmigrant visa, may be issued by DOS to Mexican citizens who reside in Mexico and who wish to cross into the United States temporarily for purpose of business or pleasure. The BCC also allows Mexican citizens to enter the United States at the land border without issuance of a Form I-94, Arrival/Departure Record if they plan to remain within a defined border zone along the U.S. southern border. BCC holders enter the United States under the same terms as a B-1 or B-2 nonimmigrant, except that their period of admission is limited to 30 days if they are admitted without a Form I-94. If a citizen of Mexico who is admitted as a visitor for business or pleasure desires to travel outside of the border zone, he or she presents the BCC and is issued a Form I-94. This border zone is defined in terms of miles from the U.S.-Mexico land border and varies depending on the state. The border zone was established in 1953 to promote the economic stability of the border region by allowing for freer flow of travel for Mexican visitors with secure documents.<sup>8</sup> The current BCC border zone is within 25 miles of the border in California and Texas; within 55 miles of the border in New Mexico; and within 75 miles of the border in Arizona.<sup>9</sup>

To obtain a BCC, applicants are vetted extensively by DOS. The vetting process includes collection of biometric and biographic information, such as fingerprints, photographs, and other information regarding residence, employment and reason for border crossing; an interview; and security checks to identify any terrorism concerns, disqualifying criminal history, or previous immigration violations. The BCC includes many security features such as vicinity-read Radio Frequency Identification (RFID) technology and a machine-readable zone. Using these features, CBP is able to electronically authenticate the BCC and compare the biometrics of the individual presenting the BCC against DOS issuance records in order to confirm that the document is currently valid and that the person presenting the document is the one to whom it was issued. The BCC is acceptable as a stand-alone document only for travel from Mexico by land, pleasure

<sup>7</sup> See 8 C.F.R. § 212.1(a)(1) (describing visa exemptions for Canadian citizens).

<sup>8</sup> See 78 Fed. Reg. 35,103 (June 12, 2013) (amending the border zone in New Mexico).

<sup>9</sup> See 8 C.F.R. § 235.1(h)(1) (describing the border zone).

vessel, or ferry. Together with a valid Mexican passport, it meets the documentary requirements for entry at all land, air, and sea POEs.

BCCs have increased security in processing travelers by providing CBP with an enhanced ability to affirmatively identify an individual and conduct admissibility checks. Additionally, in each southern border state, CBP Border Patrol immigration checkpoints within the border zone assist in preventing individuals traveling with a BCC but no Form I-94 from continuing beyond the border zone.

#### ***Departure from the United States and Overstays***

The vast majority of individuals who enter the United States depart prior to the end of their authorized period of admission. Foreign nationals who remain in the United States beyond their authorized period of admission are referred to as “overstays”. To support determinations on who has left the country within their authorized period of admission, DHS has recently enhanced its biographic entry/exit system and is working to further refine statistics related to entry/exit. The 2013 DHS Appropriations Act transferred the entry/exit mission to CBP from the former DHS US-VISIT program. Since obtaining this mission in March, CBP has created an entry/exit transformation office dedicated to enhancing the ability of CBP and DHS to better match entry and exit records and identify overstays.

DHS relies on information in the Arrival and Departure Information System (ADIS) to indicate when a B-1 or B-2 nonimmigrant alien has overstayed his or her authorized period of admission. ADIS aggregates data from multiple source systems, such as TECS, APIS, the Student and Exchange Visitor Information System (SEVIS), and the Computer Linked Application Information Management System (CLAIMS3). ICE analysts use these databases to determine if an alien is, in fact, out of status and has not moved into another visa category or received additional immigration benefits. ICE then prioritizes and addresses overstay leads for national security and public safety risks. Individuals who overstay their period of admission may be subject to sanctions, such as revocation of existing visas, denial of visa renewals, and denial of admission to the United States.

#### ***Enhanced Biographic Exit System***

The Department has in place a functioning and robust exit/entry system, and is continuing to improve this enhanced biographic system in various ways. These improvements will significantly enhance DHS’s existing capability to identify and target for enforcement action those who have overstayed their period of admission and who represent a public safety and/or national security threat.

Currently, CBP collects nearly 100% of all departure data from foreign nationals who depart the United States via air and sea ports of entry. Air and sea carriers provide manifest data as to who is on an aircraft or vessel leaving the United States. They are required to provide specific sets of data, including name and passport number, and they must report the data within strict time frames or face significant fines for delay or inaccuracy.

CBP closely monitors APIS data accuracy and there are approximately 250,000 arriving and 250,000 departing air passengers processed through APIS each day. Over 99.6% of the date of birth information transmitted in APIS is correct and confirmed by CBP officers during Primary inspection. Overall, 92% of arrival APIS records are confirmed as transmitted during the Primary inspection, and in most cases the remaining modifications are merely technical changes from a Passport to a Lawful Permanent Resident card. CBP has made substantial progress improving APIS data quality over the last several years and will continue these efforts.

The data collected from the carriers is matched against entry data to determine who has overstayed their authorized period of admission to the United States. DHS maintains ADIS specifically for this purpose. ADIS receives other DHS data pertinent to a person's lawful presence—such as immigration benefit information from CLAIMS3 or information from SEVIS on nonimmigrant students in the United States.

The enhanced biographic exit system that is being implemented will further build on these capabilities by, among other things:

- Taking full advantage of and enhance the existing automated entry-exit capability that produces information on individual overstays;
- Incorporating and using biometric information, as technologies mature and DHS can implement an affordable biometric air exit system;
- Allowing DHS to take administrative action against confirmed overstays through visa revocation, prohibiting VWP travel, and placing individuals on lookout lists;
- Further supporting the administration and enforcement of U.S. immigration laws by identifying that those who overstay in the United States; and
- Better enabling DHS to maintain a focus on individuals who may wish to do us harm while facilitating the legitimate travel of those who do not.

The first phase of the enhancement to the biographic exit system was completed in April 2013, and included automating connections between DHS data systems, thereby refining ICE's ability to more effectively target and prioritize overstay leads of concern. Subsequent phases of the enhanced biographic exit plan are in motion and include database modernization; further investments in targeting and prioritization capabilities; and increased functionality between biometric and biographic repositories including document validation, which will dramatically improve the ability to successfully match entry and exit records biographically.

As part of these efforts, CBP has developed innovative ways to collect biographic exit information in the land environment. For example, CBP and the Canada Border Services Agency (CBSA) have partnered to create a biographic entry/exit system on the shared land border by exchanging entry information, so that information collected on entry to one country is automatically recorded as an exit from the other.

This program began on June 30, 2013. CBP since has collected over one million records from Canada. We receive approximately 10,000 to 15,000 new records per day from our Canadian counterparts that are matched with U.S. entry information at a rate of over 98 percent. The program currently exchanges data only on third country nationals (including those who may be lawful permanent residents), but will expand to include citizens of both countries in June 2014.

Using available interfaces which already existed with Canada, this was developed at virtually no cost.

CBP is developing a southern border strategy plan that will analyze the existing opportunities and short and long term options for the development of out-bound exit capability on the southern border. The strategy is designed to complement the current CBP national outbound strategy, with its focus on interdiction of illegal currency, firearms, and drugs by introducing new tools and operations designed to identify overstays.

The strategy will be similar to the Canadian effort in that we will seek new ways to partner with Mexico to obtain critical biographic information without negatively affecting trade and travel. For example, CBP is working with Mexico on exchanging Mexican data collected as part of flight departures from Mexico—where we can identify travelers who have departed via the southern land border but then flew internationally from Mexico. Unfortunately, it is not feasible to simply replicate the northern border solution at the southern border. Mexico does not have fixed physical structures at ports of entry to process travelers entering Mexico for immigration purposes, nor does it have data collection procedures similar to the United States and Canada.

As DHS continues to implement its enhanced biographic system, it is also exploring ways to incorporate additional biometric technologies into its entry/exit systems. For instance, CBP has partnered with the DHS Science and Technology Directorate (S&T) to develop a test facility which will allow CBP to test a series of operational concepts for biometric exit (as well as additional entry concepts) in a closed environment. This facility will be complete in early 2014 and CBP will commence testing at that time using new emerging biometric technologies, such as facial recognition technology and iris scans. The objective of the testing is to identify biometric technology that can fit seamlessly into the existing operational environment for travelers departing the United States from international airports. As noted above, the Department's continuing efforts to improve the entry/exit system a system should not be construed to mean that DHS does not already have a functioning exit/entry system in place.

Despite significant challenges, over the past several years, DHS has implemented and now manages a fully-functioning entry/exit system in the air and sea environments, and is continuing to enhance capability for land. While the United States did not build its border, aviation, or immigration infrastructure with exit processing in mind, the Department of Homeland Security has worked to bring the existing biographic system to a level of fidelity equal to, or nearly equal to, a biometric system while continuing to pursue a more cost-effective biometric solution.

### ***Conclusion***

Visa security is a critical element of CBP's layered approach to securing our borders. DHS, in cooperation with its Federal partners, foreign counterparts, and the travel industry, is working to apply innovative solutions and make strategic security investment decisions that enhance current efforts to address terrorism and visa violation activities today while prioritizing the capabilities needed for the implementation of a future biometric exit system. These efforts enhance CBP's multilayered approach to screening and identifying potential travelers to the United States who may pose a threat to the homeland.

Thank you for allowing me the opportunity to testify before you today. I look forward to answering your questions.

Mr. CHAFFETZ. Thank you. Appreciate it.

Mr. Woods, you are now recognized for five minutes.

**STATEMENT OF JOHN P. WOODS**

Mr. WOODS. Chairman Chaffetz and Ranking Member Tierney, distinguished members of the subcommittee, it is a pleasure to appear before you and have an opportunity to discuss ICE's efforts to identify and target for enforcement those who have overstayed their period of admission and who represent a public safety or national security threat to this Country.

ICE's Overstay Analysis Unit utilizes biographical entry and exit records stored in the Arrival and Departure Information System, or ADIS, to identify international travelers who have remained in the United States beyond their authorized period of admission. In this process, ICE vets the ADIS potential violators against a multitude of other DHS data sets to enhance accuracy of the data and determine prioritization of the potential leads. This analysis supports the Department's commitment to enhance its vetting initiatives across the full mission spectrum of Homeland Security.

The analysts validate two types of non-immigrant overstay records: out-of-country overstays and in-country overstays. The out-of-country overstay records pertain to visitors who have stayed beyond their authorized period of admission and subsequently depart the United States. The Overstay Analysis Unit validates these violations based on their reported departure dates and creates a biometric and biographic lookout for these subjects should they attempt to reenter the United States in the future.

The in-country overstay records pertain to visitors who remain in the United States with no evidence of departure, change or addressment of their immigration status upon expiration of their terms of admission. The Overstay Analysis Unit reviews and validates the ADIS system identified violations based on ICE identified categories of interest. The Overstay Analysis Unit makes overstay and status violation referrals to the HSI Counterterrorism and Criminal Exploitation Unit, or CTCEU, who in turn attempt to identify and locate leads within the United States where the overstay violator may be located by special agents in the field for investigation of their status and ability to lawfully remain in the United States.

HSI prioritizes its cases for investigation from several potential violator categories. The first, of course, is like I said, the ADIS leads from the Overstay Analysis Unit that provides non-immigrant visa overstay leads and potential visa waiver program country violators. Another source is admitted watch list leads. This includes the records of individuals who, at the time of admission to the United States, were subject of a watch list record containing derogatory information that did not render the individual inadmissible to the United States, but did warrant monitoring of their visit.

Additionally, CTCEU monitors individuals who, after entry, had their visas revoked by the Department of State. Although these individuals may still be within their lawful period of admission, an investigation is warranted to determine whether a violation of the terms of their admission has occurred.

And then, finally, due to the duration of status admission period provided to foreign students in the F, J, and M categories, the CTCEU conducts recurrent vetting of the Student Exchange Visitor Information System to actively monitor and determine whether new derogatory information is developed or obtained on an active student which may warrant further investigation.

The HSI CTCEU is the only national program dedicated to the enforcement of non-immigrant visa violations and is responsible for identifying and targeting those non-immigrant visa holders who could pose a threat to our national security or public safety. Each year, the Unit analyses the records of hundreds of thousands of potential violators and, as stated in your opening remarks, chairman, in fiscal year 2012 the CTCEU received over 38,000 B1/B2 potential violator leads and, through an automated vetting process, closed more than 24,000 of those cases, identifying either a subsequent departure from the United States or an adjustment of status through USCIS. More than 14,000 violator leaders were identified for investigation and approximately 1,000 cases have been initiated thus far that have made HSI CTCEU national security criteria.

Again, we continue to make great progress in our ability to identify and target for enforcement action those who have overstayed their period of admission and who represent a public safety or national security threat to our Country. Technological advances have created unprecedented opportunity for law enforcement to identify and mitigate national security and public safety threats in a more efficient and expeditious manner than ever before.

I would like to thank you again for the opportunity to be here today, and I look forward to answering any questions that you may have.

[Prepared statement of Mr. Woods follows:]



# U.S. Immigration and Customs Enforcement

STATEMENT

OF

JOHN P. WOODS  
ASSISTANT DIRECTOR  
NATIONAL SECURITY INVESTIGATIONS  
HOMELAND SECURITY INVESTIGATIONS

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
DEPARTMENT OF HOMELAND SECURITY

HEARING ON

BORDER SECURITY: EXAMINING B1/B2 VISAS  
AND BORDER CROSSING CARDS

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
SUBCOMMITTEE ON NATIONAL SECURITY

THURSDAY, NOVEMBER 14, 2013, 10:00 AM  
2154 RAYBURN HOUSE OFFICE BUILDING

**INTRODUCTION**

Chairman Chaffetz, Ranking Member Tierney and distinguished Members of the Subcommittee:

Thank you for the opportunity to appear before you today to discuss the efforts of U.S. Immigration and Customs Enforcement (ICE) to prevent the exploitation of our nonimmigrant visa system. Through specific intelligence and the use of sophisticated data systems, ICE identifies and tracks millions of foreign students, tourists, and temporary workers who are present in the United States at any given time. Visa overstay and other forms of nonimmigrant status violations bring together two critical areas of ICE's mission—national security and immigration enforcement. My testimony today will focus on the process of identifying, tracking and investigating overstay.

***Overstay Analysis Unit***

The Department of Homeland Security (DHS) is focused on enhancing its vetting initiatives across the full mission space of homeland security by providing real-time biographic and biometric data to its front-line operational components while continuing to set leading biometric policies and standards. To this end, ICE's Overstay Analysis Unit (OAU) analyzes biographical entry and exit records stored in DHS's Arrival and Departure Information System (ADIS) to support the Department's ability to identify international travelers who have remained in the United States beyond their authorized periods of admission. DHS' Automated Biometric Identification System (IDENT) and ADIS provide person-centric information and enable DHS to search biometric and biographic data against government databases to establish and confirm the identities of individuals that DHS has already encountered. DHS's Office of Biometric Identity

Management (OBIM) supports DHS components by returning any linked information from a match against its database to aid in their vetting of individuals already encountered by DHS to identify known or suspected terrorists, national security threats, criminals, and those who have previously violated U.S. immigration laws.

The OAU analyzes and validates two types of nonimmigrant overstay records: out-of-country overstays (OCO) and in-country overstays (ICO). OCO records pertain to visitors who stayed beyond their authorized admission period and subsequently departed the country. The OAU validates these violations based on their reported departure dates and creates biometric and biographic lookouts for these subjects. The lookouts are posted in two separate databases: DHS' IDENT Secondary Inspection Tool and TECS<sup>1</sup>, in order to alert and notify Department of State consular officers and CBP officers of a subject's violation before he or she is granted a visa or is readmitted to the United States. ICO records pertain to visitors with no evidence of departure or adjustment of status upon expiration of the terms of their admission.

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

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<sup>1</sup> TECS, formerly known as the Treasury Enforcement Communications System, is U.S. Custom and Border Protection's (CBP's) primary law enforcement and anti-terrorism data base system which contains enforcement, inspection, and intelligence records.

the subject of a watchlist record containing derogatory information that did not render them inadmissible to the United States, but did warrant monitoring their visit. The third source is the Counterterrorism and Criminal Exploitation Unit's (CTCEU) Visa Waiver Enforcement Program (VWEP).

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

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

Today, through the CTCEU, ICE proactively develops cases for investigation in cooperation with the Student and Exchange Visitor Program and OAU. These programs enable ICE special agents to access information about the millions of students, tourists, temporary workers, and other nonimmigrants present in the United States at any given time, and to identify those who have overstayed or otherwise violated the terms and conditions of their admission. ICE special agents and analysts monitor the latest threat reports and proactively address emergent issues. This practice, which is designed to detect and identify individuals exhibiting specific risk factors based on intelligence reporting, including travel patterns and in-depth

criminal research and analysis, has contributed to DHS's counterterrorism mission by initiating and supporting high-priority national security initiatives based on specific intelligence.

In order to ensure that the potential violators who pose the greatest threats to national security are given top priority, ICE uses intelligence-based criteria developed in close consultation with the intelligence and law enforcement communities. ICE chairs the Compliance Enforcement Advisory Panel (CEAP), comprised of subject matter experts from other law enforcement agencies and members of the Intelligence Community who assist the CTCEU in maintaining targeting methods in line with the most current threat information. The CEAP is convened on a tri-annual basis to discuss recent intelligence developments and update the CTCEU's targeting framework in order to ensure that the nonimmigrant overstays and status violators who pose the greatest threats to national security are targeted.

The third unique source for overstay and status violation referrals is CTCEU's VWEP. Visa-free travel to the United States builds upon our close bilateral relationships and fosters commercial and personal ties among tourist and business travelers in the United States and abroad. VWP, the primary source of nonimmigrant visitors from countries other than Canada and Mexico, currently allows eligible nationals of 37 countries<sup>2</sup> to travel to the United States without a visa and, if admitted, to remain in the country for a maximum of 90 days for tourism or business purposes. Prior to the implementation of the VWEP in 2008, there was no national

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<sup>2</sup> The list of designated VWP countries can be found at 8 C.F.R. § 217.2, with the most recent designation being Taiwan in October 2012. Consistent with The Taiwan Relations Act of 1979, Pub. L. No. 96-8, § 4(b)(1), 22 U.S.C. § 3303(b)(1), all references to "country" in the Visa Waiver Program authorizing legislation, section 217 of the Immigration and Nationality Act, 8 U.S.C. § 1187, are read to include Taiwan.

program dedicated to addressing overstays within this population. Today, ICE regularly scrutinizes a refined list of individuals who have been identified as potential overstays who entered the United States under the VWP. One of the primary goals of this program is to identify those subjects who attempt to circumvent the U.S. immigration system by obtaining travel documents from VWP countries.

In Fiscal Year 2012, the CTCEU received 38,335 B1/B2 violator leads. An automated vetting process closed 24,325 cases leaving 14,010 potential violators. The most common reasons for closure were subsequent departure from the United States or adjustment of immigration status to that of a lawful permanent resident. A total of 985 prioritized leads were sent to the field resulting in 253 arrests that met CTCEU's national security criteria. The remaining cases were referred to Enforcement and Removal Operations for possible enforcement action or closed.

### **CONCLUSION**

ICE is proud of the good work accomplished over the last ten years to protect the integrity of our visa system. We are committed to promoting national security and have made significant progress in identifying visa overstay violators by working closely with our international, federal, state, local, and tribal partners to combat visa fraud and protect the integrity of our visa system.

Thank you again for the opportunity to testify today and for your continued support of ICE and its law enforcement mission.

I would be pleased to answer any questions at this time.

Mr. CHAFFETZ. Thank you.  
Mr. Ramotowski, please.

**STATEMENT OF EDWARD J. RAMOTOWSKI**

Mr. RAMOTOWSKI. Good morning, Chairman Chaffetz, Ranking Member Tierney, and the distinguished members of the subcommittee. I thank you for calling this hearing today and for your continued commitment to the Department's twofold mission: to keep America safe while we welcome legitimate visitors who grow the U.S. economy and create jobs.

The B visitor visa, which permits travel to the United States for temporary business and pleasure, is central to these efforts. Like most of my consular colleagues, I have adjudicated thousands of B visas during my 27-year career as a Foreign Service officer, and during that time I have witnessed tremendous advances in the tools that we employ to adjudicate visas efficiently and, most importantly, in a way that protects the security of our Nation's borders.

Our highest priority in adjudicating visitor visa applications is the safety of American citizens at home and abroad. Together with our partner agencies, we have built a layered visa and border security screening system that rests on enhanced training, technological advances, biometric innovations, and expanded data sharing. Security remains our primary mission, and for us every visa decision is a national security decision.

Visas also play a significant role in maintaining our Country's economic security. International tourism has a significant impact on the U.S. economy and, according to Department of Commerce figures, creates one new American job for every 65 additional visitors that we bring to our shores.

The Department strives to ensure that the B visa application process is straightforward. Every post provides detailed visa application instructions on its website, both in English and in the local language. The B visa application begins when the applicant completes the online non-immigrant application form. This application requires the completion of biographical data, information on the purpose and destination of travel, and answers to a series of questions that could signal potential grounds of inadmissibility.

Like all these applicants, B category visitors must qualify under the provisions of U.S. law and may be denied on grounds including, but not limited to, previous immigration violations, membership in terrorist organizations, and criminal activity. In the B visa category, applicants must also overcome a statutory presumption of immigrant intent. Most B visa applicants must be interviewed by a consular officer. This personal interview affords the applicant an opportunity to present evidence establishing the veracity of his or her application. At the same time, a personal interview allows the adjudicating officer to elicit information necessary to establish the applicant's eligibility for the visa category, to reconcile any discrepancies in the information provided by the applicant, and to delve more deeply into any potential grounds of inadmissibility.

All these applicants are vetted through a full suite of security checks. The visa software used to process visitor and other visa categories will not permit the issuance of any visa until all results

have been vetted by a cleared and trained U.S. citizen consular adjudicator. The Department, DHS, and other partner agencies work hand-in-hand to ensure that consular adjudicators have immediate access to the full range of relevant data on visa applicants in a 24/7 global environment. Likewise, the Department provides other agencies immediate access to our own data.

In partnership with DHS and the FBI, we have established the largest fingerprint screening program in the globe. Visa applicants' fingerprints are vetted against DHS and FBI databases at the time of adjudication, and they are later verified by Customs and Border Protection officers when the applicant appears at a port of entry. The Department uses facial recognition technology to screen all these applicants against a watch list of photos of known and suspected terrorists obtained from the FBI's Terrorist Screening Center, as well as against the entire gallery of visa applicant photos contained in our consular database.

Launched during the summer of 2013, the Kingfisher Expansion Program is our new method of conducting interagency counterterrorism screening. All visa applications are now reviewed by the National Counterterrorism Center in a highly classified environment and can be referred immediately for a Washington-based interagency review if warranted.

In conclusion, we have built strong partnerships with DHS and other law enforcement agencies to ensure that real-time flow of information necessary for keeping our borders secure. Finally, we maintain a sophisticated, highly trained staff of multilingual adjudicators who provide the cultural awareness, knowledge, and objectivity necessary to ensure that the visa process essential to our economic security also remains the frontline of border security.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Ramotowski follows:]



**DEPARTMENT OF STATE**

**WRITTEN STATEMENT  
OF  
EDWARD J. RAMOTOWSKI**

**DEPUTY ASSISTANT SECRETARY  
FOR VISA SERVICES  
DEPARTMENT OF STATE**

**BEFORE THE  
UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
SUBCOMMITTEE ON NATIONAL SECURITY**

**HEARING  
ON  
SECURING THE U.S. BORDER, B1/B2 VISAS AND BORDER CROSSING  
CARDS**

**NOVEMBER 14, 2013**

Good morning Chairman Chaffetz, Ranking Member Tierney, and distinguished Members of the subcommittee. I thank you for calling this hearing today and for your unwavering commitment to the Department's twofold mission to keep America safe while welcoming legitimate visitors who grow the U.S. economy and create jobs. Consular officers worldwide balance both goals each day as they adjudicate thousands of B nonimmigrant visitor visas and Border Crossing Cards, and I am glad to have the opportunity to elaborate on this process today.

Most foreign visitors in the B nonimmigrant category are admitted through the Visa Waiver Program, which allows nationals of certain designated countries to be admitted to the United States for a period of up to 90 days without obtaining a visa.<sup>1</sup> In addition, Canadian citizens can be admitted to the United States in the B category, and most other nonimmigrant categories, without a visa. Accordingly, this statement focuses on the Department's processes with respect to those foreign visitors who do require a visa or a Border Crossing Card for admission to the United States.

I will begin with an overview of the B category, including trends in demand for visitor visas as well as the application and interview processes. I will then describe the multi-layered security screening processes we have created in tandem with our

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<sup>1</sup> The following 37 countries are Visa Waiver Program participants: Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, Romania, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan (please see note below) and the United Kingdom.

With respect to all references to "country" or "countries" on this page, it should be noted that the Taiwan Relations Act of 1979, Pub. L. No. 96-8, Section 4(b)(1), provides that "[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan." 22 U.S.C. § 3303(b)(1). Accordingly, all references to "country" or "countries" in the Visa Waiver Program authorizing legislation, Section 217 of the Immigration and Nationality Act, 8 U.S.C. 1187, are read to include Taiwan. This is consistent with the United States' one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

interagency partners. I will conclude by describing the processes for both B visa refusal and issuance, along with a physical description of the visa foil and the Border Crossing Card.

### **The B Visa Category**

The Department adjudicates visa applications submitted by foreign persons who seek to travel to the United States for a wide variety of reasons, including for immigration as well as a host of temporary purposes such as study, work, and international exchange. The overwhelming majority of nonimmigrant travelers applying for a visa seek to enter the United States for temporary business or pleasure, purposes generally covered by the B nonimmigrant classification. Citizens of Mexico can also qualify for Border Crossing Cards (BCCs), which are B visas issued in card form to facilitate travel across the U.S.-Mexican border. B visa travel includes temporary travel for medical treatment, participation in amateur sports and arts events, and a number of other activities. Formal study and employment involving compensation from a U.S. source are generally prohibited on a B visa. In FY 2013, 77 percent of all nonimmigrant visa issuances were in the B visa categories: nearly 5.8 million of these were issued as B1 (business visitor), B2 (visitor for pleasure), and combined B1/B2 visa foils, while nearly 1.3 million were issued as BCCs to citizens of Mexico.

Receipt of a visa from the Department of State indicates that an individual has been approved to apply for admission to the United States; however, U.S. Customs and Border Protection (CBP) officers make the final admissibility determination at ports of entry.

**B Visa Trends**

Rapidly rising incomes in countries such as China, Brazil, and India have fueled B visa demand as their citizens increasingly seek to visit, shop, and do business in the United States. According to the Department of Commerce, 66 million international tourists visited the United States in 2012, generating an all-time record \$168 billion in revenue, an increase of 10 percent from 2011. Commerce does not yet have complete FY 2013 data, but reports that as of July 2013, tourist spending has risen 9 percent over the 2012 figure. International tourism has a significant impact on the U.S. economy, creating one new American job for every 65 visitors that travel to the United States.

The Department is proud to play a key role in facilitating secure travel for the approximately one-third of visitors to the United States who require a visa (the other two-thirds enter pursuant to the Visa Waiver Program or are Canadians or otherwise visa-exempt). In January 2012, President Obama issued an Executive Order tasking the Department with increasing nonimmigrant visa capacity in China and Brazil by 40 percent and ensuring that 80 percent of nonimmigrant visa applicants worldwide were being interviewed within three weeks of receipt of application by the end of 2012.

State has exceeded President Obama's goals. During the past twelve months, on average, more than 90 percent of applicants worldwide were interviewed within three weeks of submitting their applications. In key markets such as China, consular officers are keeping interview wait times to an average of five days while managing an average annual workload increase of 23 percent over the past three years. Consular officers in Brazil have brought wait times down by 98 percent,

from a high of 140 days in São Paulo, to just two days in September 2013, while also managing an eleven percent jump in annual workload between 2011 and 2013.

The Department's success is partially attributable to the introduction of secure, streamlined processes such as the Interview Waiver Pilot Program (IWPP), which allows consular officers to waive in-person interviews for certain nonimmigrant visa applicants who are renewing their visas, and whose biometric data we have on file. IWPP is operational at more than 90 visa processing posts in more than 50 countries, and consular officers have already waived interviews for more than 500,000 of these low-risk visa applicants. The pilot has been particularly successful in China, where it constitutes 30 percent of Mission China's visa renewal workload. Of course, these applicants are subject to *all* of the security checks conducted for any interviewed applicant. State also concluded an August 2013 validation study of the IWPP, which showed that B1/B2 visa issuances under the IWPP present no greater risk of overstay than interview-based B1/B2 visa issuances.

The Department also increased staff in key markets in order to meet the requirements of the Executive Order. By the end of 2012, State had created more than 40 visa adjudicator positions in China and 50 in Brazil. With these staff increases, State met the President's Executive Order target of a 40 percent capacity increase in Brazil in June 2012 and in China in November 2012. These positions are funded by the application fees paid by visa applicants. State also spent 90 million dollars to upgrade and expand its existing consular facilities in China (\$17 million) and Brazil (\$73 million) in fiscal year 2012. In China, State opened a new consulate building in Guangzhou in July 2013. Mission China also signed the leases for new properties in Wuhan and Shenyang. Both facilities are expected to

open by October 2015, and each is planned to have 25 windows, an improvement over Shenyang's current six windows. In Shanghai, the Department is continuing its work to renovate space adjacent to the consular section. The project is expected to be completed in December 2013 or January 2014. In Beijing, a former consular section facility was reopened in May 2012 to augment services being provided in the primary consular section there. State will also open new consulates in Brazil in Belo Horizonte and Porto Alegre, and relocate the Recife consulate to a larger facility in FY 2015. In Mexico, State plans to move the consulate general building in Monterrey to a new, larger space in 2014.

### **B Visa Processing**

The Department places a premium on conducting the outreach necessary to ensure that the visa application process is transparent. Every embassy and consulate provides detailed visa application instructions on its website, both in English and the host country language. Consular employees worldwide also engage regularly with local media, travel agencies and other stakeholders to ensure that accurate guidance is broadly accessible.

The B visa application begins when the applicant completes the online DS-160 nonimmigrant visa application. The DS-160 requires the applicant to provide biographical data and information on the purpose of travel and destination, and to answer a series of questions regarding prior criminal and other activity which could signal potential grounds of inadmissibility. The DS-160 is a web-based, interactive form that collects information from applicants and then makes the data electronically accessible to the consular adjudicator through the Consolidated Consular Database. The form provides consular and fraud prevention officers the

opportunity to analyze data in advance of the visa interview, enhancing their ability to make decisions. The online forms offer foreign language support, but applicants must respond in English to facilitate information sharing between the Department and other government agencies, which are able to view visa-application data in foreign and domestic locations. The online application forms are “smart,” meaning that certain answers to questions will trigger follow-up questions. The system will not accept applications if the questions have not been answered fully and “irregular” answers are flagged to ensure that consular officers address them in the interview.

Before an appointment can be scheduled, the applicant must pay the machine readable visa (MRV) fee (which is cost-of-service based and currently set at \$160). At most of our posts, fee payment and appointment scheduling are handled offsite through a Global Support Strategy (GSS) contract. In some cases, GSS contractors also collect applicants’ biometrics (fingerprints and photos) prior to their visa appointments and provide courier services for the issued visas. The biometrics are verified by American consular officers at the interview. All of these measures assist in limiting the amount of time that each applicant spends in the consular section, as well as limiting the number of visits.

On the day of the visa appointment, applicants may go through several steps before beginning their interview with a consular officer. Depending on a post’s volume, applicant pool, and physical layout, a local employee may confirm the accuracy of data submitted on the DS-160 and a cleared American employee may capture fingerprints (or verify fingerprints for applicants whose full prints were collected offsite by GSS contract employees). At small posts with light workloads, the adjudicator may perform all of these functions.

**The B Visa Interview**

Like all visa applicants, B category visitors (which include BCC applicants) must qualify under the provisions of U.S. law, primarily the Immigration and Nationality Act (INA), and are inadmissible on grounds relating to, among others, previous immigration violations, membership in terrorist organizations, controlled substance trafficking, and other forms of criminal activity. I will discuss the processes we have in place to screen for these grounds of inadmissibility in a moment. However, B visa applicants are most commonly refused under INA section 214(b), under which all visitor (and most other) visa applicants are presumed to be immigrants (and thus ineligible for a nonimmigrant visa) unless they satisfy the consular adjudicator that they qualify for the visa category for which they are applying. In the B visa context, applicants normally must demonstrate intent to return to their place of habitual residence following a limited period of time visiting the United States, during which they will not engage in activities inconsistent with the visa classification, such as accepting unauthorized employment. Applicants generally overcome the presumption of immigrant intent by demonstrating ties to their place of residence, such as employment, property and family relationships, and an explanation of the proposed travel that is legitimate and credible, taking into account their current life situation.

Most B visa applicants must be interviewed in person by a consular officer. The brief interview affords the applicant an opportunity to present evidence establishing the veracity of his or her application. At the same time, a personal interview allows the adjudicating officer to elicit information necessary to establish the applicant's eligibility for the visa category in question, to reconcile any

discrepancies in the information provided by the applicant, and to delve more deeply into any potential grounds of inadmissibility.

Consular adjudicators receive exhaustive training in both the application of visa law and the language spoken in the host country through the Department's Foreign Service Institute. Individual posts also provide training on cultural norms, economic and social trends, and fraud patterns. The consular adjudicator brings this combined knowledge to bear in assessing the totality of facts asserted by each individual applicant. When the facts presented by the applicant support the stated purpose of travel and make sense in terms of local norms, the consular adjudicator will generally approve the application, if no grounds of inadmissibility are present. Refusals under INA 214(b) tend to occur when an applicant's purpose of travel does not appear consistent with the B visa category (for example, when a student or work category visa would be appropriate) or when the facts presented, evaluated in light of the adjudicator's knowledge of local norms, fail to overcome the statutory presumption of immigrant intent.

#### **Waiver of Visa Interview**

Since 9/11, a risk-based approach grounded on greater and more effective domestic and international information sharing has become a key principle of visa processing policy. This approach enables the United States to channel more resources toward the prevention of high-risk travel while simultaneously increasing the number of legitimate visitors arriving by land, air, and sea. The Electronic System for Travel Authorization (ESTA) prescreening process for Visa Waiver Program (VWP) travelers, international information sharing arrangements, Global Entry, which expedites the movement of low-risk, frequent travelers who proceed directly to automated kiosks upon arrival in the United States, and interagency

counterterrorism and eligibility checks are examples of how U.S. agencies can use information collected from visitors and/or governments in advance of travel to accomplish complimentary and mutually re-enforcing goals of preventing terrorists and serious criminals from traveling to the United States while facilitating the entry of legitimate visitors.

In January 2012, the Department and the Department of Homeland Security (DHS) initiated the two-year Interview Waiver Pilot Program (IWPP) to streamline processing for low-risk visa applicants. The worldwide pilot program allows consular officers to waive in-person interviews for certain nonimmigrant visa applicants who were previously interviewed and thoroughly screened in conjunction with a prior visa application, and who are renewing a previous visa within four years of its expiration. The pilot program also allows consular officers to waive interviews for qualified Brazilian applicants falling into specific age ranges, even when applying for visas for the first time.

*All* IWPP applications are thoroughly reviewed by a commissioned consular officer, with the applicant's fingerprints, photograph, and biodata undergoing extensive database checks. Consular officers have been directed to require an interview for any applicant who might otherwise qualify for the IWPP, if the application is not immediately approvable upon paper review, including if database checks reveal potential grounds of inadmissibility or other possible concerns. State concluded an August 2013 validation study of the IWPP, which showed that B1/B2 visa issuances under the IWPP present no greater risk of overstay than interview-based B1/B2 visa issuances.

#### **Security Screening**

The Department has built a visa system that leverages state-of-the-art technology, extensive information sharing, highly-skilled and trained officers, and interagency cooperation to facilitate legitimate travel and trade without compromising our nation's security. Whether screening a case during the course of a visa interview or as part of the IWPP, every consular adjudicator has access to the full suite of screening results. The nonimmigrant visa software used to process visitor and other visa categories will not permit the issuance of any visa until all results have been vetted by a cleared U.S. citizen designated by the Department as a consular adjudicator. Whenever adjudicators issue over a database "hit," they must cite the reason for doing so (for example, receipt of approval to waive grounds of inadmissibility from CBP), and consular systems alert supervisors whenever an adjudicator issues over an exact match.

Under the Biometric Visa Program, before a visa is issued, the visa applicant's fingerprints are screened against two key databases. The first database is the DHS's Automated Biometric Identification System (IDENT), which has a watchlist containing available fingerprints of known and suspected terrorists, wanted persons, and immigration law violators. The second database is the Federal Bureau of Investigation's (FBI) Next Generation Identification (NGI) system (formerly called the Integrated Automated Fingerprint Identification System [IAFIS]), which contains more than 75.5 million criminal history records. More than 10,000 matches of visa applicants with records on the IDENT watchlist are returned to posts every month, normally resulting in visa refusals. In 2011, IAFIS returned more than 66,000 criminal arrest records to posts.

The Biometric Visa Program partners with DHS' Office of Biometric Identity Management (OBIM) (formerly the US-VISIT Program) to enable CBP officers at airports to match the fingerprints of persons entering the United States with the fingerprints that were taken during the visa application process at overseas posts and transmitted electronically to DHS IDENT. This biometric identity verification at ports of entry has essentially eliminated the previous problems of counterfeit and photo-substituted visas, as well as the use of valid visas by imposters.

The Department was a pioneer in the use of facial recognition techniques and remains a leader in operational use of this technology. Consular officers use facial recognition technology to screen all visa applicants against a watchlist of photos of known or appropriately suspected terrorists obtained from the FBI's Terrorist Screening Center (TSC), as well as the entire gallery of visa applicant photos contained in the Department's Consular Consolidated Database (CCD). Currently, more than 109 million visa applicant photos are enrolled in our facial recognition database. Facial recognition screening has proven to be effective in combating identity fraud.

All visa applicants are checked against our automated Consular Lookout and Support System (CLASS), which contains 27 million records of persons found ineligible for visas, or against whom potentially derogatory information exists. CLASS employs strong, sophisticated name-searching algorithms to ensure matches between names of visa applicants and any derogatory information contained in CLASS. This robust searching capability, which takes into account variations in spelling, has been central to our procedures since automated lookout system checks were mandated following the 1993 World Trade Center bombing.

CLASS has grown more than 400 percent since 2001 – largely the result of improved sharing of data among the Department, federal law enforcement agencies, and the intelligence community. Almost 70 percent of CLASS records come from other agencies, including information from the FBI, DHS, DEA, and the intelligence community. CLASS contains unclassified records on known or appropriately suspected terrorists (KSTs) provided by the Terrorist Screening Database, which is maintained by the TSC, and holds unclassified data on KSTs nominated by all U.S. government sources, including records created by the Department of State. We also run all visa applicants' names against the CCD in order to detect and respond to derogatory information regarding visa applicants and visa holders. The CCD contains more than 143 million immigrant and nonimmigrant visa records, going back to 1998. A system-specific version of the automated CLASS search algorithm runs the names of all visa applicants against the CCD to check for any prior visa applications, refusals, or issuances. We also provide a feed of CCD data to several partner agencies, and CCD access to several others. These partners in turn provide us with information on possible visa ineligibilities related to subjects, which we then use to screen visa applicants.

In 2011, we deployed the Enterprise Case Assessment Service, a visa fraud tracking tool that provides a platform to store fraud-related research that used to be stored outside of consular systems. Should fraud be confirmed during the course of a visa interview, consular officers can record that data in this tool, and it will be permanently available to consular officers worldwide should the referenced individual re-apply for a visa.

***Kingfisher Expansion (KFE)***

Kingfisher Expansion, or KFE, is a new U.S. government system for conducting interagency counterterrorism screening of all visa applicants. The Department launched KFE in June 2013 in partnership with the National Counterterrorism Center (NCTC), and in coordination with our partners at DHS (including CBP and U.S. Immigration and Customs Enforcement (ICE), the FBI, and the FBI's TSC.

KFE checks are initiated when a U.S. embassy or consulate submits electronic "vetting packages" – consisting of visa applicants' electronic visa applications as well as the automated visa cases created in post software – to the NCTC. In an automated process, NCTC compares vetting package data to its holdings in a highly classified environment, and responds to posts within minutes with "red-light/green-light" responses. KFE red-light responses trigger a Washington-based interagency review of the case.

In addition, KFE conducts post-issuance, continuous reviews of all holders of valid visas against emerging threat information. Continuous check "hits" are reviewed by our KFE partners and forwarded to the Department for revocation consideration when appropriate.

A 2011 comparison of pilot results suggested that KFE could, potentially, reduce counterterrorism SAO volume by as much as 80 to 85 percent, and associated administrative costs by as much as \$55 million annually. While we have yet to hit this volume reduction target, KFE's early impact has been positive and substantial. The public relations benefit to the United States of not delaying tens of thousands of qualified applicants cannot be quantified but will also be substantial, especially in the Middle East and South Asia.

***PATRIOT***

PATRIOT is a pre-adjudication visa screening and vetting initiative employing resources from ICE, CBP, and State, established to identify national security, public safety, and other eligibility concerns relating to visa applicants prior to visa issuance. PATRIOT will provide consular officers with a single, unified recommendation from DHS components (ICE and CBP) regarding the eligibility and admissibility of each individual visa applicant. PATRIOT currently is undergoing testing at 20 Foreign Service posts.

The PATRIOT check is planned to operate in conjunction with KFE. PATRIOT utilizes software to automate searches of online visa applications and visa case data against DHS holdings, and employs a team of agents, officers, and analytic personnel from ICE and CBP who perform manual vetting of possible derogatory matches to those holdings. PATRIOT will provide consular officers with a synopsis of analytic findings and recommendations on admissibility through an automated response package sent to State. PATRIOT screening and vetting operations are conducted by ICE and CBP personnel in the Washington, D.C. area.

#### *Interagency Cooperation with the Visa Security Program*

The Visa Security Program (VSP), under which DHS establishes Visa Security Units (VSU) staffed with ICE special agents at certain overseas consular posts, is another valuable component of the U.S. government's overall border security program. We have a close and productive partnership with DHS, which has authority for visa policy under section 428 of the Homeland Security Act, and are fully supportive of the mission and the future of the VSP.

The VSP uses the visa application and interview processes as well as the aforementioned PATRIOT vetting to detect and combat terrorism, criminality, and other threats to the United States and the traveling public. ICE special agents assigned to VSUs provide on-site vetting of visa applications and other law enforcement support to our consular officers. When warranted, DHS officers assigned to VSUs will conduct targeted, in-depth reviews of individual visa applications and applicants prior to issuance, and recommend refusal or revocation of applications to consular officers. We work very closely with DHS to ensure to the maximum possible extent that no terrorist receives a visa or is admitted into our country. Currently, 19 VSUs are active at posts in 15 countries.

#### **B Visa Refusal**

Based on the information obtained from the DS-160, the visa interview, and multiple layers of security and fraud screening, the visa adjudicator determines whether the applicant is eligible for a visa under the INA. Those who are found ineligible are informed of the grounds for refusal verbally and in writing, with the exception of those denied on certain criminal or security-related grounds, in which case the grounds may not be provided, consistent with applicable law. The Department requires that a supervisory consular officer review at least 20 percent of the refusals made in the consular section each day. The grounds of inadmissibility, consular adjudicator notes, and any supporting documentation are maintained in the CCD, where they are accessible to future Department adjudicators as well as CBP, ICE and USCIS.

A refusal under INA section 214(b) depends on the circumstances of the particular travel and the applicant at that time. Consequently, individuals denied under

section 214(b) may reapply at any time and might not be found ineligible, if the applicant is able, during a subsequent interview, to present new facts or information that were not presented initially and that establish the applicant's eligibility. Applicants found inadmissible on criminal and other grounds may only receive a nonimmigrant visa if eligible for a waiver of inadmissibility under INA section 212(d)(3)(A) and the consular adjudicator or the Department recommends, and CBP approves, a waiver. Consular adjudicators and the Department recommend such waivers when the applicant is otherwise qualified; does not pose a threat to national welfare or security; and advances a U.S. government interest, which may include travel of representatives of foreign governments, travelers coming at U.S. government invitation, or travel that furthers U.S. economic, cultural, or humanitarian interests. Consular adjudicators recommend waivers to CBP's Admissibility Review Office (ARO) using the Admissibility Review Information Service (ARIS) via the CCD.

### **B Visa Issuance**

Applicants whom an adjudicator finds to be qualified for a B visa and who are not found otherwise inadmissible based on security and fraud checks may be issued visas. It is Department policy to issue maximum validity visas, as determined on the basis of reciprocity, whenever practicable, absent a specific reason for issuing a shorter validity. Under the principle of reciprocity, insofar as practicable, the Department will not issue visas to nationals of a given country with a validity period in excess of the visa validity afforded to U.S. citizens visiting that same country for a similar purpose.

In the case of an issuance, the consular adjudicator also enters notes supporting the decision along with relevant scanned documents into the CCD for use by future Department adjudicators as well as CBP officers at ports of entry.

### *Lincoln Foil*

Aliens approved for travel to the United States are issued a “Lincoln visa foil” in their travel documents. The Lincoln foil is printed on a medium-weight security paper imprinted by ink jet with the recipient’s photo and biographic data. The ink is absorbed deeply into the paper’s substrata to prevent removal or alteration of the imprinted data. The central visual element of the visa foil is our sixteenth president as enshrined at the Lincoln Memorial.

Locally Employed Staff (LE Staff) are generally responsible for visa printing, but only designated U.S. citizen adjudicators may authorize issuance of a visa (and thus electronically enable its printing) and assume responsibility for visa foils, which must be controlled at all times. The accountable consular officer (ACO, designated in writing by the consular section chief) must maintain inventory records of foils received, their use and disposition, and periodically (at least quarterly) verify the inventory on hand by conducting a physical count. When foil shipments are received, the ACO physically counts the packages of foils, verifies the sequence of serial numbers and records the first and last numbers in an electronic ledger. The ACO dispenses the foils in consecutive order to employees responsible for printing visas and must verify the numbers on each sheet of foils handed out for daily visa production, maintaining a daily electronic record of all foils issued, spoiled or returned to secure storage. The ACO must also record the numbers of foils destroyed or transferred to other posts.

*Border Crossing Cards*

Recognizing that frequent, sometimes daily, travel across the border is a way of life for many in the Southwest, the United States developed a border crossing card in the 1940s to be used by Mexican citizens in lieu of the combined passport and visa generally required of foreign visitors. The basic laminated card, which contained the bearer's photograph, was initially issued by the former Immigration and Naturalization Service (INS) free of charge and with indefinite validity. Although the card underwent a series of permutations, it contained virtually no security features and was easily counterfeited. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) mandated that any BCC issued after April 1, 1998 contain a biometric identifier and be machine readable. By then, it had become evident that many BCC holders lived far from the border and/or used the cards for travel into the United States beyond the border region (in other words, for B visa purposes). Agreeing that the BCC and the B visa had become inextricably entwined, State and INS formed a partnership to implement the IIRIRA directive: State would adjudicate all applications for BCCs as a subset of B visas, while INS (and, subsequent to 2003, DHS) would produce the cards through its Integrated Card Production System (ICPS).

In its July 2007 report "Security of New Passports and Visas Enhanced, but More Needs to be Done to Prevent their Fraudulent Use," the GAO recommended that the Department reassess security features and redesign travel documents on a regular basis. The recommendation dovetailed with Department planning for the BCC replacement cycle, as Mexican citizens who had received 10-year validity BCCs in the wake of IIRIRA would soon be applying for replacement cards,

offering the Department an opportunity to design a new generation of BCCs. This also led to the Department taking over production of BCCs in addition to the adjudication. On October 1, 2008, the Department issued its first BCC with Radio Frequency Identification (RFID), also referred to as the DSP-150.

Today's BCC incorporates (RFID) technology, state-of-the-art security features and laser engraving. The card's design is reminiscent of the Southwest topography of the United States, with a distinctive color and geometric design. The photograph on the BCC card is laser engraved into the multiple layers of the card, becoming an integral part of the card material. Although the BCC is designed to be read by either RFID or by Machine Readable Zone readers, it is also critical that the card be secure on "face value" for inspection as well. To provide easy visual and tactile verification, and to enhance the integrity of the card, the Department uses state-of-the-art technology to embed an optical variable device (OVD), or kinegram, inside the card, rather than stamping it on the surface. The embedded OVD overlaps the lasered photograph with the personalized data, and any attempt to alter the OVD will destroy the integrity of the card. The embedded OVD is easily recognizable on the face of the card by sight and touch, and provides for quick inspection and verification that the card is genuine. The Department is working on a redesign and update to the BCC, which will be the fourth version since taking over production of the BCC. The Department worked proactively with DHS's Forensic Document Laboratory to ensure that the version four BCC will include the most state-of-the-art security features available on a full polycarbonate, laser-engraved card that includes innovative counterfeit-deterrent features not previously used in secure document design.

To meet CBP's operational needs at land and sea ports of entry, the BCC contains a vicinity-read (RFID) chip which serves as a pointer to a stored record in a secure DHS database. There is no personal data recorded on the chip; the chip contains only a number that can be read by authorized CBP readers mounted at traffic lanes at ports of entry. The number points to the database; personal information of the card holder is relayed to CBP officers' screens as the card holder approaches the inspection booth. Because the card design does not include any technology that would encode or encrypt bio-data, identity data cannot be tampered with or manipulated, eliminating the possibility that a new or false identity could be associated with the card.

#### **Layered Security and Data Sharing**

As I have previously stated in my testimony, the Department embraces a layered approach to security screening to contribute to border security. The Department and DHS continue to work hand in hand to improve procedures and upgrade systems devoted to supporting the visa function. DHS receives all of the information collected by the Department during the visa process. DHS's OBIM (formerly US-VISIT) is often cited as a model in data sharing because the applicant information we provide, including fingerprint data, is checked at ports of entry to confirm the identity of travelers. DHS has broad access to our entire CCD. A menu of reports tailored to the specific needs of each particular unit is supplied to elements within DHS, such as ICE agents assigned to VSUs.

Our systems are specifically designed to facilitate comprehensive data sharing with our partners. We give other agencies immediate access to more than 15 years of

visa data for these purposes, and they use this access extensively in the course of conducting law enforcement and/or counterterrorism investigations.

Working in concert with DHS, we proactively expanded biometric screening programs and integrated this expansion into existing overseas facilities. In partnership with DHS and the FBI, we established the largest fingerprint screening program on the globe. These efforts require intense ongoing cooperation from other agencies. We successfully forged and continue to foster partnerships that recognize the need to supply accurate and speedy screening in a 24/7 global environment. As we implement process and policy changes, we are always striving to add value in both border security and in operational results. Both dimensions are important in supporting the visa process.

### **Conclusion**

The Department recognizes that the United States' long-term interests and security are served by continuing the flow of commerce and ideas that are the foundations of our prosperity and security. The B visitor visa is the cornerstone of this flow, enabling ever-increasing numbers of visitors to experience U.S. culture and contribute to our economy.

The Department has been able to facilitate this important flow of legitimate travelers even while maintaining national security as its number one priority. We have incorporated multiple biographic and biometric checks, supported by a sophisticated global information technology network, into the visa adjudication process. We have built strong partnerships with DHS, other law enforcement agencies, and other relevant agencies to ensure the real-time flow of information

necessary for keeping our borders secure. Finally, we maintain a sophisticated, highly trained staff of multilingual adjudicators who provide the cultural awareness, knowledge, and objectivity necessary to ensure that the visa function, essential to our economic security, also remains the frontline of border security.

This concludes my testimony today. I will be pleased to take your questions.

Mr. CHAFFETZ. Thank you.  
Mr. Osuna.

#### STATEMENT OF JUAN OSUNA

Mr. OSUNA. Good morning, Mr. Chairman, Ranking Member Tierney, and other distinguished members of the subcommittee. Thank you for the opportunity to speak with you today about the Department of Justice's Executive Office for Immigration Review, or EOIR.

Our agency is responsible for conducting civil immigration removal proceedings through our immigration courts located around the Country and our appellate level court, the Board of Immigration Appeals. While our judges have no role in determining the guilt or innocence of aliens charged with criminal wrongdoing at the border or in the interior, we are certainly affected by law enforcement activity at the border and beyond. Every alien that the Department of Homeland Security formally charges with being removable from the U.S. results in another case for EOIR, and our trial and appellate judges are responsible for deciding whether the person should be removed from the U.S. or whether he or she merits some sort of relief from removal.

With 348,000-plus proceedings pending at the end of fiscal year 2013, we are currently managing the largest caseload the immigration court system has ever seen. Overall, there are 252 immigration judges located in 59 immigration courts around the Country. Many of our courts are located near or along the southern border, including San Diego, El Paso, and Harlingen, Texas; and along the northern border, including Seattle, Detroit, and Buffalo. Some courts are located within INS-ICE detention centers, thereby making the adjudication of those cases involving detained aliens at those facilities much more efficient. These include the border locations of East Mesa California, Eloy, Arizona, where I think you visited, Mr. Chairman, and Port Isabel, Texas, along the southern border; as well as Batavia, New York along the northern border.

In order to address the immigration courts significant caseload, EOIR requires adequate resources. Most crucial is the ability to properly staff our immigration courts with the immigration judges and support staff needed to most efficiently and fairly process cases. For fiscal year 2013, EOIR was funded at \$289.1 million post-sequestration, which is more than \$13 million below the fiscal year 2012 funding level. The resources that the President's budget requests for fiscal year 2014 are essential to our ongoing efforts to recruit, train, and equip top-quality immigration judges and support staff.

The highest priority cases for EOIR are those involving detained individuals, and the agency focuses on the efficient and timely adjudication of such cases. These individuals are often detained by DHS because they have criminal convictions that may make them deportable from the Country and because they may pose a risk of flight or a public safety risk. In addition, detention is expensive and it implicates a liberty interest for the individuals detained. Therefore, these cases always rise to the very top of our priority list.

In this world of limited resources, however, placing a high priority on the adjudication of the detained cases has implications for the non-detained side of the docket, including some cases initiated as a result of a person seeking asylum in the U.S. EOIR, however, understands that its mission includes a timely adjudication of all cases, detained and non-detained, and strives to complete every case as quickly as possible within the constraints of due process.

The utmost priority for every type of case is that the facts are fully considered and every application of law is correct. As with all hearings before our tribunals, EOIR is very focused on protecting the integrity of immigration proceedings. The agency has a robust and active program for identifying and referring claims of fraud encountered by immigration judges and the Board of Immigration Appeals, and we work very, very closely with our partner agencies to identify and take action against those individuals who perpetrate fraud against the court system. This program also allows us to safeguard aliens from falling prey to a growing notario problem, which is a problem that every agency has to deal with that deals with immigration cases.

The complaints and requests for assistance that our fraud program receives each year are almost evenly divided between unauthorized practice of immigration law complaints and fraudulent claims perpetrated against the Government. As an illustration of our fraud program, we are currently a participant with the FTC in the Sentinel Network, which is a consumer protection network, and we have referred about 70 cases to the Network of potential fraud in the last couple years.

Mr. Chairman, Representative Tierney, and other distinguished members, despite the large caseload that EOIR faces, we continue to make great strides. Our adjudicators and staff are dedicated professionals who work every day to ensure efficient and fair immigration court proceedings, both at the trial and the appellate levels. While we face the demands of a large and increasing caseload, with your continued support we are confident that we can continue to meet that challenge.

Thank you for the opportunity to speak with you today, and I look forward to answering any questions you might have.

[Prepared statement of Mr. Osuna follows:]



# Department of Justice

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STATEMENT OF

JUAN P. OSUNA  
DIRECTOR

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON OVERSIGHT & GOVERNMENT REFORM  
SUBCOMMITTEE ON NATIONAL SECURITY

HEARING ON

“BORDER SECURITY OVERSIGHT,  
PART III: BORDER CROSSING CARDS AND B1/B2 VISAS”

PRESENTED

NOVEMBER 14, 2013

### **Introduction**

Mr. Chairman, Representative Tierney, and other distinguished Members of the Subcommittee, thank you for the opportunity to speak with you today about the Department of Justice's Executive Office for Immigration Review (EOIR). While maintaining the largest caseload the immigration system has ever seen, EOIR continues to effectively and efficiently carry out its adjudicatory mission.

EOIR administers the Nation's immigration court system, composed of both trial and appellate tribunals. Removal proceedings before EOIR begin when the Department of Homeland Security (DHS) files a formal charging document, called a Notice to Appear (NTA), with an immigration court. EOIR's immigration judges decide whether the alien is removable from the United States based on the DHS charges and, if removable, whether the alien is eligible for and merits relief or protection from removal. EOIR is responsible only for civil immigration proceedings, and EOIR's adjudicators have no role in state or federal criminal proceedings. EOIR's immigration judges, for example, do not determine the guilt or innocence of aliens charged with criminal wrongdoing at the border or in the interior of the country.

Overall there are now 252 immigration judges in 59 courts around the country. Many of our courts are located near or along the southern border, including in San Diego, California; El Paso, Texas; and Harlingen, Texas. Some courts are located within DHS detention centers, including the border locations of East Mesa, California; Eloy, Arizona; and Port Isabel, Texas.

The appellate level of EOIR is the Board of Immigration Appeals (BIA), which sits in Falls Church, Virginia. The BIA consists of 15 Board Members, supported by a staff of attorney advisers, and is headed by a Chairman. The BIA has nationwide jurisdiction and hears appeals of the immigration judge decisions. When appropriate, the BIA issues binding precedent decisions interpreting complex areas of immigration law and procedure. Either an alien or DHS may file an appeal with the BIA. An alien who loses an appeal before the BIA may seek review of that decision in the applicable federal circuit court of appeals.

EOIR's third adjudicatory component is the Office of the Chief Administrative Hearing Officer (OCAHO). The Chief Administrative Hearing Officer heads a tribunal comprised of administrative law judges, who handle and adjudicate cases related to illegal hiring and employment eligibility verification violations, document fraud, and unfair immigration-related employment practices. Although there is a much smaller volume of these cases relative to the immigration courts, OCAHO case receipts doubled between FY 2008 and FY 2012.

Each immigration court's caseload is tied directly to DHS enforcement and detention activities. DHS determines both detention space allocations and the filing of charging documents. As such, EOIR is in regular and continuing contact with DHS to anticipate and respond to caseload trends. Through this close coordination, our two

departments are able to explore additional ways of handling the removal adjudication process more efficiently. In turn, we can focus our resources on those case involving detained aliens, our highest priority cases.

### **Pending Caseload**

We recognize the continuing public interest in EOIR's pending caseload. At the end of FY 2012, EOIR's immigration courts had 327,431 proceedings pending, marking an increase of more than 29,000 proceedings pending over the end of FY 2011. In FY 2013, that pending caseload grew by approximately 21,000 proceedings, reaching 348,343 proceedings pending, our highest caseload to date. The pending caseload is directly tied to both the number of cases that DHS files in the immigration courts and EOIR's ability to complete those cases with available resources.

As I noted above, EOIR's highest priority cases are those involving detained aliens. These individuals are often detained by DHS because they have criminal convictions that may make them removable from the United States. Others are detained because they pose a danger to the community or are a flight risk. As such, the agency prioritizes the efficient and timely adjudication of these cases.

### **Asylum and Convention Against Torture (CAT)**

Placing a high priority on the adjudication of detained cases has implications for the non-detained side of the docket, including some cases initiated as a result of persons seeking asylum in the United States. EOIR understands the importance of providing a meaningful process for those seeking protection from persecution and preserving the integrity of the asylum process.

All EOIR staff understand the importance of asylum claims, and of the need to decide these life-changing cases quickly while still taking the appropriate time to consider all of the relevant facts and applicable law. While we take seriously our responsibility to decide cases in an expeditious manner, the utmost priority for every type of case is ensuring that every fact is considered and every application of law is correct.

There are two types of asylum processes – defensive and affirmative. The defensive asylum process applies to aliens who are in removal proceedings before EOIR and who request asylum before an immigration judge. The process is called “defensive” because it can provide aliens with relief from removal from the United States. The affirmative asylum process applies to aliens who initially file asylum applications with DHS's U.S. Citizenship and Immigration Services (USCIS). Affirmative asylum applicants whom USCIS does not find to be eligible for asylum and are not in lawful status are referred to immigration court, where immigration judges conduct a *de novo* hearing of their asylum cases.

DHS is authorized to utilize expedited removal for aliens at the border who are without proper immigration documents or who have engaged in fraud or misrepresentation, when certain conditions exist. Generally, aliens subject to expedited removal do not have a hearing before an immigration judge. To ensure that those who may qualify for asylum or Torture Convention protection are not returned to countries where they would be subject to persecution or torture, USCIS asylum officers conduct non-adversarial screening interviews, known as “credible fear” interviews, of aliens subject to expedited removal who, while in DHS custody, express a fear of persecution or torture if they return to their home country. On the basis of that interview, USCIS asylum officers determine, in accordance with the statutorily-defined standard, whether there is a “significant possibility” the alien can establish eligibility for asylum or Torture Convention protection. EOIR has a very limited role in the expedited removal process. If DHS finds that an alien has established a credible fear of persecution or torture at the credible fear interview, the alien is taken out of the expedited removal process and referred for removal proceedings before EOIR, during which the alien can pursue asylum. If DHS finds that the alien does not have a credible fear of persecution or torture, the alien may request that the screening decision be reviewed by an EOIR immigration judge, who may either agree with DHS, in which case the alien is removed without any further EOIR involvement, or find that the alien has a credible fear of persecution or torture, in which case the alien is taken out of the expedited removal process and referred for further proceedings before EOIR.

#### **Fraud, Abuse, and Attorney Disciplinary Issues**

EOIR has a robust and active program for identifying and referring claims of fraud encountered by immigration judges and the BIA. This program serves to protect the integrity of immigration proceedings and to safeguard aliens from falling prey to fraud. EOIR’s Fraud and Abuse Program makes referrals for investigation of immigration fraud complaints it receives from EOIR staff and adjudicators, respondents in EOIR proceedings, and members of the public. The complaints and requests for assistance the Fraud and Abuse Program receives each year are almost evenly divided between unauthorized practice of immigration law (UPIL) complaints and fraudulent claims perpetrated against the government.

Because EOIR has no authority to conduct investigations or prosecute, UPIL complaints are referred to federal, state and local law enforcement, and bar associations for investigation and prosecution. EOIR also files complaints of UPIL fraud with the Federal Trade Commission’s Consumer Sentinel Network (Sentinel) and collaborates with USCIS’s Fraud Detection and National Security Directorate and other government agencies in combating fraudulent immigration activity. EOIR consistently is among the top-ranked government agencies in referring UPIL fraud to Sentinel.

EOIR also regulates the professional conduct of immigration attorneys and representatives in order to protect the public, preserve the integrity of immigration proceedings and adjudications, and maintain high professional standards among

immigration practitioners. EOIR's Disciplinary Counsel investigates complaints involving alleged misconduct associated with practice before EOIR's immigration courts and the BIA to determine whether an attorney or representative has engaged in criminal, unethical, or unprofessional conduct. If the EOIR Disciplinary Counsel determines that a complaint has merit and that disciplinary sanctions should be imposed, the EOIR Disciplinary Counsel can issue confidential discipline or initiate formal disciplinary proceedings. Since the program's inception in 2000, EOIR has disciplined more than 1,100 attorneys.

### **Budget and Resource Impact**

It is critical that EOIR maintain the ability to properly staff our immigration courts with the immigration judges and support staff needed to most efficiently and fairly process cases. In 2010, the Department and EOIR placed a great emphasis on the hiring of new immigration judges in order to address the rapidly rising caseloads. The effort met with great success, increasing our immigration judge corps and adding more law clerks to assist the judges.

Unfortunately, the current partial hiring freeze continues to have a significant negative and worsening impact upon EOIR's core mission, increasing the number of cases pending adjudication and extending court dockets further into the future. More than 100 immigration judges – more than one third of the immigration judge force – are eligible to retire in FY 2014 alone.

The Department continues to seek the resources necessary to hire additional immigration judges, BIA attorneys, and other staff, to provide them with sufficient training and tools, and to continue pursuing other improvements that will benefit the immigration court system and the parties who appear before EOIR. For FY 2013, EOIR was funded at \$289.1 million, post-sequestration, which is more than \$13 million below the FY 2012 funding level. The resources the President's Budget requests for EOIR for FY 2014 are essential to our ongoing efforts to recruit, train, and equip top-quality immigration judges and court staff.

### **Immigration Judge Training, Conduct & Professionalism**

EOIR has a well-established and effective means of training its judges for the substantive rigors of their jobs. An Assistant Chief Immigration Judge (ACIJ) for training is responsible for enhancing and maintaining adequate training programs for immigration judges and other court staff. EOIR now provides new immigration judges with six weeks of training, in order to ensure that they are ready to hear cases fairly and promptly. Further, they are assigned a mentor immigration judge to assist them throughout their first year on the bench. They are also required to take and pass an immigration law exam before they can begin adjudicating cases. A formalized review process is included as part of a new immigration judge's probationary period, which typically lasts two years. If performance issues arise, EOIR offers counseling, and

additional training and mentoring before more formally disciplining an immigration judge.

EOIR also goes to great lengths to ensure that both new and experienced immigration judges receive continuing education. EOIR continues to rely on many of its established methods of training to bolster and fine-tune the immigration judges' knowledge, such as video and webinar trainings.

EOIR also employs an ACIJ for conduct and professionalism, who serves to promote and preserve the integrity of the immigration judge corps. EOIR continues to monitor immigration judge performance through an official performance work plan and evaluation process, through a corps of 13 ACIJs who oversee the daily operations of the courts. Further, the agency remains committed to ensuring that any allegations of misconduct involving immigration judges are investigated and resolved, promptly and appropriately.

### **Conclusion**

Mr. Chairman, Representative Tierney, and distinguished Subcommittee Members, despite the large caseload that it faces, EOIR continues to make great strides. Our adjudicators and staff are dedicated professionals who work every day to ensure efficient and fair immigration court proceedings, both at the trial and appellate levels. EOIR faces the demands of a large and increasing caseload, but, with Congress's continued support, we are confident that EOIR will effectively meet that challenge.

Thank you for your interest and for the opportunity to speak with you today. I am pleased to answer any questions you might have.

Mr. CHAFFETZ. Thank you.

I will now recognize myself for five minutes.

I don't want to spend the bulk of my time trying to get you to respond to letters that we send you, specifically to Homeland Security. I have a problem when I send you a letter in July asking for some basic information and I get the response last night, after hours, to which most answers are we'll get you this information later. My colleagues, I think in a very sincere way, are trying to point out that these overstay are less of a problem, but when I ask the Department of Homeland Security to provide a document describing the total number of overstay, the response was Homeland Security will provide more specific information on overstay by the end of the calendar year. I asked this question in July. This is the answer you gave me last night. I don't know how anybody can make the case that this is less of a problem or even more of a problem when Homeland Security can't even tell me what the numbers were in 2009.

I also don't understand, from Homeland Security, why, when I issue a letter on August 26th, I get no response. I have had no response.

Mr. Woods, why do I not get answers to the questions we ask?

Mr. WOODS. Chairman, I will take your concerns back to the Department.

Mr. CHAFFETZ. No. You are the representative from Homeland Security. What is intolerable to this committee, and it has happened on both sides of the aisle, is we don't get answers to very basic questions. Don't tell me you are just going to carry the message back. I carried the message to the secretary and to the Department. Why don't you have answers to those questions? Why do these letters go unanswered?

Mr. WOODS. It is my understanding that your July letter was answered last evening, and I apologize for the delay in that letter. It went through a lengthy clearance process. There were many questions to answer, and it is my understanding—

Mr. CHAFFETZ. Most of the answers are we are going to get you the answers later.

Mr. WOODS. It is my understanding that the Office of Immigration Statistics is committed to publishing the overstay rates by the end of this calendar year.

Mr. CHAFFETZ. I asked for them back in—do you have the numbers for 2009?

Mr. WOODS. I do not have the numbers for 2009 right at this time. From what I understand at the time—

Mr. CHAFFETZ. What I want you to understand and take back, look, I am sure you are a very nice gentleman. You are the person, though, that your agency put up here in front. It is nothing personal. But when I ask for this in writing, in letter, trying to be nice, polite, give you plenty of time, in July, it should be a clue that when we come and have a hearing in November that I might ask you this question. You take up half my time trying to get you to do what we asked you to do politely just in writing from what the statistics are in 2009. This is what is so terribly frustrating about trying to interact with this Administration, it is the lack of information about this.

Now, let me go to the Department of State, Mr. Ramotowski. Help me understand this definition of—in order to get a border crossing card, Mexico, these are for Mexican citizens to come to the United States, they have to demonstrate ties to Mexico. We believe, as a Government, that they will want to go back to Mexico. Can you define what that is? Because I am having a hard time finding what the definition and the leniency that maybe somebody from the Department of State is going to give somebody to get one of these border crossing cards. What does it take?

Mr. RAMOTOWSKI. Mr. Chairman, we evaluate each and every visa application on its own individual merits and, as you pointed out, the law requires each applicant to demonstrate that they are not an intending immigrant. So the consular officer will evaluate that applicant's case based on their circumstances.

Mr. CHAFFETZ. Do you know the average time that the application is reviewed?

Mr. RAMOTOWSKI. It varies by country.

Mr. CHAFFETZ. No, we are talking about just Mexico, because I am just talking about just border crossing cards, which are only available——

Mr. RAMOTOWSKI. In Mexico, that is correct.

Mr. CHAFFETZ.—in Mexico. So it doesn't vary by country, it is only Mexico.

Mr. RAMOTOWSKI. Okay. For Mexico, the average time would be in the neighborhood for three to four minutes for a consular interview.

Mr. CHAFFETZ. And what documentation is required to make this?

Mr. RAMOTOWSKI. What is required is our DS-160 electronic visa application form, and the consular officer is entitled to request any other document that he or she needs in order to make a decision.

Mr. CHAFFETZ. As a minimum, what documentation do you need? As a Mexican. A Mexican comes up, filed his application. What documentation do they need to provide as a minimum?

Mr. RAMOTOWSKI. As a minimum, as I said, the application is the only required document. If the consular officer doubts the applicant's answers——

Mr. CHAFFETZ. So there is no passport, no——

Mr. RAMOTOWSKI. A passport is required, yes, in addition to the application form.

Mr. CHAFFETZ. Birth certificates?

Mr. RAMOTOWSKI. Birth certificates are not required unless the officer has reason to doubt the identity of the individual that is standing before them.

Mr. CHAFFETZ. So they must have a Mexican-issued passport.

Mr. RAMOTOWSKI. That is correct.

Mr. CHAFFETZ. What is the opportunity or what are the latitude that they have to waive that requirement?

Mr. RAMOTOWSKI. A passport cannot be waived. A Mexican citizen has to travel to the U.S. with a passport and a border crossing card.

Mr. CHAFFETZ. And my last question, I have gone over my time here, unfortunately, and we are going to come back with several rounds here, I promise you that, why such a dramatic increase? We

have nearly 300,000-plus, more than 300,000 border crossing cards issued in the Obama Administration than the Bush Administration. I just want to know why.

Mr. RAMOTOWSKI. I think there are several reasons for that, Mr. Chairman. Visa demand, border crossing card demand in Mexico tends to be cyclical because the cards are issued for a period of 10 years, and when you come to the end of a 10-year period, a larger group of applicants are renewing their cards. Another reason is that overall travel demand to the United States has been increasing. We are seeing that in a number of countries around the world. Private industry and cities, States, and towns have been heavily promoting the U.S. as a tourist destination. Demand dropped drastically after the 9/11 attacks and it is now recovering.

Finally, with respect to Mexico, initially border crossing cards were mainly issued in our five border consulates, and the consulates and the U.S. Embassy in Mexico City issued standard visas. But now Mexico has converted to issuing the border crossing card, B1/B2 visa card exclusively, so you are going to see, simply because we have shifted more of the demand in Mexico to these cards, and the reason for that is the card helps CBP at the border because it contains an RFID chip, which enables the CBP officer to get that data as a car drives up to the border.

Mr. CHAFFETZ. And perhaps we will have time to explore why the rejection rates are so different between the two administrations.

But I will now recognize the gentleman from Massachusetts, Mr. Tierney.

Mr. TIERNEY. Thank you.

Mr. Woods, first of all, let me add some comments to the chairman's request for documents and whatever. It is very difficult for us to determine any materials around here as an oversight unless the Department is cooperative and gets us those materials. He has a phone, so if for some reason they can't be answered, you are busy doing your bureaucratic ping pong over there or whatever, which I understand you are forced to go through, and that ought to be revised, somebody could contact the committee, let them know where they stand on that process, offer what it is they have in the meantime. Actually, some of these responses, please contact the Department of State to obtain the information. Well, that could have been given the first day, to reroute him to where he should go, instead of waiting months and now have to start all over again with a different Department.

This is a bipartisan request in terms of that. When a request for information is made, if you legitimately don't have the information, then pick up the phone or pay a little visit, we are not that far away, and explain why not. And if you are redirecting it to another department, that is two minutes. That ought to be given immediately on that so people can start in a different direction on that. That is one message I would like you to take back and issue on that, and then we can try to get going.

I did put up a chart there which indicated from some very, I think, credible individuals that at least from 2000 to 2009, the non-immigrant visa overstays seemed to have a trend downward, significant trend downward, and I know the Pew Hispanic Center

trends project indicates that there is an uptick. They say not a significantly determinative uptick in the last couple of years on that, but it would be helpful for us to know what those numbers are, coming from the source on that. But if we assume, at least, that that 73 percent decline from 2000 to 2009 is reliable information on that, can you tell me what you say accounts for that trend?

Mr. WOODS. Sir, I think there is a multitude of reasons that account for that trend. We have much more robust vetting up front, before people are issued visas, to determine what their intentions are in coming to the United States. So if they are intending immigrants, the State Department does not issue visas. Additionally, we do have a targeting enforcement program that identifies those people who are public safety and/or national security threats to go out and arrest them and remove them from the United States. We have a robust recurrent vetting process that CBP handles on a daily basis with all the active visas, and determines those individuals that may, up-front, be not admissible to the United States; it may be a potential oversight. So there are a multitude of reasons, a layered approach here.

Additionally, they now understand that the Bureau of Office of Immigration Statistics within DHS will be issuing the fiscal year 2012 statistics this year. We are in the process of pulling the raw data of the fiscal year 2013 so that we can provide them a side-by-side comparison. This way they can see whether the actual trend is upward or downward. But we hope that we are committed to publishing the fiscal year 2012 data by the end of this calendar year and then have the fiscal year 2013 data shortly behind that, or hopefully maybe contemporaneously with it.

Mr. TIERNEY. Thank you. Are you maintaining records indicating a large increase in the number of rejected applications?

Mr. WOODS. We don't maintain records on applications, that would be the Department of State that handles the applications.

Mr. TIERNEY. Mr. Ramotowski, are you maintaining any records on that, indicating whether there has been an increase in the number of applicants for visas or not?

Mr. RAMOTOWSKI. Yes, we maintain records on that, and globally visa demand has increased in recent years. In Mexico, however, for fiscal year 2013, demand has been down by approximately 14 percent for border crossing cards and B visas. So, again, demand fluctuates by country and over time.

Mr. TIERNEY. Thank you.

So back to you, Mr. Woods, even if it is going down, we saw that trend, there are still some people coming in and overstaying, so the issue gets back to the information we take on entry versus the information we get on exit. Now, the Senate bill, the total comprehensive reform immigration did provide that the Department of Homeland Security establish an automated exit system that would collect biographic information from departing foreign visitors at air and seaports by the end of 2015 and require the Department of Homeland Security to establish an exit system for collecting biometric information at 10 airports, which would later be expanded to 30.

Is that something that the Department feels would be useful in addressing this issue?

Mr. WOODS. I am going to defer to Customs and Border Protection; they run the ports of entry and would be setting up that program. But I can say this before, that we have, over the last two years, enhanced our interconnectivity with the CBP and the CIS to better validate overstay records through both biographical and biometric matches, and our match rate is up substantially to show that we can validate those records at this time, and that is the reason we will be publishing the fiscal year total status this year. But I will defer to CBP for the—

Mr. TIERNEY. The later is to you, Mr. Wagner. Can you tell us whether or not that proposed system would be useful or helpful on that, or whether it actually can be done, practically speaking? Can we get that kind of an exit system up and operating so it would be effective?

Mr. WAGNER. Yes, happy to address that. We were given the responsibility for the entry/exit mission in April with our, this past year, appropriation, so we are busy working on setting up an entry/exit program management office that will set up a demonstration and prototype lab over the course of the next year. We will be looking at the different technologies, the different biometrics. Really, the key here, it is not so much the technology, it is where you put it in that process to make it meaningful. Right now, today, we do biographic entry/exit tracking, so the addition of biometrics into that is not going to get us additional records in the air and sea environment; it is going to confirm the biographic data that we already have today. But we have to put it in such a place that we have confidence that that person who registered their biometrics, whatever that is, actually boarded that aircraft or boarded that conveyance to leave the United States, and they didn't just turn around and walk right out of the airport, thereby then just defaulting to the same exact system we have in place today.

So we want the information. We want to get it, we want to use it, but we want to do it in such a way that it doesn't cause gridlock at the airports and that it is done in a meaningful way, that it doesn't end up jeopardizing or looking at the expenditures to do this and thus jeopardizing even our authority to collect this type of information. So we will be working over the course of the next year to determine what the concept of operations are, what are the right different biometrics to do this, and then looking at running a demonstration at a port of entry, at an airport, sometime in 2015. So we have some concerns with the time lines in the bill. We have some concerns, of course, about the funding of what it would cost to do this. We are asking for a little bit more time over the course of next year to really do this right and doing it meaningful.

Land borders is a whole different set of challenges. We would struggle with finding the right type of biometric to collect on inbound without really creating gridlock and capacity issues at the ports of entry that already experience wait times now, and that is just on the inbound case. On the outbound case even more difficult because the infrastructure is not there and the physical infrastructure is not there. In a place like San Ysidro, we have 20-something lanes of inbound. There are only a handful of lanes going out into Mexico. So to replicate the inbound and outbound process will be quite costly and quite tremendous of a project to take on.

Now, what we are doing, we are collecting all the inbound biographical data at the land borders. What we started with Canada this past year is an exchange of their inbound data for our inbound data, and we are able to exchange those biographical records so we have a confirmation via entry into Canada that that person did in fact depart the United States; and we are exchanging that data today now on all non-U.S., non-Canadian citizens. We will be expanding that to U.S. and Canadians at some point next year.

Mr. TIERNEY. With your permission, Mr. Chairman, just one.

So are you going to do a cost-benefit analysis? It seems to me the cost of replicating an exit system similar to the entry system is going to be huge.

Mr. WAGNER. Yes. We will look at those considerations.

Mr. TIERNEY. Thank you.

Mr. CHAFFETZ. I now recognize the gentleman from Arizona, Mr. Gosar.

Mr. GOSAR. I will just keep you on the hot spot, because you just led me into some questions. When you are looking at these biometrics, are we going to share them with all law enforcement throughout State, local, and Federal entities?

Mr. WAGNER. We would share them with any permissible use of sharing any information.

Mr. GOSAR. So we would actually engage them. So not just looking at ports of entry, airports, port waterways, but we would work with local entities? I am from Arizona, by the way, so that is why it is a pointed question for us. We seem to have this disconnect by looking and working with local and State law enforcement officials. You would share these biometrics so that we have numerous ports of looking at the biometrics of overstays?

Mr. WAGNER. Well, as with any information we would collect, we would share it with whatever is a permissible use of the information we have.

Mr. GOSAR. Okay.

Mr. Ramotowski, some of the things that we have seen lately in forged documents, even leading in Florida to two mass murderers, actually, or murderers being allowed out of jail. In replication of this chip and this border crossing aspect, what is our dimension of forgery?

Mr. RAMOTOWSKI. One of the biggest advances in both visas and border crossing cards was including the biometric fingerprint, which is a tremendous link to the applicant's true identity, and that has cut forgery by a tremendous amount. We also have at all of our embassies and consulates designated fraud prevention officers, and at the larger and medium-sized ones we have dedicated fraud prevention units who work continuously with our visa officers, with diplomatic security, special agents, with law enforcement agents from other U.S. Government agencies to investigate fraud scams, immigration scams, and to detect trends in alien smuggling and other risks to our national security. That information is continuously communicated to our visa officers so that they have up-to-date information about the applications that they are handling.

Mr. GOSAR. Are they having harder times in regards to supporting documents being forged? The cross-link here is incredible.

What you can do with a computer and Adobe printer is just amazing.

Mr. RAMOTOWSKI. Yes. We put a lot of effort in training our officers to detect fraudulent documents, but we also train our officers to focus in their interviews on the applicant and his or her purpose for traveling so that they can detect whether the applicant's story makes sense in the cultural context in which they are applying. Does the planned travel fit the applicant's profile? Does it make sense given their ties to the country that they are applying in? We want our officers to focus on the whole picture, and not just one specific set of documents.

Mr. GOSAR. Would it be easier in the border crossing cards to have a uniform, some type of agreement between border States of distance that would be uniform that everybody would accept? Would that be helpful in regards to the border crossing cards?

Mr. RAMOTOWSKI. Let me clarify, sir, that the border crossing card that we issue in Mexico is also a B1/B2 visa, so an individual can be admitted by Customs and Border Protection to travel anywhere in the Country.

Mr. GOSAR. Mr. Osuna, a real curiosity I have here. What does it really take to get somebody here on a political amnesty aspect out of this Country? Would you say three felonies? Would that take—

Mr. OSUNA. Congressman, are you asking what it takes to get somebody removed?

Mr. GOSAR. Yes.

Mr. OSUNA. Well, the immigration laws have various provisions based on criminal activity. So DHS can charge somebody with being removable from the Country based on drug convictions, crimes of violence, a long list of what are called aggravated felonies, which are pretty severe, because if somebody is convicted of an aggravated felony and an immigration judge finds that they are removable for an aggravated felony, they are actually not eligible for any sort of relief from removal, like asylum and things like that. So the laws already provide some fairly robust enforcement provisions that are pretty unforgiving for people who commit crimes in the U.S., and there is a long history going back on that.

There are other provisions that are also in the grounds of removability not based on criminal convictions, overstays and things like that. But for the criminal grounds that the judges handle, those are pretty harsh and intended to be pretty harsh provisions in the law already.

Mr. GOSAR. Well, there must be an exception to that rule down in Arizona in regards to a gentleman that was an Iraqi political asylum aspect. Maybe you are familiar with the gentleman. I mean, three prior felonies, tried to blow up the Social Security building on 2011, right down from my office. And we are trying to figure out what it actually takes for a political asylum person, when they convict aggravated felonies—this guy spent time in jail in Arizona—and why it takes such a long time to get some adjudication here.

Mr. OSUNA. I am not familiar with that particular case. It may be a case that was not in our court system. It may not have been brought to us yet, but, again, if it is a case that you are interested

in, we can certainly look into it. If it is in our court system, we can try to get you some information. I would caution, however, that we are somewhat limited, especially if it is an asylum case, of what information we can give out, but I am happy to get back to you on that.

Mr. GOSAR. I would like that, because it seems to me that that is that integration that I was talking to Mr. Wagner about. It should be in your court system. And it should not be if, it should be it is in your court system, and that we have a follow-through in regards to that, because the safety of people are at stake.

Thank you.

Mr. CHAFFETZ. If you would indulge me for one moment. I just want a point of clarification from Mr. Ramotowski. You said that they get a border crossing card that is also a B1/B2, and then you went on to say which allows them to travel throughout the United States. Could you help clarify that? Because I don't think that is accurate. Maybe I just heard it wrong.

Mr. RAMOTOWSKI. Yes, and I will also defer to my colleague in CBP regarding the admission process. But in Mexico, the border crossing card that we issue is a border crossing card and B1/B2 visa, and it replaces the B1/B2 visa in Mexico and is only issued in that country. So when they apply for admission to CBP, they can be admitted on the card, the B1/B2 border crossing card for travel anywhere in the Country.

Mr. CHAFFETZ. My understanding was when you get a border crossing card you are limited to entry to certain miles, depending on which State you are involved and engaged in. You are telling me that is not the case?

Mr. RAMOTOWSKI. That is not the case.

Mr. CHAFFETZ. Can you help clarify this, Mr. Wagner? Because that doesn't sound right to me.

Mr. WAGNER. Yes. We can admit them, CBP can admit them into that border zone under certain conditions; they can stay up to 30 days, they can't work, but they can travel within that border zone, which is different by State, as you mentioned. If they want to go beyond that zone, they can use the B1/B2 aspect of that visa and apply with CBP to go beyond that zone. We will bring them into a secondary inspection environment, we will collect their fingerprints, we will match them up against what Department of State had taken when they issued the visa, we will run, of course, the fingerprints against a watch list, we will do additional database queries, we will ask them for ties to Mexico to demonstrate that they intend to return to Mexico, and if there are no risk factors present or if we don't feel there are any factors that would call into question that they don't intend to honor the terms of that admission, we can admit them for up to six months to anywhere in the United States on the B1/B2 aspect. Pretty much the exact same process as if that person had gotten onboard a plane and flown into an airport in the United States, the same type of inspection process and we would do the same type of admission, and we can admit them to any part of the United States.

Now, we are going to question them about where they are going, why they are going, how long they intend to stay, what they intend to do there, and it is the answers to those types of questions which

we factor in with the ties that they are demonstrating to make that judgment about the person, that they don't intend to not comply with the terms of that.

Mr. CHAFFETZ. I will now recognize the gentleman from Massachusetts, Mr. Lynch, for a generous five minutes.

Mr. LYNCH. Thank you, Mr. Chairman, I appreciate that.

I want to thank the witnesses for coming forward and helping the committee with its work.

Mr. Woods, I have to say, as a threshold matter, though, the lack of information coming to Congress is just inexcusable. This was our request to you for 2009 data. We are, up to now, debating comprehensive immigration reform, okay, which prospectively would place great responsibility on your Department, and for you to just abjectly refuse to give information from 2009—this isn't top secret information, this is 2009 data—so that we can make a good decision is just inexcusable. And maybe DHS is being cute; maybe they think this is helping them. But from my side of the dais, it gives me low confidence in the information you are providing, number one; it gives me low confidence in reliability of the responsibility that we might give you in comprehensive immigration reform; it gives me low confidence in your ability to carry out those functions; and it really hurts the whole idea of comprehensive immigration reform, because you all will be handling it, and you can't even give us data from 2009 so that we can make a good decision. You are hurting this process.

I know it is not you individually, but it is the people who sent you here. And if they think they are being cute by stonewalling Congress, you are hurting your cause. If you really believe in immigration reform, you couldn't do worse to throw a monkey wrench into this whole process, because now we don't trust you. We don't trust you with the responsibility. You can't even give us 2009 data that was asked for six months ago. I mean, give me a break. Give me a break. So that is what we are faced with.

And, you know, I am the ranking Democrat on the Subcommittee on the Federal Workforce, and I know how hard, I know how hard the Federal employees at the Department of Homeland Security are working, the rank and file, the Border Patrol people, the ICE people. I know how hard they are working; we work with them on a daily basis in my office. This has become a huge responsibility for the average member of Congress, this whole immigration piece. I know how hard they are working. And by stonewalling and giving us this, zero; waiting since August for some basic information from 2009, we get nothing, we get we'll get back to you later. You make all those hardworking employees look bad. You make them look bad, and that is disgraceful because I know how hard they are working. It is not indicative of the work that they are doing.

I just think that you owe us better, and we are not getting it and there will be consequences. There will be consequences. I wouldn't doubt any member of Congress who says I don't want to engage in serious and deliberate immigration reform because the people who are required to carry it out are so incompetent that they can't give us data from 2009; how can we trust them? That is going to be the response. And how do I respond to that, as someone who thinks

that comprehensive immigration reform is necessary? You are hurting our cause.

Mr. Osuna, can I ask you how long does it take if someone is detained today—I have this data here that tells me there are about 348,000 cases that are pending. And if I go back last year and the year before, it seems like the backlog is getting bigger and bigger by like 30,000 cases every year, so we are burying ourselves. I appreciate your efforts here and I understand the workload on individual judges, but I am just trying to get a sense of what does that mean for someone who is detained today? When could they expect their case to be heard, what is the wait time on that?

Mr. OSUNA. Congressman, detained cases, as I mentioned, are our highest priority. I look at the immigration court system as a little bit of a two-track system right now, because we do treat the detained caseload quite differently than the non-detained caseload. The nature of the cases are often very different. The nature of the cases in the detained context, you see fewer applications for relief because, as I mentioned, many of those individuals have criminal convictions, so they are not eligible for a lot of relief from removal. So they are put on a separate track; they tend to move very, very quickly. I believe that the numbers that we have are that about 90 percent of those cases are adjudicated within about a month of the person being detained.

Mr. LYNCH. For which category of cases?

Mr. OSUNA. For the detained caseload. Somebody detained today can expect to have a hearing before an immigration judge in roughly about a few weeks, about a month. I will verify those numbers and get you some more exact numbers, but they tend to move very, very quickly. There are cases that go beyond that. Sometimes cases tend to be a little bit more complicated than they first seem. But generally speaking, when you are talking about people detained at Eloy, at the Port Isabel—

Mr. LYNCH. Okay, let's go to a non-detained individual.

Mr. OSUNA. They tend to move a lot slower, and it varies significantly from court to court, so I can't give you an average number of how long somebody would have to wait.

Mr. LYNCH. Can you get it to me?

Mr. OSUNA. We can get you some more information on that, yes, sir.

Mr. LYNCH. That would be helpful, because these are big numbers and they are getting bigger every year, so at some point that has to affect the time frame, right?

Mr. OSUNA. The time frame, yes. And the time frame does depend on a number of factors: Is the person represented or are they not represented by a lawyer? Are they applying for relief? Is it a complicated asylum application or is it a more straightforward what we call cancellation of removal application?

Mr. LYNCH. All right. Well, since I have to wait for the information anyway, why don't we try to break down what the categories are for me and for the committee, and tell me what the wait time for those individual categories are? Would that be okay?

Mr. OSUNA. We will get you that information, yes, sir.

Mr. LYNCH. That will be great. Thank you, Mr. Osuna.

Mr. Chairman, I appreciate the indulgence.

Mr. CHAFFETZ. And thank you for the comments. You can see this is a bipartisan issue. We have been focused on Homeland Security, but let me also point out that this is also pointed to the Department of Justice. For Mr. Lynch here, on August 26th I sent a letter to the Department of Justice asking this very question that the gentleman from Massachusetts is asking. We have had no response. Please provide all documents describing the average length of time and longest length of time for a notice to appear before an immigration judge for an asylum proceeding. I have had no response. So when you say you are going to get back to us, and I asked for that very question that Mr. Lynch just asked, and I asked for that in August and it is now November and you haven't provided this. When will you provide that information to this committee?

Mr. OSUNA. Mr. Chairman, I believe we provided some responses.

Mr. CHAFFETZ. Some, but not to that one.

Mr. OSUNA. We will provide you with that information as quickly as we can.

Mr. CHAFFETZ. No. I want a date from you personally. I want a commitment from you.

Mr. OSUNA. We can provide you that information in the next few weeks.

Mr. CHAFFETZ. You pick the date. You pick the date. You tell me.

Mr. OSUNA. I think we can get that information fairly quickly, so let me get you—

Mr. CHAFFETZ. No, I want you to give me a date. I want you to give me a date. What is reasonable? I asked in August and you have had a running start at this.

Mr. OSUNA. We will get you that information as quickly as we can. I am not trying to—

Mr. CHAFFETZ. It does, it sounds like you are playing games with me. How about December 10th? Is that reasonable?

Mr. OSUNA. We will do our best to get you that information by December 10th.

Mr. CHAFFETZ. Okay.

Mr. Lynch, do you care to weigh in on this?

Mr. LYNCH. No, let's try for December 10th. That's as good a day as any. Thank you.

Mr. CHAFFETZ. Thank you.

Thank you. We will now recognize the gentleman from Vermont, Mr. Welch.

Oh, I think we are going to actually recognize Ms. Kelly first. My apologies.

Ms. Kelly.

Ms. KELLY. Thank you, Mr. Chairman.

Mr. Ramotowski, according to your written testimony, nearly 5.8 million B1 and B2 visas were issued by the State Department's Bureau of Affairs in 2013. While that number may seem small when compared to the 1 million travelers who cross our Nation's borders each day, it is still a significant number. I would like to discuss the steps that the Department takes to prevent and detect public safety and national security threats at the beginning of the process, when the applicant applies for a B1 or B2 visa. According to your testimony, after an applicant submits their B visa application, their

biographical and biometric information is checked against several databases to search for disqualifying information. Just how many database does a consular's office query on a given application? You can just give me a ballpark if you don't know the exact.

Mr. RAMOTOWSKI. I would estimate that at least six major databases. And those databases draw information from the whole constellation of law enforcement and intelligence agencies across the United States Government. So it is not really a question of how many databases, but where is the data coming from. And we share all of our visa application data with law enforcement and intelligence agencies, and we, in turn, draw from them information about individuals who may represent a national security threat, either for criminal purposes or terrorism or other national security concerns.

In addition to that, we check the applicant's fingerprints against both the FBI and DHS fingerprint databases, and we have the world's largest facial recognition program, where we screen the applicant's photograph against photographs of terrorists provided by the FBI and also our entire database of prior visa applicants to see if perhaps we have a case of identity fraud, an individual who may have applied under a different name before.

So we have an extensive series of checks to help our consular officers make the best possible decisions.

Ms. KELLY. Now, are these all State-owned or controlled databases?

Mr. RAMOTOWSKI. No. Many of the databases belong to partner agencies, such as Homeland Security, the FBI, and the intelligence community. As I noted in my remarks, just in June of this year we started a major new security vetting program in cooperation with the National Counterterrorism Center, which is the U.S. Government's central coordination point for terrorism information, and visa cases are now being sent for screening there. And they have the ability to check very highly classified materials and send an alert to the consular officer in advance so that an individual who is a potential threat would not be issued a visa.

Ms. KELLY. So each separate entity is responsible for maintaining and updating their own database?

Mr. RAMOTOWSKI. That is correct.

Ms. KELLY. Who has the responsibility for ensuring interoperability and that your consular officers have the access they need?

Mr. RAMOTOWSKI. Well, we work, again, with our partner agencies on that. There are interagency committees that work to ensure that the databases can talk to each other, that they are not sent down for maintenance at a critical time when lots of applicants are applying for visas or arriving at airports. We get very good cooperation from our partners in that respect.

Ms. KELLY. Is this type of vetting any less rigorous for applicants for border crossing cards?

Mr. RAMOTOWSKI. No, it is absolutely the same for all applicants, whether you are applying for a B visa or a border crossing card combined with a B visa or other types of U.S. visas.

Ms. KELLY. Okay. According to your testimony, after an applicant submits their application, a consular officer must interview them. I think we can all agree that the interview serves an impor-

tant role in the vetting process. However, the Department has recently unveiled an Interview Waiver Pilot Program, which waives the requirement of in-person interviews for certain applicants renewing their visas and whose biometrics have already been collected. Can you explain how the Department can assure us that it will still be able to identify and deny high-risk applicants?

Mr. RAMOTOWSKI. Yes, certainly. The Interview Waiver Pilot Program was developed in coordination with the Department of Homeland Security, both the Secretary of State and the Secretary of Homeland Security signed off on it, and what it does is it allows the interview to be waived for low-risk applicants who are seeking to renew a visitor visa. All of those applicants, no matter how many times they are renewing a visa, are checked through all of the databases that I mentioned earlier; they are all checked. The only thing that would be waived would be the interview if nothing unusual comes out of the actual database checks. And this benefits travelers who visit this Country frequently, respect our immigration laws, often are supporting U.S. businesses, and we don't really need to use our limited resources—and an interview is our most labor-intensive and expensive resource—on that group of applicants. We would rather have our officers talk to first-time applicants and anybody who has a database issue.

Ms. KELLY. Thank you. My time is up.

I yield back.

Mr. CHAFFETZ. Thank you.

We will now recognize the gentleman from Vermont, Mr. Welch, for five minutes.

Mr. WELCH. Thank you, Mr. Chairman. Thank you for this hearing.

I live, of course, in Vermont, and our issues are mainly on the northern border, and we are very fortunate in Vermont to have excellent relations with our Canadian friends.

Mr. Wagner, I know you came up to Vermont and visited with Senator Sanders and members of my staff. I appreciate you doing that. I wanted to ask you a little bit about the Nexus card.

As you know, my colleagues, that is similar to the border crossing card and it allows pre-screened Canadian and U.S. travelers expedited processing in designated processing lanes. Applicants who are approved get issued a photo ID and an RFID chip, and they each pay \$50. It is non-refundable, so this is a self-financed program. And it is incredibly important to Vermont because the Canadian impact on our economy is enormous. We hosted over 2.5 million Canadian visitors in 2011. Canadian visits accounted for 200 million to our economy and the trade across our border contributes to about 19,300 jobs.

We are hearing anecdotal stories about wait times that I think are detrimental to the economic back and forth between Canada and Vermont. Some of our ski areas are dependent for 50 percent of their visits on Canadian visitors. We don't have specific wait time reports, that is not something that the CBP does, but we are hearing anecdotally that a lot of folks are waiting from 30 minutes to an hour.

So this program, the Nexus program, can be a win-win, because obviously it expedites the free flow and the quick passage. Number

two, it reduces the demand on your folks, who have a lot to do and little time to do it. So we need to get those Nexus lanes opened.

I want to ask you, Mr. Wagner specific suggestions do you have that would help us to get those Nexus lanes open and operating more effectively for Vermonters and for Canadian visitors?

Mr. WAGNER. Thank you. Nexus is one of the key ways we manage the traffic on the border, along with the Sentry program and the Global Entry program at the airports, and, like you mentioned, we know more about those people, we can take the time to go through a very thorough risk assessment of the people, including their biometrics, and when they do then come to the border, we can expedite the inspection process to some extent and we can give them, where available, the designated or dedicated infrastructure for them to use by that dedicated lane.

So really it is a matter of us marketing it and getting the information out and being available to do the application approvals and the interviews and get people enrolled in the program. We would be more than happy to work with your staff locally to come up with ways to market it better and come up with ways to be more available to get it done, but then it just boils down to what is the percentage of people with the Nexus cards using that port of entry, and can we afford to dedicate the infrastructure just to their exclusive use without really impacting too bad the non-members.

Mr. WELCH. I mean, that is a practical problem. There is no value in having a Nexus card if you have to stay in the standard line. And I know you have resource issues, but there must be some suggestions you might have to let folks with the Nexus card be processed more quickly. Because if they have to stand in the regular line, they are not going to get the card.

Mr. WAGNER. Absolutely. We have to get a higher percentage of people enrolled, so we have to find where those people are and get them those marketing materials and get them that information, get them to understand the benefit that they get. The more people enrolled in Nexus is better for us. We look at a place like San Ysidro, our busiest border crossing on the southwest border. We do 35 to 40 percent of that entire traffic through those Sentry lanes. All the time we save we can reinvest to doing a more thorough inspection on everyone else, so it is in our benefit to do it. So I really look forward to working with you.

Mr. WELCH. Well, we are on the same page, but we would like to make that program work. The folks who have the card are starting to get a little frustrated. That is detrimental to our businesses and to them. So I would welcome your very concrete suggestions on what you can do, what we can do to make that Nexus program more widely used and then more efficiently administered.

Mr. WAGNER. Absolutely, and we absolutely look forward to working with you on that.

Mr. WELCH. Well, can you get back to me with some concrete suggestions about what we can do and what help you might need from us, what things you can do administratively? I know your folks are working hard. We appreciate that.

Mr. WAGNER. Yes.

Mr. WELCH. But we have to make this thing work.

Mr. WAGNER. Absolutely agree. We have about 875,000 people enrolled in Nexus. It is a key way we manage the border and how we segregate the traffic at the points of entry between the trusted traveler status, someone with just an RFID-enabled document versus everybody else, much like a toll booth, where you have Easy Pass, exact change, and everyone else. By segregating that traffic by virtue of the vetting status or the facilitative nature of their document, it just increases the throughput through those ports of entry.

Mr. WELCH. My time is up. I yield back. I thank you and I look forward to hearing from you.

Mr. WAGNER. I will get back to you.

Mr. WELCH. Thank you.

Mr. CHAFFETZ. Thank you.

We now recognize the gentlewoman from New Mexico for a very generous five minutes.

Ms. LUJAN GRISHAM. Thank you, Mr. Chairman. And I appreciate the chairman bringing this issue to the Oversight Committee's subcommittee, and I appreciate the panelists for being here today.

I am interested in both issues, the accountability and security issues, but balancing that clearly with the intent of the business and tourist visas to make sure that folks who should be crossing can cross and that we can reap the benefits of that relationship. Specifically, I understand that this year the U.S. Customs and Border Protection Agency submitted a rule change that would extend the border commercial zone in New Mexico from 25 to 55 miles.

Now, a New Mexico State University study estimates that extending the border commercial zone from 25 miles to 55 miles could generate 51 million in new sales for New Mexico businesses, potentially create 343 jobs, and increase tax revenue by 2.57 million.

Now, we are one of the poorest States in the Country. Every single new job and every single new dollar of additional revenue, whether it is in my district or somewhere else in the State, is vital. Additionally, border community families also benefit, since this allows them to travel further distances to visit loved ones and family.

Mr. Wagner, can you talk to me a little bit about the challenges your agency faces in balancing the quick travel and commerce, which I see as a clear benefit to a State like New Mexico, the public safety and security issues, and the—well, I really want you to—I don't know how much time I have to talk about the prudent balance of the taxpayer dollars here, but we also want you to be accountable when you talk to us about those security measures.

Mr. WAGNER. Well, thank you for the question. That is exactly it, the challenge before us. The vast majority of travelers we encounter at the ports of entry are honest law-abiding returning citizens to the U.S. or visitors to the United States for a variety of purposes, and our role is to ferret out those few unlawful people or people with bad intentions coming in and prevent that from happening. So there are a variety of approaches we take to be able to do this and, like you mentioned, without creating the gridlock and shutting down the port of entry so people can't come visit those areas and can't come work and study or even return home from a trip abroad.

So it is a matter of doing a lot of, say, pre-departure analysis and vetting and getting secure credentials issued to people either via border crossing card or a passport card or one of our trusted traveler programs; having confidence in that program that you have done a thorough risk assessment of the person, the biographical vetting, the biometric vetting, the interview with someone; having a facilitative type technology in place at the border so we can readily identify that person and match them up that they are the true document holder and that that document is valid. So when we read those RFID-enabled cards at the border, one thing we do on our systems queries, we are doing all of our law enforcement queries; any previous violations, any wants and warrants, any terrorist database hits, but also validating against the originating source, so we will ping Department of State to say is this a valid border crossing card, is this a valid U.S. passport card. Up will come the picture that Department of State took when they issued that card, and we will be able to compare that picture against the person.

Ms. LUJAN GRISHAM. So some of the new initiatives will clearly provide those benefits so that you can balance that. But given the problems in getting them to be fully materialized or implemented, do you think that your agency sometimes makes tradeoffs to balance these priorities?

Mr. WAGNER. Well, it is a balance because we recognize the support to the economy that CBP has, and the more legitimate people we can get in, the better it is for the Country; the more jobs it creates, the more travel and tourism is good. But it is also very damaging if we let the wrong person in, so we have to make sure we are ferreting out those people. But these systems are in place today with the RFID. What we are working on now is segregating that traffic by virtue of a risk assessment status so a Sentry lane on the southwest border; someone with just a facilitative document with the RFID chip, but not necessarily the preapproval or pre-vetting that has been done, and giving them a section; and then putting everyone else in the remainder lanes. And this increases the throughput of that overall port of entry because of the less time we need to spend with each one of those.

Ms. LUJAN GRISHAM. And, Mr. Wagner, I very much appreciate the in-depth explanation of the streamlining of the processes and a reassurance that that streamlining and those efforts doesn't in any way minimize the security or the accountability. But I think it points to a broader issue for me that I think is important about this hearing, which is we know that there are economic benefits. Looking at New Mexico as an example, I can only imagine the rule change for broadening those commercial zones around the Country, but really talking about comprehensive immigration reform so that this becomes a priority, that all of these issues at the border are a priority; that we are figuring out a way to deal with the 11 million, we are bringing in incredible revenue, we are affecting the national debt, and we are finally, instead of incrementally looking at one issue from another and balancing and having tradeoffs in this design, maybe it is time that we focus on immigration reform and do that in a comprehensive manner so we can get beyond these kinds of hearings and debates.

Mr. CHAFFETZ. We now recognize the gentlewoman from California, Ms. Speier, for five minutes.

Ms. SPEIER. Mr. Chairman, thank you. I am pretty perplexed, as are some of my colleagues, about the inability to get straight answers.

Let me ask this. During the subcommittee hearing in June, a question was asked about whether Customs and Border Protection monitors cardholders once they enter the U.S., and Customs and Border Protection official responded that the agency does not. So, Mr. Wagner, would it be safe to say that the border crossing card operates on a sort of honor system, as some might suggest, or is that an oversimplification?

Mr. WAGNER. We do not monitor people once they are admitted into the United States, as far as from the Customs and Border Protection perspective. Now, before we admit them we do a series of risk assessments and evaluations of that person, and it is a judgment call whether or not, in our opinion, that they intend to honor the terms of that admission. So we will look at the database queries; we will look for previous violations; we will ask people about the ties to their home country; we will ask them about where they are going, where they are staying, what they are going to do here. If they are flying in, do they have a return ticket home. If they are driving across the border, what is in the trunk of their car; is it just a suitcase that would be appropriate for a one-week trip, or are there household possessions in there? But it is through this questioning and this analysis and this review that we make a judgment determination on the person whether or not they intend to comply with the terms of that admission. But we do not follow them around the U.S. to see that they actually go and do the things. We don't do that.

Ms. SPEIER. So the border crossing cards, though, are typically restricted to 25, 55, or 75 miles from the border, depending on the State, correct?

Mr. WAGNER. Yes, that is correct.

Ms. SPEIER. Okay. So we put this so-called restriction on it, but we don't monitor it. So if they violate it, we wouldn't know. Nor do we care?

Mr. WAGNER. Absolutely we care.

Ms. SPEIER. Well, why do we have a restriction that we don't enforce? It is bogus.

Mr. WAGNER. We enforce it through—we have border patrol checkpoints at the top end of those zones, which are on the highways, which then help restrict and we will ask people for their documentation, their approvals to proceed inland, into the U.S. beyond those border zones. But it is the same as if someone flew into one of the airports. We ask the same type of risk assessment questions; the purpose and intent of their travel, how long they intend to stay here, and do they have the ties back to their home that we feel they don't intend to abandon. It is a similar process to that.

Ms. SPEIER. But from my perspective, if we are going to fix immigration reform and we are serious about it, we have to do something about monitoring those that are using border crossing cards, those that are here on tourist visas, or otherwise it is just a sieve.

Mr. WAGNER. Well, what you mean by monitoring, while they are here and what they are doing, or at the point of their departure from the U.S., where we then record it and match it up with the inbound record to see if they then did overstay? I am a little confused about the question.

Ms. SPEIER. Well, that wasn't a question, that was just a statement.

Mr. Wagner and Mr. Woods, I would like to ask whether the Department undertakes continuous monitoring of any class of visa holder admitted to the United States.

Mr. WOODS. There are several monitoring ways of non-immigrant visas. Like I said in my opening remarks, in ICE, we currently vet students who are in the United States under the E, F, J, and M categories for any derogatory information because they are admitted for duration of status; they don't get six months or 30 days, they get duration of status, as long as they maintain their status as a student. So we currently vet those individuals through the intelligence community and other DHS databases to see if there is any derogatory information.

Additionally, in CBP all other visa holders are vetted daily through their super query process to determine derogatory information. So if any information is raised, it is forwarded to the appropriate agency, mostly to ICE, and we enforce the laws, and when we identify they have violated their status or has new derogatory information, it is placed under investigation to determine whether they are allowed to remain in the United States.

Ms. SPEIER. Mr. Ramotowski, how susceptible are border crossing cards to document fraud?

Mr. RAMOTOWSKI. The Department of State has been continuously improving the border crossing card over the years, and early next year the fourth version of the card will be produced, which has state-of-the-art features to prevent counterfeiting or misuse. Border crossing cards, as I mentioned, are adjudicated in exactly the same way that a B visa is adjudicated elsewhere in the world because it is a combined border crossing card and B1/B2 visa, so our officers are trained to detect fraudulent documents, they are trained to look for discrepancies in a visa applicant's story, they are trained—

Ms. SPEIER. I understand that you do all those things, but I am just asking a fundamental question: How often are they susceptible to fraud? How often do you come across fraudulent border crossing cards?

Mr. RAMOTOWSKI. Actually, fraudulently altered cards, it is not very often. I don't have the exact figures on that, but it is not common. More common would be an imposter trying to use it.

Ms. SPEIER. All right.  
I yield back.

Mr. CHAFFETZ. I thank the gentlewoman. My understanding is that in fiscal year 2009, more than 13,000 fraudulent border crossing cards and 4500 fraudulent passports were intercepted by Customs and Border Patrol.

Did the gentlewoman have any other additional comments?

Ms. SPEIER. Well, I guess in the theme of things, thank you, Mr. Chairman, for answering my question that I would have assumed

that the witnesses could have answered. I guess that number to me seems relevant. Now, how many border crossing cards do we actually issue a year I guess is the next question. Do you happen to know that?

Mr. RAMOTOWSKI. In Mexico, the total number for fiscal year 2013 was 1,283,319, which is a 14.1 percent drop from the year before.

Ms. SPEIER. All right. So it seems like, Mr. Chairman, that is not a significant number when there are 1 million, but the point that that begs, of course, is that we have a million of these cards issued and there is virtually no monitoring going on.

I yield back.

Mr. CHAFFETZ. Well, I thank the gentlewoman, and to follow up, if she will further yield, my concern is we have nearly 9 million cards that are currently valid. When you get a border crossing card, it is valid for 10 years, and if you add up year by year and assume that each one is valid for 10 years, we have close to 9 million of these; and that is the concern. It is the number one visa that we issue, is this category. In fact, it accounts, I believe, for more than 50 percent of all the visas we give out fall into this B1/B2, and the border crossing card we basically hand them out by the millions.

All right, I would now like to recognize myself.

Let's go back to Mr. Ramotowski. The one and only document that we ask in order to get a border crossing card from somebody who is from Mexico is a passport, a Mexican passport.

Mr. RAMOTOWSKI. Correct.

Mr. CHAFFETZ. What do you do to validate that that is a real Mexican passport?

Mr. RAMOTOWSKI. If our interviewing officer has any suspicions about the validity of the passport, it can be sent to our Fraud Prevention Office—

Mr. CHAFFETZ. Do you check any of the numbers against any sort of database?

Mr. RAMOTOWSKI. Mexican passport numbers are not in our database.

Mr. CHAFFETZ. We don't query against a Mexican database of any sort?

Mr. RAMOTOWSKI. We are working to expand our—

Mr. CHAFFETZ. Sorry, just yes or no. I have to move faster here.

Mr. RAMOTOWSKI. We don't query against directly against a Mexican passport database.

Mr. CHAFFETZ. So the authenticity is just up to the individual in what you told me is three to four minutes of a review. They are looking at this passport and they are just making a physical assessment, yeah, looks valid.

Mr. RAMOTOWSKI. If they have any doubt at all, Mr. Chairman, they can refer it to our fraud prevention specialists, who will take all the time that they need—

Mr. CHAFFETZ. What cooperation do we get from the Mexican government to validate their passports?

Mr. RAMOTOWSKI. In my experience, we get very good cooperation with Mexican authorities.

Mr. CHAFFETZ. But what do they do other than being nice? I am sure they are very nice.

Mr. RAMOTOWSKI. They provide information as to whether the passport is a valid Mexican document——

Mr. CHAFFETZ. How do they do that? If they are not querying a database, how do you do that?

Mr. RAMOTOWSKI. The Fraud Prevention Office consults with Mexican passport offices in the major cities of Mexico——

Mr. CHAFFETZ. I would love to follow up with you on that, because I am not convinced that we have a process that works in that category. I worry about that.

If somebody here maybe gets a border crossing card, comes and commits a crime, let's say it is a DUI in Utah, would that information go into a database and do they query that? Are they matching the records? I guess what I am worried about is that we have a database of fingerprints. How do they match those two up?

Mr. Woods, you are shaking your head yes. Would you care to tackle that?

Mr. WOODS. If someone is arrested in Utah for DUI and they have a border crossing card, besides being out of status and violating their 55 mile or 75 mile radius from the border, they would be either A, through secure communities, identified to ICE for removal, and depending on how their criminal case goes and the conviction, maybe use the conviction and remove them as a criminal alien, depending, or we could move them administratively as a violator of the——

Mr. CHAFFETZ. Okay, let's go to those administrative violations.

Mr. WOODS. Yes.

Mr. CHAFFETZ. And the number I have is a few years old; I haven't gotten an updated one. How many "fugitive aliens" do we have? That was a category that Homeland Security used some time ago. Do you still have that category or did you redefine it, and how many people fall into that category?

Mr. WOODS. Well, a fugitive alien is a person who has already been put in removal proceedings——

Mr. CHAFFETZ. But has not left the Country.

Mr. WOODS. Has been ordered deported from the United States.

Mr. CHAFFETZ. Yes.

Mr. WOODS. By an immigration judge and has not left the Country. I don't know the exact number today. I know, like you said, a few years ago it was around the 400,000 figure. I think it is a lot lower today, but I could get back to you with the exact number.

Mr. CHAFFETZ. Can you give me a date?

Mr. WOODS. I can give you probably that number within two weeks.

Mr. CHAFFETZ. I appreciate that. There is some definitive answer. I appreciate it. Thank you.

What would cause somebody to lose their border crossing card? Is there any violation? What is the standard by which somebody would lose their border crossing card? I guess that is for you, Mr. Ramotowski.

Mr. RAMOTOWSKI. At the time of application, if the officer has any doubt——

Mr. CHAFFETZ. No, no, no. No, no, no. They have been issued one.

Mr. RAMOTOWSKI. Okay.

Mr. CHAFFETZ. It is valid for 10 years.

Mr. RAMOTOWSKI. It is valid for 10 years.

Mr. CHAFFETZ. When, how do they lose—

Mr. RAMOTOWSKI. If the Department becomes aware, as Mr. Woods stated, of immigration violations or any criminal activity that that individual may have—

Mr. CHAFFETZ. If you stay more than 30 days, do you lose your border crossing card?

Mr. RAMOTOWSKI. If we become aware of it and you violate immigration law, yes, we will revoke that card.

Mr. CHAFFETZ. And part of my question is how many have you revoked. Again, we ask for stats and don't necessarily have them.

Mr. RAMOTOWSKI. Yes. I will have to get back to you.

Mr. CHAFFETZ. I would love to know how many have been revoked. I guess what I am not convinced is that systems and computers talk to each other to the point that we actually know that this is happening. Somebody goes beyond their threshold, whether it be in time or in distance. To point Ms. Speier, what kind of enforcement there is.

Now that we have—and I believe the number is fairly significant, what are we doing to pursue those people that have violated that. Mr. Woods, ICE has very limited resources. You have hundreds of thousands of fugitive aliens, hundreds of thousands of them. And then you have people on the list of people who have violated their border crossing cards. How do you pursue them? How many people do you have, for instance, in the ICE Overstay Analysis Unit, how many people are in that group and what sort of resources do you have to pursue and actually deport these people?

Mr. WOODS. Currently, between Federal employees and contract analysts, we have approximately 68 individuals of Federal employees and another 50 contract analysts who analyze the data that is in ADIS to determine the overstay records and identify and prioritize them and validate those numbers.

Mr. CHAFFETZ. You have hundreds of thousands of people that you are trying to track down, and you have just about 100 that are pursuing them?

Mr. WOODS. These are the individuals that look at the data; these are not the individuals that actually track them down. They look at the data and prioritize those cases and then send them over to our Investigations Branch, which we have approximately 6700 special agents in the field and a small number of them are dedicated—

Mr. CHAFFETZ. I am sorry, how many in the field?

Mr. WOODS. Sixty-seven hundred.

Mr. CHAFFETZ. Okay.

Mr. WOODS. And we have a number of them that are dedicated to the enforcement of overstay violations. But we take these numbers—

Mr. CHAFFETZ. How many are pursuing the overstays?

Mr. WOODS. Percentagewise, approximately 3 to 5 percent of the programmatic area is spent on actual overstays.

Mr. CHAFFETZ. So let's assume it is 5 percent of 6500 are pursuing hundreds of thousands of people.

You know, I am one that wants to fix legal immigration. We can make the fence as big and wide and far as you want, but if you don't fix legal immigration it is never, ever going to work. Most people, as you all have said and I believe, that come here, they come here legally, lawfully; they are good, honest, decent people. But what I worry about is you have fugitive aliens by the hundreds of thousands. You have people who aren't willing to play by the rules. In fact, they break the rules, but there is no consequence; there is no follow-through. And, again, a lot of good men and women who are out there trying to do it, but they just feel overwhelmed by the process. And then when somebody comes and claims asylum, for instance, and then they get a court date in 2020, I mean, we don't really know who this person is, whether it is valid or not.

Last question, then I will yield, because I have gone way passed. When somebody goes through the process and their asylum has been denied, who has primary responsibility to find that person and make sure that they actually leave the Country?

Mr. RAMOTOWSKI. ICE does.

Mr. CHAFFETZ. Do you do that? Because your field agents have told me they don't.

Mr. WOODS. It depends on the case. If the person is in custody and detained at the time that they are ordered removed, they go into enforcement removal operations for removal from the United States. And depending upon the issuance of a travel document to remove them, their length of stay in custody or whether there is an alternative detention method until they are properly removed.

Mr. CHAFFETZ. I want to make sure, when you get back to me by, say, the end of the month—you said two weeks, we will be a little lenient there, with Thanksgiving and all—the reality is—and I have talked to agents on the ground in Arizona, and they say this is a loophole, that they actually don't have primary responsibility for going out and pursuing those that don't qualify for asylum. If you can clarify this for me. Again, talking to people who are wearing badges and wearing uniforms, but I want to clarify from the Department and the agency. Perhaps they needed some education and I can get back to them. Help me clarify. I want to make sure that particularly with the asylum, that this is also the case.

Mr. WOODS. If an individual is before an immigration judge, they are under the docket control of a deportation officer. That deportation officer tracks that case to its final conclusion.

Mr. CHAFFETZ. But my understanding is not everybody shows up for that asylum hearing. They could show up in 2013, they get assigned a time in 2020. I don't think I can remember what I am supposed to do on which day and which time in 2020. They may have easily moved or gone to a different place. They just showed up in this Country. So the ability for them to even remember, be served noticed, there are undoubtedly by the thousands of people who don't get notice, don't remember, and should be deported, but we have lost these people, there is no track of them. We don't know where they are, what they are doing, correct?

Mr. WOODS. If those individuals are outside of custody and not adhering to some sort of alternative detention method, whether it would be an anklet bracelet or whatever, no, we don't track their

movements. But they do have reporting requirements. If they fail to report to their deportation officer, they are looked for and removed.

Mr. CHAFFETZ. And I help you say that with a little smile on your face, because the reality is——

Mr. WOODS. Honestly, there has to be a prioritization going on here. You want to remove the person who is the heinous criminal, that is the aggravated felon. If you have an individual with no criminal history, with no other identifiers except that they did claim asylum, those persons do fall to the lowest priority and those people are not sought after as rigorously as someone who is an aggravated felon that may be on the street, that needs to be brought back into custody and removed from the United States. So like I said from the beginning, we look at national security and public safety first and we prioritize those cases. Once we prioritize those cases, we use our infinite resources to determine who is of highest priority and go after those individuals and make sure they are removed. Last year we removed 400,000 people from the United States based on our appropriations, and we made sure those individuals were of the highest classifications to make this Country safer.

Mr. CHAFFETZ. And I appreciate that. You have to prioritize things, there is no doubt in my mind, but I worry that this is the loophole, this is the problem.

And I appreciate the indulgence of the ranking member here. There are no other members here, we are given multiple rounds, so with your continued indulgence, I will continue on for a few more questions.

What I would love to know and have some sort of sense is is there any way to actually pursue these people. How many people are actually going out there and doing this? You know, in Utah, for instance, we have less ICE officers than we do counties, so the number of resources that we have that can actually be applied to this are so few and far between; and these ICE agents, they are obviously pursuing people that are at the highest of the food chain and working closely with the U.S. marshals and others if they are wanted for other crimes and whatnot. But this becomes terribly complicated, and this is the worry, that we essentially give out 8 million, 9 million of these cards and there is no exit. We have no idea if these people have left.

And I just don't understand why this is so difficult. We talk about air and sea. Air works pretty well. I go through international travel, I did in the last two days, and it was amazing how quick we went through the system. But when you are talking about on the land, these ports of entry, it is very difficult.

Mr. Wagner, I need to ask you about the process for minors. You will issue border crossing cards to minors, correct, Mr. Ramotowski?

Mr. RAMOTOWSKI. Yes, that is correct.

Mr. CHAFFETZ. Mr. Wagner, do you know, if you are a minor, can you cross the border unaccompanied, with no adult?

Mr. WAGNER. No.

Mr. CHAFFETZ. I will let you get back to me. I can tell by your physical response that maybe you want to come back.

Mr. WAGNER. If you are in the custody of an adult, we can ask for do you have legal custody or guardianship of that child. I don't believe there is a prohibition against a minor crossing the border by themselves, but it may bear the question from us, depending on how old they are, what are you out here doing. But let me get back to you on it.

Mr. CHAFFETZ. And this is my concern. I went down to Naco, Arizona. I watched it myself. I watched dozens of kids probably in the third, fourth, fifth grade, pretty young, crossing the borders all by themselves. And the agent there told me, oh, they do it everyday. I don't understand where a minor shouldn't—you know, they are not supposed to go watch an R rated movie, let alone cross an international border. And the liability that we have by having somebody who is eight years old or ten years old crossing an international border, and the liability that can happen. Would you please get back to this committee? I want to understand the process for minors, particularly as it is for unaccompanied minors.

Also, the other thing that I worry about, we hear horrific cases, they are not great in number, at least I hope they are not great in number, where you have people who are going through divorce and other sometimes tumultuous type of activities, and kids are brought south, going south on the border; and we don't check. You have somebody standing there, have a little turnstile. There is no checking. I don't want to drone on here, but it seems to me an easy process. When I go buy a turkey sandwich at my Gandolfo's deli, you can tell how many times I got a turkey sandwich. Given the radio frequency embedment of these chips, the ability to scan a card, I don't see any reason in any delay further, given that it is law, the proper appropriations, that there can't be, southbound, a way for people to scan those cards and just keep on going, so that we have some idea. Right now we are operating in the dark, in the blind. We have no idea how many people actually abide, if they leave on time, and that is a shame for the people who are doing it legally and lawfully.

Mr. Wagner?

Mr. WAGNER. Well, it would be a matter of replicating the inbound infrastructure and personnel requirements and resources to be able to replicate that in an outbound environment. So we can certainly put those figures together and look at what that would cost to deploy that type of infrastructure, but again, in a place like San Ysidro, with 20-plus lanes of inbound, there are only four to six lanes going outbound. It would be a matter of extending that footprint and building that infrastructure and having the resources to put in there to be able to do it and looking at what the congestion and the traffic would be by doing that and whether or not the land is even available. So it would be a tremendous process to undertake and a tremendous program to undertaken, at great cost to do it.

Mr. CHAFFETZ. Well, given that the Congress had already passed this law more than 10 years ago, I do think that the American people have spoken that, yes, they want to have this happen. It is the current law; it should happen. It may take people a little bit longer to go, but I don't think it is going to take much longer. If you come in, scan your card, go to the next person, we are supposed to be

reviewing these people, not just letting them flow with no review. I mean, I have seen you there with scanners on cars. You are reading license plates, correct?

Mr. WAGNER. Yes. And we can actually read documents going outbound, too, but it takes an officer being there to stop the person to do it and then make sure they are the cardholder, too.

Mr. CHAFFETZ. So you do have the capability. You do do it with vehicles.

Mr. WAGNER. Absolutely. We have a lot of license plate readers out there. We have some fixed options, we have some mobile options that do it. We are just not doing it 100 percent of the time at 100 percent of the locations.

Mr. CHAFFETZ. When I can return my National car, they come up, pop the number, print me out a receipt, walk around the car, next.

Mr. WAGNER. It is a resource issue at that point, but we are not even fully resourced to handle the inbound traffic that we have today, much less take on the additional responsibility of the outbound piece.

Mr. CHAFFETZ. And I think we need that. We have a bigger obligation for this Country to make sure we get it right, rather than we get it fast, and that is my deep concern.

Listen, I do have lots more questions, but I appreciate you taking your time here today.

Unless the ranking member has an additional comment, I want to thank the men and women who do a hard, difficult job within your departments and agencies. I appreciate you for having the willingness and guts to come before Congress. Waking up to testify before Congress is not exactly necessarily your best day, and I understand how difficult a time. I appreciate the staff and the preparation that it takes for this.

We do, on a bipartisan manner, ask that you respond to our letters in a thoughtful way. We can avoid a lot of these hearings if you just have some good dialogue. We are asking for stats and metrics so we, on both sides of the aisle, can respond and look at the same numbers and have the same discussion. Rather than some nebulous study done, we want to hear from you how this works, what happens. It is the only way we can assess it and try to improve it. We are going to debate and have differences on what is valid and how we should do things, but when we operate in the blind and you can't provide the basic metrics, it is terribly frustrating. And I don't understand the games that the legislative liaisons sometimes play. Some have been very good, very responsive, and we appreciate that and we should probably do a better job of highlighting it when it does work well. But I tell you, in this instance, trying to get some basic numbers has been terrible, it has been awful.

With that, I want to again thank you for your time. Appreciate everything you do, and please do what you can to send word back how much we appreciate the men and women who are doing the hard work out in the field, on the border, chasing down the bad people. And we thank you so much for your time today.

With that, we will adjourn this committee. Thank you.

[Whereupon, at 11:06 a.m., the subcommittee was adjourned.]



## **APPENDIX**

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MATERIAL SUBMITTED FOR THE HEARING RECORD

**Opening Statement of Chairman Jason Chaffetz**  
**Subcommittee on National Security**  
**“Border Security Oversight, Part III: Border Crossing Cards and B1/B2 Visas”**  
**November 14, 2013**

Good morning, and welcome to today’s hearing, titled: “Border Security Oversight, Part III: Border Crossing Cards and B1/B2 Visas.” I would also like to welcome Ranking Member Tierney of the Subcommittee, and members of the audience. Today’s proceedings are the third in a series of hearings designed to assess U.S. border security efforts, as well as challenges to obtaining operational control of the southwest border.

On June 27th of this year, the Subcommittee received testimony from officials at Customs and Border Protection, Immigration and Customs Enforcement, and the Government Accountability Office.

During the hearing, this Subcommittee learned about the variety of emerging threats to U.S. border security, ranging from:

- The increasing number of OTMs – also known as Other than Mexicans – coming across the southwest border. When I visited the Eloy Detention facility in Arizona, OTMs accounted for 900+ inmates out of 1,599.
- New challenges at our border, including drug cartels’ use of ultra light aircraft and tunnels.
- Potential fraud in the asylum application process, while, at the same time, we are seeing a 434% increase over the last five years in “credible fear” requests for asylum; and
- Flaws in the government’s issuance and administration of B1 and B2 visas and entry/exit program.

In light of testimony this Subcommittee has received, it is imperative to examine the potential flaws in our immigration system – especially the process and procedures relating to the issuance and enforcement of Border Crossing Cards and B1/B2 visas. The B1 and B2 cards are nonimmigrant visas for persons who want

to enter the United States temporarily for business, a B1, tourism, pleasure, or visiting, a B2, or a combination of both purposes, a B1/B2.

According to the Department of State, more than 5.3 million B1/B2 nonimmigrant visas were issued in Fiscal Year 2012. Since 2008, the number of B1/B2 visas issued by the Department of State have skyrocketed. In 2008, the State Department issued 3.5 million B1/B2 visas, representing an approximately 55% increase in the issuance of B1/B2 visas from Fiscal Years 2008 to 2012.

Likewise, the State Department issued 1.3 million Border Crossing Cards in Fiscal Year 2013, continuing to issue millions of Border Crossing Cards during the last few years. Border Crossing Cards are only issued to applicants who are citizens and residents of Mexico, and “must demonstrate that they have ties to Mexico to compel them to return after a temporary stay in the United States.” Today I am interested in learning what the standard is for determining what types of ties are considered strong enough to qualify for a BCC.

On July 17<sup>th</sup>, 2013, this Subcommittee received testimony about rampant fraud in the asylum application process. Likewise, various reports, including from the Government Accountability Office have previously identified the risk of potential fraud in the applications and use of B1/B2s and Border Crossing Cards. I hope we will discuss what steps the Departments is taking to prevent fraudulent applications and use of B1/B2s and Border Crossing Cards.

Integrity in the issuance of the B1/B2 and Border Crossing Cards is critical. And the enforcement of the law is just as important. But reports of visa overstays remain a challenge, and in Mr. Woods’ written testimony submitted to this Subcommittee today, he wrote, “in Fiscal Year 2012, the CTCEU received 38,355 B1/B2 violator leads. An automated vetting process closed 24,325 cases leaving 14,010 potential violators.” In other words, the Subcommittee is being told that, right now, in terms of just B1/B2 violators, there are approximately 14,000 violators. This represents a real problem. I have serious questions about fraud in the process and the potential lack of enforcement. Do we know where these B1/B2 violators are? What are we doing on the enforcement side for the thousands of B1/B2 nonimmigrant violations?

On April 2, 2013, Members, including myself, and Committee staff traveled to Yuma and Nogales, Arizona, to assess the federal government's most recent efforts to secure the border. I visited Eloy Detention Facility in Arizona and was briefed by prison and ICE officials. I also visited various ports of entry in Yuma and Nogales. Based on our conversations with CBP officers in Yuma and Nogales, they had concerns about serious flaws in the issuance and enforcement of B1/B2 and Border Crossing Cards.

I was also told that asylum applicants have received Notice to Appear for a court date before an Immigration Judge (tell story – Phoenix, 2020). Today I'd like to hear from our witnesses about the average length of time for a Notice to Appear before an Immigration Judge.

Likewise, we heard concerns from officers on the ground on the Southwest border that CBP does not currently have a fully implemented out-bound exit capability to maintain data on exit from the United States into Mexico.

All of these statistics, personal accounts, and news reports point to an alarming trend that suggests there may be serious flaws in our legal immigration system, in addition to showing where some of the newest threats may be emerging. Today, we hope to not only discuss these potential flaws to the system but solutions to ensure a more effective system. I want to emphasize that I commend and support the hard work and dedication of our law enforcement officers and of CBP, ICE, State and the DOJ.

In trying to facilitate a productive discussion, on August 26th, 2013, I sent a letter to the Department of Homeland Security and Department of Justice asking questions about the immigration process, including fraud in the asylum process, the percentage of asylum seekers who do not appear at their scheduled immigration court proceedings, the average length of time, and longest length of time, for a Notice to Appear before an Immigration Judge for an asylum proceeding.

The due date for a response and production of documents was September 9<sup>th</sup>, 2013. Here we are, more than two months later, and the Department of Homeland responded last night, and failed to answer many of my questions. This is not acceptable, and the Subcommittee hopes to hear some of the answers today, as well as an explanation for why you were unable produce a sufficient and timely response to this Subcommittee.

We are eager to hear your thoughts about how to improve the B1/B2 and Border Crossing Card process in the United States.

**SFL Opening Statement for November 11, 2013 OGR-National  
Security Subcommittee Hearing:  
Border Security Oversight, Part III: Border Crossing Cards and  
B1/B2 Visas**

THANK YOU VERY MUCH, MR. CHAIRMAN FOR THE TIME AND FOR CONVENING THIS HEARING.

THIS HEARING WILL EXAMINE ONE OF THE MANY CHALLENGES WE HAVE TO ADDRESS AS PART OF IMMIGRATION REFORM: THE TRACKING OF THOSE WHO ENTER LEGALLY, BUT OVERSTAY THEIR VISAS. CONGRESS HAS LONG MANDATED THE ESTABLISHMENT OF AN EFFECTIVE SYSTEM TO ENSURE THAT THOSE WHO COME HERE TEMPORARILY ACTUALLY LEAVE WHEN THEY ARE SUPPOSED TO.

UNFORTUNATELY, CARRYING OUT THIS REQUIREMENT HAS PROVEN TO BE A CHALLENGE, BOTH FOR THE DEPARTMENT OF HOMELAND SECURITY AND ITS PREDECESSOR ORGANIZATION, THE IMMIGRATION AND NATURALIZATION SERVICE. TODAY, APPROXIMATELY FORTY PERCENT OF UNDOCUMENTED IMMIGRANTS CURRENTLY IN THE U.S. ORIGINALLY ENTERED WITH VALID VISAS. WHILE I UNDERSTAND THAT A STUDY BY THE CENTER FOR MIGRATION STUDIES FOUND THAT THE NUMBER OF YEARLY VISA OVERSTAYS HAS DROPPED, IT IS IMPORTANT THAT WE FULLY UNDERSTAND WHAT IS WORKING RIGHT AND WHAT IS NOT WORKING.

ULTIMATELY THOUGH, ONLY A COMPREHENSIVE REFORM OF OUR IMMIGRATION SYSTEM WILL GIVE US THE SUSTAINABLE RESULTS THAT THE AMERICAN PEOPLE NEED AND DESERVE. WE NEED TO ADDRESS EVERY ASPECT OF THIS ISSUE: THIS MEANS REFORMING OUR LEGAL IMMIGRATION SYSTEM SO IT WILL WORK BETTER, ADDRESSING THE STATUS OF THE ESTIMATED 11 MILLION UNDOCUMENTED PERSONS CURRENTLY HERE, TAKING ON THE EMPLOYERS WHO EXPLOIT UNDOCUMENTED LABORERS, MAKING OUR BORDER SECURITY MORE EFFECTIVE AND BETTER TRACKING THOSE WHO ENTER.

I WOULD LIKE TO THANK OUR WITNESSES FOR COMING. I LOOK FORWARD TO HEARING THEIR TESTIMONY ON THE STEPS THEY HAVE TAKEN, AND NEED TO TAKE, TO ENSURE A MORE EFFECTIVE ENTRY/EXIT SYSTEM.

THANK YOU MR. CHAIRMAN. I YIELD BACK.