

# TERRORISM AND THE VISA WAIVER PROGRAM

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## JOINT HEARING

BEFORE THE  
SUBCOMMITTEE ON NATIONAL SECURITY  
AND THE  
SUBCOMMITTEE ON HEALTH CARE, BENEFITS, AND  
ADMINISTRATIVE RULES  
OF THE  
COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM  
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## **TERRORISM AND THE VISA WAIVER PROGRAM**

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**Thursday, December 10, 2015**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON NATIONAL SECURITY, JOINT WITH THE  
SUBCOMMITTEE ON HEALTH CARE, BENEFITS AND  
ADMINISTRATIVE RULES,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
*Washington, D.C.*

The subcommittees met, pursuant to call, at 10:09 a.m., in Room 2154, Rayburn House Office Building. Hon. Ron DeSantis [chairman of the Subcommittee on National Security] presiding.

Present: Representatives DeSantis, Jordan, Russell, Mulvaney, Mica, Walberg, Hice, Gowdy, Meadows, Walker, Carter, Chaffetz, Lynch, Cartwright, Norton, Lawrence, Lieu, Watson Coleman, DeSaulnier, Cooper, Lujan Grisham, and Cummings.

Mr. DESANTIS. This Subcommittee on National Security and the Subcommittee on Health Care, Benefits, and Administrative Rules will come to order.

Without objection, the chair is authorized to declare a recess at any time.

The United States, our Western allies, and, indeed, the civilized world are facing a global jihad that is dedicated to the destruction of our way of life. While certain terrorist groups, such as ISIS, receive understandable attention, the global jihadist movement is not limited to members of ISIS. Indeed, the terrorists who massacred 13 Americans in California were dedicated to jihad before ISIS even rose to prominence.

To protect the American people, terrorists cannot be allowed to gain access to the United States. To gain entry into the United States, citizens of most countries must obtain visas issued at overseas embassies and consulates by the State Department following an in-person interview with the Department of State consular officer. An exception to this rule is the Visa Waiver Program. Established in 1986, the program allows foreign nationals of 38 countries to enter the United States as temporary, non-immigrant visitors for up to 90 days without having to obtain a visa or undergo an in-person interview at a U.S. consulate.

The terrorist attacks in Paris on November 13 demonstrated that the Visa Waiver Program represents a potential vulnerability for our country. Those terrorists killed nearly 130 people and caused over 350 injuries. At least five of the attackers were French nationals, two of whom were living in Belgium, and one was a Belgium

national. Nationals of both France and Belgium are able to enter the United States under the Visa Waiver Program.

Accordingly, at least six of the Paris attackers could have attempted to enter this country under the program. The Belgium neighborhood of Molenbeek, for example, is notorious for being a hotbed of Islamic jihadists. Known as jihad central, Molenbeek is a hellhole that is filled with Belgian national Islamic radicals who qualify to travel to the U.S. without a visa under the Visa Waiver Program.

And, of course, many Islamic jihadists in places such as Syria are actually Western passport holders who could then come to this country with those Western passports after fighting jihad in Syria and Iraq. This exposes the American people to the possibility that these militants, after receiving training and undergoing further radicalization in the hotbed of the jihad, could exploit the Visa Waiver Program to enter our country.

With this in mind, the U.S. must ensure that all appropriate safeguards are in place to ensure that the program cannot be exploited. A properly functioning biometric exit system is one of those safeguards. Biometric exit and overstay reporting was required as part of the Visa Waiver Permanent Program Act in 2007. Despite this, the U.S. does not have an exit system at our air, sea, and land ports of entry to track overstays as required as part of the Visa Waiver Program.

In 2011, the former Commissioners of the 9/11 Commission concluded, quote, "The Department of Homeland Security properly supported by the Congress should complete as quickly as possible a biometric entry-exit screening system." As important as it is to know when foreign nationals arrive, it is also important to know when they leave. Full deployment of the biometric exit should be a high priority. Such a capability would have assisted law enforcement and intelligence officials in August and September of 2001 in conducting a search for two of the 9/11 hijackers that were in the United States on expired visas.

Instead of a biometric exit system, DHS has moved to implement a biographic exit system, despite the fact that former DHS Secretary Janet Napolitano told the GAO that she has no confidence in the current system. Even if a biometric exit system were implemented tomorrow, it is doubtful, though, that the administration would take the necessary action against the vast majority of visa violators. The Obama administration has circumvented duly-enacted immigration laws through memoranda and executive action. Under current law, overstaying a visa or violating its terms is sufficient to render a foreign national deportable. But now, pursuant to the administration's so-called priorities, only aliens who are found to have significantly abused the visa or Visa Waiver Programs are deportable. All too often, however, such offenders are only found after they have committed crimes in this country. The administration has taken steps to water down the terrorism bars that render aliens inadmissible or deportable by broadening the exemption authorities and redefining what constitutes material support.

Finally, although the government may argue that even aliens entering under the Visa Waiver Program are subject to some level of background check, more stringent checks than the Visa Waiver



Program applicants are subject to have their limitations. For example, they failed to prevent Tashfeen Malik, who, along with her husband, Syed Farook, killed 14 people in San Bernardino, California, last week before she entered the United States on a finance(e) visa in July 2014. And this was supposed to be a rigorous examination.

This is not to say that Congress should attempt to protect the American people—this is to say that Congress should attempt to protect American people from those who would come here to do us harm. In fact, the House has just passed legislation to address concerns related to the exploitation of both our refugee admission process and the Visa Waiver Program. We will continue to review other immigration vulnerabilities that impact our security. Today, as the House has passed the visa waiver legislation, we assess the mechanisms in place within the Visa Waiver Program that protect our national security and help identify returning foreign fighters and identify further steps that can be made to strengthen the Visa Waiver Program.

I thank our witnesses for their testimony today and look forward to examining issues related to the impact of terrorism on the Visa Waiver Program and potential improvements to the program.

And, with that, I yield to the ranking member, Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

I would also like to thank the witnesses for your willingness to appear before this committee and help us with our work. As recently noted by William McCants of the Brookings Institution and author of “The ISIS Apocalypse,” the horrific terrorist attacks in Paris on November 13 evidenced a marked shift in the strategy of the Islamic State, also known as Daesh. By perpetrating a series of centrally planned and coordinated terrorist attacks against civilian targets in the West, the Islamic State has crossed some kind of Rubicon in the words of Mr. McCants and definitely shifted in their thinking about targeting their enemies.

This shift in strategy is even more concerning given the continued terrorist threat posed by foreign fighters returning from Iraq and Syria. According to the bipartisan report on foreign fighters released by the House Homeland Security Committee in September of this year, approximately 10 percent of so-called returnees seek to engage in terrorist activity and recruitment upon their return from conflict zones. This statistic took form in the United States in 2015 with the arrest of several American returnees on terrorist-related charges. These dangers are exponentially greater given the Islamic State’s widespread use of social media as a global recruitment and radicalization tool.

The Islamic State has more than demonstrated its savagery and willingness to expand its terrorist activities beyond its controlled territories in Iraq and Syria. And it is imperative that we continue to work together and take effective steps to enhance our national security against the threat of a homegrown terrorist attack.

Of course, just last week, we witnessed the tragic mass shooting in San Bernardino, California, the most devastating terrorist attack on U.S. soil since September 11 and one that the Islamic State has since praised in its daily online broadcast. So while we offer our prayers for the victims and their families, we also must take

reasonable measures promptly to prevent this from happening again.

One area where we do have significant bipartisan agreement is the subject of today's hearing, the Visa Waiver Program, administered by the Department of Homeland Security in consultation with the State Department. Beginning in 1986, back in 1986, during the Reagan administration, the Visa Waiver Program was allowed—has allowed foreign citizens from specified countries to enter the United States for the purpose of business or tourism for up to 90 days without a visa. The program reflects a security partnership between the U.S. and 38 participating countries.

By establishing minimum standards for acceptable travel, including machine-readable passport use, information sharing on lost or stolen passports via INTERPOL, the Visa Waiver Program has also served to promote commerce and tourism in the United States. According to the Department of Homeland Security, in fiscal year 2014, the U.S. accepted more than 20 million Visa Waiver Program travelers, who spent an estimated \$84 billion on goods and services.

However, despite the economic benefits and security standards that stem from the Visa Waiver Program, its sheer size, traveler volume, and the continued threat of terrorist activity worldwide demand that we make every effort to strengthen that program. As reported by the Government Accountability Office in 2012, approximately 364,000 individuals traveled under the program in 2010 without verified approval from the program Electronic System for Travel Authorization. I would also note that the attacks on Paris involved the participation of several individuals with French and Belgian citizenship, and that Belgian federal prosecutors have indicated that coordination of the Paris plot may have extended to Budapest, Hungary. France, Belgium, and Hungary are all Visa Waiver Program countries.

The Department of Homeland Security has taken steps to enhance Visa Waiver Program security since November of 2014. Most recently, this month, the Obama administration announced that the Department of Homeland Security will modify the program's electronic travel authorization database to collect applicant information regarding past travel to conflict zones or terrorist safe-haven countries.

However, the administration itself has noted that more robust program security measures will require congressional authorization and approval. To this end, the House passed H.R. 158, the Visa Waiver Program Improvement Act, by a 407-to-19 vote on Tuesday. This bipartisan legislation, which I cosponsored, seeks to reform the Visa Waiver Program through stringent security and oversight requirements. Among various program enhancements, the bill would prohibit individuals who have traveled to Iraq, Syria, Iran and other specified nations since March 1 of 2011 from entering the U.S., unless they first undergo biometric screening and interviews by U.S. officials and obtain a regular travel visa. The bill would also require the Department of Homeland Security to remove a country from the program if it does not fully vet or share information on citizens traveling to the U.S. who could pose a threat to national security.

Beginning of April 1, 2016, H.R. 158 would further mandate that all passports from Visa Waiver Program countries be machine-readable, electronic passports that are fraud-resistant and contain comprehensive biographic and biometric information as determined by the Department of Homeland Security. We must continue to work in a bipartisan manner to ensure that these and other program reforms become law.

Mr. Chairman, I look forward to the further discussion of this Visa Waiver Program with our witnesses as we examine any additional security measures proposed by Congress and the administration to enhance program security.

I want to thank you. And I yield back the balance of my time.

Mr. DESANTIS. The gentleman yields back.

The chair now recognizes Mr. Jordan, the chairman of the Health Care, Benefits, and Administrative Rules Subcommittee.

Mr. JORDAN. I thank the chairman. And I would just thank you for putting together this hearing today and would yield back. I just want to get to the witnesses' testimony and get on with the hearing. So thank you so much for this important hearing.

Mr. DESANTIS. Well, it is one of many things, I think, that, if you look, we have really three facets. One is dealing with terrorists overseas who are creating caliphate and have territory that they are in charge of. They can recruit. They can train. They can obviously cause a lot of damage there.

The second part is preventing people like that from coming into our country. This is just one part of that. I mean, the fact that Tashfeen Malik received a visa, she should not have been allowed into this country. And we have to figure out a way to deal with that.

And the third, which we will probably be dealing with on this committee at some point, is how to deal with people who are radicalized here at home.

With that, I will yield to Mr. Cartwright for 5 minutes.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

And I also want to thank our witnesses for being here today. I think this is an important topic. We ought to engage in a bipartisan dry-eyed review of the situation.

And I want to start by clearing up a few misconceptions that some people may have about the Visa Waiver Program. The Visa Waiver Program permits citizens of 38 countries in Western Europe and other nations to travel in the U.S. without first obtaining a visa. But some have described the Visa Waiver Program as visa-free travel. And that is not quite correct. For example, a German citizen cannot grab their passport, arrive at a major airport in Germany, buy a ticket, and hop a flight to Washington, D.C. It doesn't work that way. And we have an illustration that actually the Heritage Foundation created to show the extensive counterterrorism screening that every prospective Visa Waiver Program traveler has to undergo before successfully entering the U.S. You can see it up on the screen. You can see it is a very simple process.

You can follow along as I talk about it. A prospective Visa Waiver Program traveler has to go through a vetting process by the Department of Homeland Security. Travelers are required to complete an online security screening form prior to departing their country.

The screening form includes biographic information, criminal background information, and any previous visa revocations. This information is continuously vetted against U.S. law enforcement and intelligence agency watch lists to determine if the traveler poses a risk. DHS also conducts extensive preflight screenings for air travelers, and it includes checking passenger airline reservation data against terrorist watch lists. In addition, DHS conducts pre-arrival screenings to vet passenger manifest data indicating who is on board against, again, the terrorist watch list. Once a Visa Waiver Program traveler arrives in the U.S., he or she must undergo an additional level of screening in the form of an in-person inspection at the port of entry by CBP, Customs and Border Patrol. The first inspection includes a validation of travel and identification documents and the collection of biometric data, such as fingerprints and a photograph for first-time Visa Waiver Program travelers. Following this primary inspection, the VWP traveler must then submit to a thorough inspection of their physical self, their bags, their documents, and their electronics.

No VWP traveler can be admitted to the U.S. without completing all security checks. And according to DHS, since 2008, almost 6,000 travelers have been denied travel to the U.S. under this program because of national security hits to one of the terror watch lists. In addition, nearly 166,000 more have been denied traveling here for using lost or stolen passports. So, as far as we know, terrorists are always looking for new ways to skirt antiterror measures. And that makes sense. That is why we have to be ready to respond, to alter measure as new threats arise. That is why I commend the administration for taking steps to close security gaps that we find in the Visa Waiver Program.

On Sunday night, the President called on us here in Congress to provide the legal authority for the administration to implement these changes as soon as possible. And just 2 days ago, the House voted on and passed a bipartisan bill to tighten restrictions and enhance security under this Visa Waiver Program.

Now, in light of the terrorist attacks in Paris and San Bernardino, the administration and Congress should evaluate what additional measures are needed to tighten security while still preserving American values of inclusiveness and nondiscrimination. It is crucial we don't make rash policy decisions without thinking about the consequences and the implications and certainly the prices of our actions.

I caution my fellow Members of Congress to avoid knee-jerk reactions based on fear and focus on a more measured, comprehensive approach to national security. That approach should include addressing terrorist radicalization and recruitment; the Islamic State's operation capacity and community resilience; and, an often overlooked issue, combatting homegrown terrorist threats posed by our own sovereign citizens, militias, and other antigovernment terrorists. We also ought to find ways to unite with other countries to defeat ISIS.

Importantly, this approach should include Congress passing legislation that will finally close the terrorist gun loophole and prevent known or suspected terrorists from purchasing firearms or explosives at any gun shop in America. Congress can play a key role

in defeating terrorist groups like ISIS and protecting the American people. And that is why I am happy we are having this hearing today.

And I yield back, Mr. Chairman.

Mr. DESANTIS. Thank you.

I will hold the record open for 5 legislative days for any members who would like to submit a written statement.

We will now recognize our witnesses. I am pleased to welcome Ms. Kelli Ann Burriesci, Deputy Assistant Secretary for Screening Coordination at the Office of Policy, Department of Homeland Security; Ms. Janet Kephart, director of Homeland Security Solutions at MorphoTrak, LLC; Mr. Brian Michael Jenkins, senior adviser and president of the RAND Corporation; and Mr. Ken Gude, senior fellow on the National Security Team at the Center for American Progress.

Welcome all.

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 the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

All right. Thank you. Please be seated.

All witnesses answered in the affirmative.

In order to allow time for discussion, please limit your oral testimony to 5 minutes. Your entire written statement will be made part of the record.

Ms. Burriesci, you are up for 5 minutes.

## **WITNESS STATEMENTS**

### **STATEMENT OF KELLI ANN BURRIESCI**

Ms. BURRIESCI. Thank you, Chairman DeSantis, Chairman Jordan, Ranking Member Lynch, Ranking Member Cartwright, and distinguished members of the subcommittee. Thank you for the opportunity to testify on behalf of DHS on the U.S. Visa Waiver Program.

The Visa Waiver Program permits citizens of 38 countries to travel to the United States for business or tourism stays for up to 90 days without a visa. That does not mean travelers are able to board a plane with no security checks. "Waiver" does not mean waiving security. There are a host of checks conducted as a result of each applicant being required to have an approved Electronic System for Travel Authorization, or ESTA. In addition, countries are required to meet security standards. And they are reviewed every 2 years to ensure these standards are maintained. DHS has and will continue to adapt the VWP to meet the challenges of the modern threat environment.

Let me walk through three security pillars that are required of VWP countries but not of countries whose citizens must obtain visas. First, countries are required to meet multiple statutory and policy requirements. These include, among others, entering into agreements with the United States to share information about known and suspected terrorists, reporting to the Stolen and Lost Travel Documents database, and issuing new passports. As a result

of the information-sharing arrangements, VWP countries have provided information on 9,000 known or suspected terrorists to the United States. And VWP countries are responsible for nearly 70 percent of the records in INTERPOL's Stolen and Lost Travel Documents database.

The second pillar is screening of the travelers. All travelers coming to the United States are screened, regardless of whether they were an ESTA or a visa. ESTA applicants are vetted against the same biographic databases as visa travelers. This includes DHS holdings, the FBI's Terrorist Screening Database, State Department's CLASS system, and INTERPOL databases.

ESTA applications are also vetted by the National Counterterrorism Center. This screening occurs before travelers depart for the United States. DHS also recurrently vets ESTA data on a daily basis, which means that even though an applicant has an approved authorization for travel, an ESTA is continuously reviewed throughout its validity period for new derogatory information. If someone is a national security concern, their ESTA application is not approved. Since ESTA's inception, CBP has denied over 6,000 ESTA applications on national security grounds. And, of course, DHS is vetting all travelers before they depart for the United States and upon arrival at a port of entry.

The third security pillar is the statutory requirement to conduct an assessment at least every 2 years on each VWP country to ensure security standards are maintained. DHS conducts 19 VWP reviews annually, each review supplemented by an intelligence assessment. Following the conclusion of every review, DHS, in consultation with the State Department, provides a report to Congress regarding the results and designation determination. During our review, which takes approximately 6 to 9 months, DHS assesses each country's counterterrorism, law enforcement, immigration enforcement, passport security, and border management capabilities. We collect information from the government of the VWP country, the U.S. diplomatic missions in that country, the Department of State, Justice, and the intelligence community. Many reviews also include thorough inspections of airports, seaports, land borders, and passport issuance facilities. No other program enables the U.S. Government to conduct such consequential assessments of foreign partner security standards and operations.

Those three pillars are important. But we cannot be successful if we don't adapt to the evolving threat environment. In November 2014, Secretary Johnson introduced new data fields on the ESTA application. These new fields have enabled CBP and NCTC to identify a large number of applicants with potential connections to terrorism whose connections would not have otherwise been known. Per the November 30 White House announcement, we will make additional improvements to the application that will grant us greater insight into prospective VWP travelers who have been to Syria, Iraq, other conflict zones.

In August 2015, the Secretary added further security measures. These included full implementation of the required information sharing arrangements, collection and analysis of travel data, vetting against INTERPOL's Stolen and Lost Travel Documents database, and making sure all VWP travelers use secure e-Passports

when traveling to the United States. The e-Passport measure will be implemented very shortly. CBP is already notifying ESTA applicants that they may not be able to board a plane to the United States without an e-Passport.

The recent tragic events in Paris underscore the need for the United States and its partners to swiftly implement these VWP enhancements. In conclusion, and keeping in mind the VWP program requires countries to meet strong security standards, vets all VWP travelers against the same databases as a visa and on a recurrent basis, and reviews each country to ensure standards are maintained, the VWP provides significant security benefits to the United States and its citizens.

I look forward to responding to your questions. And I've submitted written testimony for the record. Thank you.

[Prepared statement of Ms. Burriesci follows:]



**TESTIMONY**

**OF**

**Kelli Ann Burriesci**

**Deputy Assistant Secretary for Screening Coordination**

**Office of Policy**

**U.S. DEPARTMENT OF HOMELAND SECURITY**

**BEFORE**

**THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM:  
SUBCOMMITTEE ON NATIONAL SECURITY**

**ON**

**"TERRORISM AND THE VISA WAIVER PROGRAM"**

**DECEMBER 10, 2015**



## Introduction

Chairman DeSantis, Chairman Jordan, Ranking Member Lynch, Ranking Member Cartwright, and distinguished Members of the Subcommittees, thank you for the opportunity to testify on behalf of the Department of Homeland Security (DHS) about the security benefits of the U.S. Visa Waiver Program (VWP).

The VWP permits citizens of 38 countries<sup>1</sup> to travel to the United States for business or tourism for stays of up to 90 days without a visa. That does not mean travelers are able to board a plane with no security checks. “Waiver” does not mean waiving security. There are a host of security checks conducted on each VWP traveler, prior to travel to the United States, as a result of each applicant being required to have an approved Electronic System for Travel Authorization (or ESTA). To be eligible for the Visa Waiver Program, each country must first meet statutory requirements, and then maintain security standards throughout its membership. Additionally, DHS, with interagency partners, conducts robust, national-level risk assessments – at least every two years - that assess the impact of each program country’s participation in the VWP on U.S. national security, law enforcement, and immigration enforcement interests. Far from being a security vulnerability, the VWP provides significant security benefits to the United States and its citizens. I look forward to going into more detail about these strong security requirements.

## From Travel Program to Security Partnership

When Congress first authorized the VWP, the program was intended to facilitate low-risk travel to the United States, boost international trade and cultural links, and promote more efficient use of consular resources. Recognizing that global security threats have evolved dramatically since the 1980s, DHS has adapted the VWP to meet the challenges of the modern threat environment. These efforts have been most successful when working in concert with our partners in Congress. For instance, DHS collaborated with Congress to develop and implement the provisions of the *Secure Travel and Counterterrorism Partnership Act of 2007*, which was included as part of the *Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act)*. This legislation transformed the VWP from a program that evaluated security threats on a country-by-country basis to a program with the added capability to screen individual travelers for potential threats that they may pose to the security of the United States and its citizens. It also requires countries seeking designation in the VWP to, among other measures:

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<sup>1</sup> 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). 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.

- Enter into agreements with the United States to share information regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or safety of the United States or its citizens;
- Report lost and stolen passport information via INTERPOL or other means designated by the Secretary of Homeland Security; and
- Be subject to an independent assessment by the Director of National Intelligence (DNI) that includes a review of all current, credible terrorist threats of the subject country; an evaluation of the subject country's counterterrorism efforts; an evaluation as to the extent of the country's sharing of information beneficial to suppressing terrorist movements, financing, or actions; and, an assessment of the risks associated with including the subject country in the program and recommendations to mitigate the risks identified therein. The independent DNI assessments supplement comprehensive assessments that DHS conducts pursuant to existing statute.

All current VWP countries meet these requirements. In fact, VWP designation is so prized that many countries that are not in the VWP complete program requirements in the hope of one day joining. Consequently, the VWP often provides security benefits to the United States without extending travel facilitation benefits to foreign countries.

Since the introduction of the 9/11 Act, DHS has made further improvements to the security of the VWP to address evolving threats. In August 2008, responding to a provision of the 9/11 Act, DHS introduced the Electronic System for Travel Authorization (ESTA), an online vetting application that DHS requires all VWP travelers to complete prior to traveling to the United States by air or sea. ESTA applicants must provide extensive biographic information, including their name, date of birth, place of birth, current residence, additional countries of citizenship and passport information, employment information, travel itinerary, and U.S. point of contact, among others. This information is vetted against DHS, Department of State, Federal Bureau of Investigation (FBI) and Intelligence Community databases to determine if prospective VWP travelers pose a national security or law enforcement threat to the United States. If a prospective VWP traveler does not submit this information or is denied travel authorization, he may not board a plane for the United States.

More recently, we have taken measures to ensure that individuals of counterterrorism concern, including foreign terrorist fighters who have traveled to Syria, Iraq, and other conflict zones, are not able to travel to the United States via the VWP or any other means. In November 2014, for example, Secretary Johnson introduced enhanced data fields to the ESTA application. The enhanced ESTA data fields have enabled U.S. Customs and Border Protection (CBP) and National Counterterrorism Center to identify a larger number of applicants with potential connections to terrorism whose connections would not otherwise have been known.

In August 2015, DHS introduced a number of additional security enhancements to the VWP, including enhanced traveler vetting, information sharing, and other security requirements for VWP countries to further address any potential threat.

Specifically, the August 2015 VWP enhancements require program countries to:

- Implement the Homeland Security Presidential Directive 6 (HSPD-6) arrangements and Preventing and Combating Serious Crime (PCSC) agreements by sharing of terrorist and criminal information and utilizing such information provided by the United States;
- Collect and analyze travel data (Advance Passenger Information/Passenger Name Records), consistent with UN Security Council Resolution 2178 in order to identify high-risk travelers before they board inbound planes and thereby keep such travelers as far as possible from U.S. shores;
- Use the INTERPOL Lost and Stolen Passport Database to screen travelers crossing the VWP country's external borders to prevent the fraudulent use of passports by terrorists and serious criminals;
- Report Foreign Fighters to multilateral security organizations such as INTERPOL or EUROPOL to enhance our collective efforts to identify and disrupt terrorist travel; and
- Cooperate with the United States in the screening of refugees and asylum seekers to ensure that terrorists and criminals cannot exploit our system.

In addition, the security enhancements require all VWP travelers to use secure, electronic passports with biometric identifiers when traveling to the United States.<sup>2</sup> This measure, which will be implemented in early 2016, will help to prevent passport fraud and better enable CBP officers to verify the identity of VWP travelers. CBP is already notifying ESTA applicants they may not be able to board a plane to the United States without an electronic passport.

The recent, tragic attacks in Paris underscore the need for the United States and its partners to swiftly implement these VWP enhancements. The Department of State reiterated this need to all VWP countries via demarche cable last week. On November 30, the White House announced additional enhancements to the program, to include, but not limited to DHS introducing further improvements to the ESTA application that will grant us even greater insight into prospective VWP travelers who have been to Syria, Iraq, and other conflict zones; identifying possible pilot programs to assess the collection and use of biometric information to effectively improve the security of the VWP; and working with Congress to seek authority to increase the Advanced Passenger Information System (APIS) fines from \$5,000 to \$50,000 for air carriers that fail to verify a traveler's passport data.

DHS and the Department of State will continue to work with VWP countries to rapidly implement all new program requirements, thereby strengthening U.S. security and the security of our partners. These enhancements demonstrate the degree to which DHS continuously assesses and is willing to take measures to strengthen the security of the VWP.

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<sup>2</sup> Currently, citizens of the 27 countries designated into the VWP before 2007 may use a machine-readable non-biometric passport if that passport was issued before October 26, 2006 and is still valid.

### **National-Level Risk Assessments**

After designation in the VWP, countries must maintain high and consistent security standards. DHS, in consultation with the Department of State, is statutorily required to conduct reviews of the effects of each VWP country's continued designation in the program on U.S. national security, law enforcement, and immigration enforcement interests at least once every two years. During six- to nine-month reviews, DHS assesses each VWP country's counterterrorism, law enforcement, immigration enforcement, passport security, and border management capabilities. We collect information from the government of the VWP country under review, the U.S. Diplomatic Missions in that country, the Departments of State and Justice, the U.S. Intelligence Community, and other sources. Many reviews also include rigorous and thorough DHS inspections of airports, seaports, land borders, and passport production and issuance facilities in VWP countries. These reviews are at minimum conducted by personnel from DHS Headquarters – both Policy and Intelligence Analysts – as well as CBP officers, Transportation Security Administration experts, and State Department officials. No other program enables the U.S. Government to conduct such broad and consequential assessments of foreign partners' security standards and operations.

DHS conducts 19 VWP reviews annually. Each VWP review is supplemented by an independent intelligence assessment produced by the DHS Office of Intelligence and Analysis on behalf of the DNI. Following the conclusion of every review, DHS, in consultation with the Department of State, provides a report to Congress regarding the assessment results and designation determination.

In addition to the biennial review process, DHS continuously monitors all VWP countries to ensure that their continued designation in the program will not adversely affect the security of the United States. Continuous monitoring enables DHS to react rapidly to evolving security threats. The Secretary of Homeland Security has statutory authority to terminate or suspend a country's designation in the VWP if there is a credible threat originating from that country which poses an imminent danger to the United States or its citizens, or there is an emergency that could threaten the law enforcement or security interests of the United States.

The biennial review and continuous monitoring processes enable DHS not only to terminate the participation of countries in the VWP, but also to assist those countries in addressing security vulnerabilities. DHS has leveraged the VWP to improve foreign partners' counterterrorism capabilities, traveler screening, information sharing, passport issuance policies, and lost and stolen passport reporting processes. These actions have enhanced the mutual security of the United States and partner nations.

### **Comprehensive Traveler Screening**

In addition to national-level risk assessments, DHS conducts targeted screening of all VWP travelers at multiple points throughout the travel continuum. To be clear, all travelers coming to the United States are vetted – regardless of a visa or an ESTA.

All prospective VWP travelers must first obtain pre-travel authorization via CBP's ESTA application prior to boarding a plane or vessel bound for the United States. ESTA applicants are vetted against the same biographic databases as visa travelers. DHS screens all ESTA application information immediately and automatically against DHS TECS<sup>3</sup> records, the FBI's Terrorist Screening Database (TSDB), and State Department's Consular Lookout and Support System (CLASS), as well as international databases, such as INTERPOL's Stolen and Lost Travel Document database. All ESTA applications are also vetted by the National Counterterrorism Center. This comprehensive vetting ensures that travel authorizations are not issued to prospective VWP travelers who pose a threat to U.S. national security. Any would-be traveler whose ESTA application is denied is referred to a U.S. embassy or consulate, where he or she would be interviewed by a consular officer and undergo biometric screening while applying for a visa.

I reiterate that this screening occurs *before* prospective VWP travelers may board a plane or vessel bound for the United States. Furthermore, DHS recurrently vets ESTA data on a daily basis, which means that even though an applicant has an initially approved authorization for travel, the authorization is continuously reviewed throughout its validity period for new derogatory information and is subject to further review and subsequent denial if necessary. This includes recurrent vetting against the Terrorist Screening Database (also known as, the "Terrorist Watchlist"). CBP officers adjudicate every ESTA application that raises counterterrorism or admissibility concerns.

In addition to ESTA screening, U.S. law requires all private and commercial air carriers operating routes to, from, or through the United States to provide Advance Passenger Information (API) and Passenger Name Records (PNR) data to CBP. These data, which include travelers' biographic and travel reservation information, are screened against U.S. and international law enforcement and counterterrorism databases to identify high-risk individuals before they depart for the United States and when they travel by air within the United States. All VWP travelers are subject to this screening.

VWP travelers are subject to additional layers of screening and inspection upon arrival at U.S. ports of entry. CBP officers collect biometric information from all VWP travelers and screen it against U.S. law enforcement and counterterrorism databases. Moreover, CBP officers screen the biographic information from VWP travelers' passports against additional U.S. holdings. No VWP traveler who fails to clear these checks will be admitted to the United States.

Since ESTA's inception, CBP has denied thousands of ESTA applications for national security reasons as a result of vetting against the Terrorist Screening Database. During

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<sup>3</sup> TECS is an automated enforcement and inspections system that provides a large database of information for law enforcement and border inspection purposes.

the same period of time, CBP denied more than 165,000 ESTA applications submitted by individuals with passports reported as lost or stolen. This diligence continues. Since the beginning of the current fiscal year, October 1, 2015, CBP has denied more than 280 ESTA applications for national security reasons.

DHS also leverages its partnerships with the National Counterterrorism Center and the FBI -including harnessing the capabilities housed in the Terrorist Screening Center - to augment the screening of VWP travelers throughout the travel continuum. In support of this effort, DHS seeks to expand Preclearance operations to ten additional foreign airports, most of which are located in VWP countries. The Preclearance Program enables CBP officers at overseas locations to inspect travelers—including those traveling under the VWP—before they board planes bound for the United States. This ensures that high-risk individuals are identified long before they reach our shores.

#### **Mutually-Reinforcing Security Criteria**

VWP traveler screening is reinforced by the statutory requirement that VWP countries regularly share information with the United States pertaining to known and suspected terrorists, serious criminals, and lost and stolen passports. As a result of VWP information sharing arrangements, VWP countries have provided the United States with identity information about thousands of known or suspected terrorists. VWP information sharing augments existing information sharing between the United States and VWP countries' security services. Moreover, VWP countries have provided nearly 70 percent of the records in INTERPOL's Stolen and Lost Travel Document Database, which DHS utilizes in its daily screening of ESTA applications and API/PNR data to prevent the fraudulent use of passports by terrorists and serious criminals.<sup>4</sup> The ongoing exchange of criminal and terrorist information is integral to the traveler screening that we conduct. It is questionable whether the United States would receive such extensive law enforcement and counterterrorism information from foreign partners without the VWP.

#### **Conclusion**

In summary, the VWP is a rigorous, multi-layered risk assessment program that promotes secure travel to the United States. VWP countries are required to meet stringent security standards and to share extensive counterterrorism and law enforcement information with the United States. VWP travelers are subject to rigorous screening before they depart for the United States and throughout the travel continuum. DHS continues to strengthen its efforts to ensure that the VWP provides for the security and prosperity of the American people. We look forward to partnering with Congress as we undertake this endeavor.

Chairman DeSantis, Chairman Jordan, Ranking Member Lynch, Ranking Member Cartwright, and distinguished Members of the Subcommittees, thank you for your consideration of this important topic. I look forward to responding to your questions.

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<sup>4</sup> INTERPOL ASF-SLTD Statistics, October 11, 2015

Mr. DESANTIS. Thank you.  
The chair now recognizes Ms. Kephart for 5 minutes.

**STATEMENT OF JANICE KEPHART**

Ms. KEPHART. Good morning.

Chairmen DeSantis and Jordan, Ranking Members Lynch and Cartwright, as well as esteemed members of this committee, thank you for the opportunity to testify on terrorism and the Visa Waiver Program.

I come before you today in my personal capacity as a former 9/11 Commission border counsel to augment the good work conducted by the White House, DHS, and Congress since the tragic November 13 terrorist attacks and, before that, the 14 years since 9/11. Enclosed in my written testimony you will find 18 recommendations intended to address the terrorist traveler threat from radicalized individuals in Europe who seek to abuse the visa-free benefits of the VWP.

These recommendations include, first, how to secure the overall Visa Waiver Program; second, how to improve individual vetting of these travelers; and, third, how to further secure our ports of entry against terrorists entry.

To be clear, the benefits of not having to obtain a visa before entering the U.S. are beyond convenience. Visa-free travel enables the terrorist to avoid biometric screening until arrival in the U.S., investigations by ICE HSI visa security units, security reviews by counterterrorism intelligence officers at the National Counterterrorism Center, and interviews conducted by consular officers trained in behavioral anomalies.

But, first, before reviewing these recommendations, let's make sure that the effort to revamp the VWP actually matches the terrorist threat of VWP travel to America. I think we can all agree that the threat evidence is pretty substantial and includes outright direct threats from Daesh against the U.S.; the ramped-up attacks against civilians we are seeing in Texas and now in California; the guidebooks that are in my testimony that Daesh itself are putting out, emphasizing faking identity and passports to assure border crossing; and reports of Daesh seeking to embed in the Syrian refugee populations in Europe.

Yet perhaps the most obvious evidence of the threat of terrorist travel from European countries is that France, the U.K., and Germany are all in the top 10 of producing ISIS foreign fighters in the world, with numbers now in the thousands. And these individuals have direct, legal, visa-free access to our shores.

So what do we do? First, in regards to the VWP program, we must require that all VW countries, as you all just passed in legislation, replace all their passports with those that hold biometric information that can be verified by our border personnel. But replacing paper booklet passports with e-Passports is not quite enough. Our ports of entry must be able to read those passports to verify that the bearer of that passport is the right one by conducting facial recognition between the passport and the person standing in front of them. Not only do we not do that for foreign nationals today, but DHS has no capability right now to conduct facial recognition. They can only match fingerprints because the Office of Bi-

ometric Identity Management has yet to become fully multimodal in its biometric matching capability.

Another serious issue, on a completely different topic, are countries, like Malta and Cyprus, that put up their passports for sale with no residency requirement. VWP countries that sell citizenship outright to a potential terrorist should be made ineligible for the program.

Moving on to the individual traveler, the online ESTA application Kelli Ann has spoken of in-depth does add a layer of security by requiring passport and other information from the traveler in a timely manner so watch lists can be checked. However, the form, as DHS knows well, depends upon the applicant's veracity, which is not something that is usually in a terrorist's toolbox. Despite the ESTA form's inherent vulnerabilities, biographic information remains essential to processing. But biometrics do need to be added to the mix. One such opportunity for adding biometrics into the vetting of all travelers is requiring all VWP countries to establish CBP preclearance operations to remain in the program. Preclearance authorities would encompass full admission procedures, including authenticating the passport is valid; checking to make sure the holder of the passport is the passport owner and that their name, face, fingerprint, or iris biometrics do not match any watch list. Preclearance would also be a win for legitimate travelers who can arrive in the U.S. with minimal cues and hassle. And the program itself would be stronger, individual application processing more secure, and the U.S. port of entry processing streamlined.

One last point I think we cannot overlook. The VWP tourist overstay issue remains. The GAO tells us that 43 percent—43 percent—of VWP tourists make up the overstay population in the U.S. Yet, as of 2013, there were over a million unmatched records in our biographic arrival/departure system. Who knows who amongst this group may be hiding in plain sight on U.S. soil because we simply haven't the means to know who is here and who is not and who may pose a threat amongst those overstays.

I encourage Congress to continue oversight of the VWP program, augment the good work that DHS is doing, improve biometric immigration processing, including full biometric exit implementation. Thank you. And I look forward to having further discussions with you.

[Prepared statement of Ms. Kephart follows:]



Testimony before the  
Committee on Oversight and Government Reform,  
Subcommittee on National Security  
and the  
Subcommittee on Health Care, Benefits and Admin-  
istrative Rules

## TERRORISM AND THE VISA WAIVER PROGRAM

Thursday, Dec. 10, 2015, 9:00 am  
Rayburn House Office Building, Room 2154

**Janice Kephart**

Former border Counsel, National Commission on Terrorist Attacks Upon the  
United States

Former Special Counsel, Senate Judiciary Committee (during consideration  
of S. 744, *Border Security, Economic Opportunity, and Immigration Modern-  
ization Act*)

Homeland Security Solutions Director, MorphoTrak LLC

Chairman Chaffetz, Ranking Member Cummings, Subcommittee Chairs DeSantis and Jordan and Ranking Members Lynch and Cartwright as well as esteemed Members of this Committee, thank you for the opportunity to testify on terrorism and the Visa Waiver Program (VWP). Creating a secure border system which operationally assures the tri-objectives of facilitation, efficiency and security requires a combination of clear statutory guidance, leadership, clear policies, appropriate resources in budgets, personnel and good technology.

The clear tension between increasing numbers of U.S.-bound international travelers alongside unprecedented possibilities for increased U.S.-bound terrorist travel from vulnerable Visa Waiver Program members<sup>1</sup> overwhelmed by Syrian refugees and its own radicalized demographics is a deep challenge to the national security of the United States.

In 2007, the biometric exit requirement became intertwined with Visa Waiver Program continuation and once more at today's hearing, the emphasis born on 9/11 will continue to be on the importance of thorough identity vetting via biometrics, borders and advance counterterrorism intelligence reviews. To be clear, progress has been substantial since 9/11 in curtailing terrorist travel, resulting in thousands of watchlisted individuals being denied visas or admission into the U.S. The men and women who commit every day of their careers to countering terrorism and securing our borders deserve both our sincere thanks and support. Yet as the threat evolves and technologies evolve to combat the threat, our policies, operations and legal structure must evolve as well. In addition, as the ad hoc and intermittent terrorist information-sharing with our international partners remains insufficient, strong U.S. leadership and support in the world is essential.

As you are well aware, the *The Final Report of the National Commission on Terrorist Acts Upon the United States* (the *9/11 Final Report*) and my border team's attending monograph, *9/11 and Terrorist Travel*, provided the factual and policy backdrop for the 2004 Intelligence Reform Act and subsequent 9/11 laws that were integral to reorganizing our intelligence bureaucracy as well as mandating key border recommendations such as first a fully automated biometric entry and exit system at all ports of entry, which today remains only partially fulfilled. I want to clarify that this testimony is intended to augment the many of the upgrades to the Visa Waiver Program announced by President Obama on November 30, 2015 and included in H.R. 158, the "Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015."

To clarify for the record, I have been called to testify today in my individual capacity as a former 9/11 Commission border counsel, along with my subsequent research and work over the past 11 years continuing to buttress the recommendations found in the *9/11 Final Report* and my team's supporting monograph, *9/11 and Terrorist Travel* regarding border and identity security. In addition to conducting much of the investigation and reporting into why the 9/11 terrorists were able

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<sup>1</sup> According to the State Department website at <http://travel.state.gov/content/visas/en/visit/visa-waiver-program.html> the following 38 countries\* are Visa Waiver Program participants: Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, United Kingdom.

to exploit U.S. border vulnerabilities here in the U.S., some of the well-known 9/11 Commission phrases and concepts for which I was directly responsible are “terrorist travel,” “border security is essential to national security,” “for terrorists, travel documents are as important as weapons,” requiring a passport or equivalent for all persons entering the United States (implemented as the Western Hemisphere Travel Initiative), and a comprehensive biometric entry-exit system. I remain proud to serve this country by providing whatever analytical support is of value, and hope the 18 recommendations in this testimony are helpful.

I am currently the Homeland Security Solutions Director for MorphoTrak, LLC, a U.S. subsidiary of the largest and oldest biometrics company in the world, Safran Morpho, based in Paris, France. Every day, Morpho spends \$3 million in research, development and deployment of biometric technologies around the world, including border systems. I am also the founder, and was until September 2015, the CEO of the nonprofit trade association advocating on behalf of the biometrics and identity industry, the Secure Identity and Biometrics Association.

#### **VISA WAIVER PROGRAM NATIONAL SECURITY CONCERNS and RECOMMENDATIONS**

38 countries are currently designated as VWP participants. Five years ago, 45 percent of our global nonimmigrant admissions were from VWP countries.<sup>2</sup> These 20 million VWP visitors per year have remained steady through 2014. However, VWP today represents about 33 percent of global travelers to the U.S. as travel from the rest of the world to the U.S. continues to increase.

The VWP participants overlap with the Schengen Area of Europe, but for Poland, which still lacks VWP status. This is relevant because the Schengen area consists of 26 European countries that have created one common external border for international travel purposes, and a common visa policy. Within its borders the need for a passport has been abolished as well as border control. This system has been left the interior of Schengen extremely vulnerable to terrorist travel, and these weaknesses in turn make it difficult for European VWP partners to provide the type of intelligence and vetting we must require. VWP partner citizens receive a significant perk in not being required to obtain a visa prior to non-immigrant tourist or short term business travel, and as such, our partners must live up to their agreements in providing sufficient information on their citizens to assure we are not permitting terrorist travel unknowingly.

While the European Commission’s Smart Border initiative and a series of biometric pilots at Schengen land, air and sea ports has recently concluded after extensive testing that will help lead to full deployment of biometric solutions to further secure the external borders of Schengen, between the sovereign nation borders within Schengen terrorists will likely continue to travel relatively easily unless there are drastic changes to Schengen border crossing policies and operations. The worst type of result of such travel was witnessed by the atrocious coordinated attacks

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<sup>2</sup> CRS Report RL31381 “U.S. Immigration Policy on Temporary Admissions” by Ruth Ellen Wasem (Feb. 28, 2011) at <https://www.fas.org/sgp/crs/homsec/RL31381.pdf>.

in Paris on November 13, 2015 leaving 135 innocent people dead that included those now known to have had false passports, used the Syrian refugee flows, and traveled extensively throughout Europe and beyond.

Additional concerns are less well publicized, such as the VWP countries that have placed their passports and/or citizenship for sale like Austria, Hungary and Malta and island nations near the United States for whom we do not require a visa for short term stays, such as St. Kitts.

To be clear, as we learned during the course of our 9/11 Commission investigation, terrorists are resourceful, study border vulnerabilities closely, and continually remain a threat even when border control is strong, especially with digital alternatives such as social media and the dark net available to incite local terrorist activity. Yet weak borders are not an option; weak or no vetting procedures enable the ability to clandestinely meet, train, recruit and conduct deadly operations with little to no impediment. If a terrorist cannot get to his attack destination, that terrorist is not fulfilling his mission. It is that simple.

Thus, as stated in our *9/11 Commission Final Report* recommendations, our nation's level of border security is significantly relevant to our national security. It thus essential that despite the many dedicated improvements to border control the U.S. has undertaken since 9/11, we continue to assess and determine how as a nation we can improve our border system here at home, as it is our ports of entry that are responsible for adjudicating admissions of VWP travelers.

Aligning the threat from terrorist travel today against the strengths and weaknesses of our nation's current border system will go a long way to making an objective assessment as to what to prioritize in terms of VWP and border control improvement. That analysis begins with three objectives:

1. Determine whether the current VWP eligibility requirements are sufficient and if not, how to improve the criteria.
2. Determine how to improve the current ESTA process, including determining whether any of the security elements of the current visa process administered by the State Department Consular Services could be incorporated into the ESTA procedures administered by the Department of Homeland Security; and
3. Determine whether the current admission requirements are sufficient to assure U.S. national security from VWP applicants for admission, and what improvements could be made.

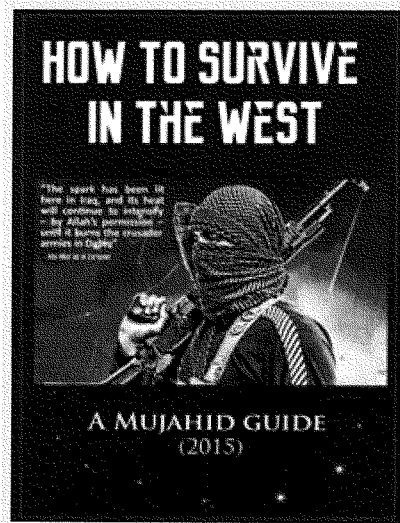
This testimony will conclude that while the VWP improved its processing with the addition of the ESTA processing of individual travelers, and this past September upgraded the online application further with a few somewhat helpful new data fields, equally important is assuring that the country criteria for VWP eligibility is adequate. We must make sure that we are doing all we can to enforce compliance with current criteria while considering new, additional requirements to be eligible, or retain the VWP designation. H.R. 158 that was voted on this week addresses many of

these issues, but it is worthwhile to conduct further analysis to place H.R. 158 in context, and expand beyond the confines of the bill. That is the intent of this testimony.

### The Threat of Terrorist Travel

While the threat of terrorism to all those not adhering to ISIS' version of radical Islam is perhaps greater than ever in recent history, this is not the same as determining the threat of terrorist travel. I leave the former to counterterrorism experts. Here I will focus on analyzing the relevant and useful courses of action to enhance the VWP and our port of entry processing at home of VWP applicants.

From briefings received in July 2015 while speaking before the United Nations Security Council on *Curtailing Terrorist Travel*, there was a strong exchange on the issue of how terrorists are moving. Some intelligence authorities from European countries asserted that most of those seeking to join ISIS were using their own identities and passports, while others stated that false identities and use of counterfeit or stolen passports were the preferred means of travel. To be thorough, this testimony attempts to address both.



To be clear, because this hearing focuses on the Visa Waiver Program and not the entire border system, this testimony will not address those seeking clandestine entry between our ports of entry, a valuable alternative to those who either seek anonymity or are unable to use air travel for U.S. entry.

### Manipulation of Identity a Key Element of ISIS Strategy

As ISIS expands its brand of terror and widens its net with its worldwide call for other terrorists to join them, there has been a rapid rise of the need for fighters to use fake passports to get out of their home countries undetected, travel into Syria, and then back out (if they survive) undetected to their designated locations to await instructions.<sup>3</sup> In this case, ISIS has intended for over a year to use Syrian refugee flows as an additional means to hide themselves. Fake passports, aliases, and

<sup>3</sup> International Business Times, "ISIS Terrorists Disguised as Refugees in Trojan Horse Plot Against Europe" (Oct. 2014) by Jack Moore at <http://www.ibtimes.co.uk/isis-terrorists-disguised-refugees-trojan-horse-plot-against-europe-1468701>.

bypassing border checkpoints are critical to success. Curtailing this terrorist travel is critical to stopping this rising tide and spread of terror,<sup>4</sup> and some countries like Australia and the United Kingdom are placing stringent requirements or outright banning the return or exit of such fighters.

On March 28, 2015, ISIS published its *How to Survive in the West 2015*<sup>5</sup> guide for ISIS recruits and members. Divided into chapters, its English translation [without grammatical corrections] begins with a section on the importance of changing and maintaining different personas depending on the audience. The section below is actually broken out in blue and red to highlight its importance as follows:

Changing your identity is important because you will come across different people in this struggle...

Identity change is so important that everything about you – your: (Alias name, Physical look, Voice, Meeting places, and even phone number.) are different to your real ones. This makes it extremely difficult for intelligence agencies to know who you really are if you always take security precautions before every meeting. If you can find people who can fake ID cards, that would be even better (and this may be possible if you can have contact with people in the dark underworld)."

These types of publications are proliferating on the dark net and intercepted by intelligence authorities. For example, this past spring ISIS also just published a 70-page manual in fluent English instructing ISIS members on how to best to "befriend, rob, and kill" from the inside of western society. The manual, according to an April 20, 2015 summary,<sup>6</sup> begins with how to use online scams to steal money and raise funds, make bombs from household items, praises the Tsarnaev brothers for using a pressure cooker as their mode of attack, and then lays out how to conceal one's identity.

Along with funds and weapons, one last aspect the guide teaches is the methods of covert operation needed to keep the terrorist attack secret and launch it without attracting attention. The guide instructs terrorists not to wear Islamic clothing, take on a westernized name, and wear colored contact lenses to confuse witnesses. One covert tactic is to cover up terror acts. The guide's section on "secret white converts" explains how to manipulate Westerners to use them for alibis, and how to influence people in power.

<sup>4</sup> While North America Director for an international border nonprofit, I organized and held an international security meeting in Washington D.C. Sept. 9-11, "Curtailing Terrorist Travel" that included the international community, the FBI, CBP, ICE and many others. It was quite informative on the level of threat and how to curtail it. The website is [borderpolamerica.com](http://borderpolamerica.com)

<sup>5</sup> <http://www.blazingcatfur.ca/wp-content/uploads/2015/04/ISIS-How-to-survive-in-the-west.pdf>

<sup>6</sup> [israelnationalnews.com](http://www.israelnationalnews.com). "ISIS Guide Teaches How to Befriend, Rob and Kill Westerners" by Dalit Halevy and Ari Yashar at <http://www.israelnationalnews.com/News/News.aspx/194292#.VmE7QOlrGd>.

"Befriend good decent white people who are dissatisfied with their governments, be close to them and offer them support and guidance in life," it suggests. "If these people open up to you, you can decide if you want to tell them about Islam. You will tell them enough information to satisfy what service you require off them, but not more than that."

It is clear that an essential element of a successful terrorist portfolio, according to ISIS, is the ability to manipulate identity. Using fake IDs and taking on a different name while infiltrating western society to pretend to be a different individual, or with different intentions, is essential. ISIS is so well aware of the issue of identity and fraud that it has begun issuing its own ID cards to prevent its own "caliphate citizens" from using the fraud they advocate to manipulate the rest of the world. The image here was tweeted on April 17, 2015. According to Australian reporting,<sup>7</sup> the IDs contain a "three-dimensional chip and anti-counterfeiting hologram and are being distributed among people living in IS controlled territories throughout Iraq and Syria."



### Stolen VWP and American Passports

We know that legitimate U.S. passports are a high commodity on the black market, including for ISIS and those seeking travel out of Syria. Americans targeted for passport theft are then sold to individuals whose facial likeness best matches the buyer. The same is the case for those from VWP countries who have easy access to the U.S. as well, since the ESTA online application form itself is highly susceptible to fraud.

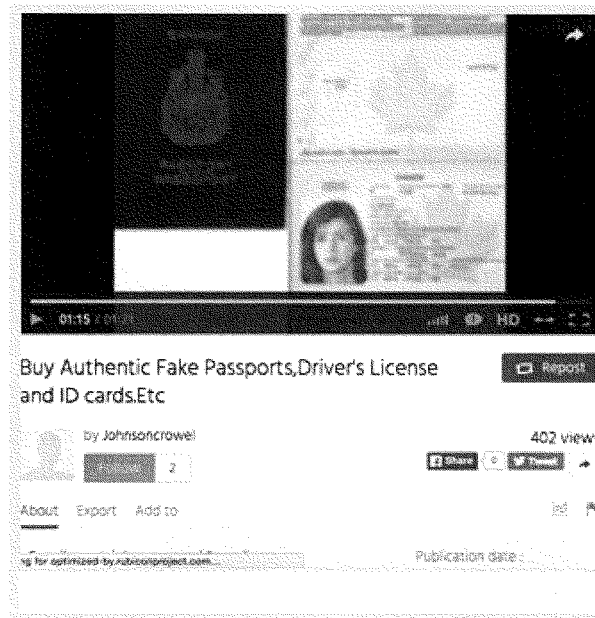


TV report by Dubai TV AlAan, "ISIS terrorists stealing passports from Westerners" (May 11, 2015) at <https://www.youtube.com/watch?v=1mkWW2DX6Mg>

<sup>7</sup> [news.com.au](http://news.com.au). "Images have emerged on Twitter of new identification cards for those under IS rule" (April 17, 2015) <http://www.news.com.au/world/middle-east/images-have-emerged-on-twitter-of-new-identification-cards-for-those-under-is-rule/news-story/8d323b1e7bb126363803fb4067a876e4>

### Fake Travel Document Production

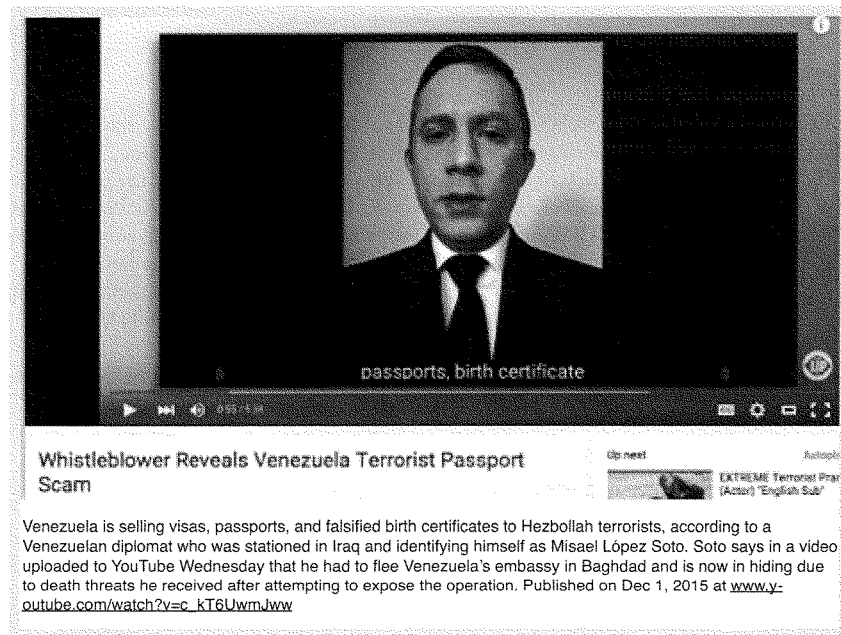
Second best to legitimate travel documents are fake travel and breeder documents. Production of fake birth certificates, national ID cards and passports continue to have value for those to obscure their identities, including terrorists, as ISIS has made clear in its 2015 western survival guide. One of the November 13th Paris suicide terrorist attack bombers outside a soccer stadium had a Syrian passport that was not his own. As long as all countries are not requiring ePassports that hold biometrics verifiable by immigration authorities when travelers present for border crossing, fake document production will continue to facilitate travel. That will be the case for VWP countries too until machine-readable-only passports are eliminated as valid for border crossings and U.S. entry. Sites like this one abound, with fake document purveyors posting and seeking to outdo each other in the quality of their products:



**Venezuela Producing Fake Documents for Terrorists.** From the vantage point of fake document purveyors comes the case of *state sponsored* fake document purveyors. “According to a declassified CBSA [Canada Border Services Agency] report, Venezuelan authorities provided at least 173 passports, visas, and other documents to Islamic extremists seeking to slip into North



America unnoticed.”<sup>8</sup> In a video was posted onto YouTube featuring a former diplomat from the Venezuelan embassy in Baghdad, in Spanish, this official blows the whistle on a scheme whereby employees at Venezuelan embassies throughout the Middle East create false immigration documents. According to this officer, between June 2014 and February 2015 he witnessed the sale of thousands of visas, passports, national identification cards, and birth certificates to thousands of Syrians, as well as some Iraqis, Palestinians, and Pakistanis. The man even confesses that embassy workers assisted known terrorists, specifically detailing a case involving a member of the terrorist group Hezbollah in Lebanon.



### Syrian Refugee Crisis

With the Syrian refugee crisis creating preferential treatment for Syrian refugees, the crisis itself is itself creating a surge in blackmarket fake Syrian passports sought for those seeking refugee

<sup>8</sup> Toronto Sun, "Passports: Rogue regimes, black markets for identity documents pose border security challenge" by Candice Malcolm (Nov. 28, 2015) at <http://www.torontosun.com/2015/11/27/hogus-passports-create-refugee-challenge>.

status in the U.S. and elsewhere in the West.<sup>9</sup> Meanwhile, ISIS strategy to date has been to use the Syrian refugee crisis as cover to move its own people. On November 19, 2015 five Syrians were arrested in Honduras using stolen Greek passports in an attempt to make their way to the U.S. According to news reports, the men were going to move through northern Honduras, cross Guatemala and Mexico to illicitly cross the U.S. southwest border.

Fake Syrian passports, stolen VWP passports, and illegal entry are all vulnerabilities that the Syrian refugee crisis is fomenting. In addition, in a report by the House Homeland Security Committee on the Syrian refugee crisis published this month, the depth of evidence that ISIS is infiltrating the Syrian refugee camps is substantial. The report lists known terrorists now in Germany, Italy and Hungary and of course France, all known to have come in via the Syrian refugee flows.<sup>10</sup>

***Recommendation 1:*** While taking into account the human factors involved with any refugee crisis, and the factors of persecution and genocide of particular groups within the Syrian population, **the U.S. must remain vigilant that ISIS will target the refugee population to seek legitimate immigration status to embed in the U.S.. Vetting is far from inhumane; it is a standard operating procedure that must be invoked categorically on any demographic where it is impossible to be assured that an individual is who they say they are, and has no nefarious information attached to them. Such vetting should be automatically ramped up when the threat is known to be high.**

There are many ways to maximize adequate vetting and minimize risk which include but are not limited to background investigations, forensic document analysis, extensive overseas interviews and biometrics as well as choosing which demographics pose the least risk. All must be examined. However, in a population where there is substantial information that terrorists known to be overtly threatening the U.S. are infiltrating, it is imperative that all factors are considered prior to a final Syrian refugee policy determination.

### **Conducting a Visa Waiver Program Assessment**

While it is highly encouraging that the President is requiring DHS and the State Department to jointly conduct a review of “identifying any countries that are deficient in key areas of coopera-

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<sup>9</sup> Toronto Sun, “Passports: Rogue regimes, black markets for identity documents pose border security challenge” by Candice Malcolm (Nov. 28, 2015) at <http://www.torontosun.com/2015/11/27/bogus-passports-create-refugee-challenge>.

<sup>10</sup> House Homeland Security Committee, “Syrian Refugee Flows Security Risks and Counterterrorism Challenges: Preliminary Findings of a House Homeland Security Committee Review” (Nov. 2015) at [https://homeland.house.gov/wp-content/uploads/2015/11/HomelandSecurityCommittee\\_Syrian\\_Refugee\\_Report.pdf](https://homeland.house.gov/wp-content/uploads/2015/11/HomelandSecurityCommittee_Syrian_Refugee_Report.pdf).

tion,”<sup>11</sup> Congress has both an obligation and a right to oversee the Visa Waiver Program and insist upon access to the VWP compliance reports the White House has asked for in its Fact Sheet.

In its November 30, 2015 VWP Fact Sheet announcement, the White House verified that many nations in the VWP program are not able to adequately share terrorist information or are not fully cooperating with information-sharing. It is encouraging that both the White House and the House are seeking corrective action to assure information-sharing on terrorists, those nations who are having difficulty doing so as well as INTERPOL, and are willing to provide incentives or penalties where appropriate. Also of value is the Fact Sheet statement that the President is seeking a full report within 60 days to “identify possible pilot programs designed to assess the collection and use of biometrics (fingerprints and/or photographs) in the VWP to effectively increase security.”<sup>12</sup>

***Recommendation 2: Congress should continue to conduct its own assessment of the VWP in parallel to the White House to assure that enhancements requested by the administration are adequate to curtail terrorist travel, and do so annually.***

### **Enhancing Visa Waiver Program Requirements**

In addition to the requirement for a less than three percent visa refusal rate to be eligible for VWP designation, the State Department website<sup>13</sup> lists the following criteria for eligibility for a VWP designation is discretionary and includes:

- enhanced law enforcement and security-related data sharing with the United States
- issuing ePassports (program still accepts machine-readable passports issued prior to 2006)
- having a visitor (B) visa refusal rate of less than three percent
- timely reporting of both blank and issued lost and stolen passports
- maintenance of high counterterrorism, law enforcement, border control, and document security standards
- requiring its residents to fill out an online authorization form, ESTA, before traveling to the United States
- increased airport security requirements

The House Homeland Security Final Foreign Fighter Task Force released in September 2015 states that “The level of terrorist travel we are seeing today is without precedent. The numbers are now so high that Western governments are becoming increasingly worried they will be un-

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<sup>11</sup> White House, “FACT SHEET: Visa Waiver Program Enhancements” (Nov. 30, 2015) at <https://www.whitehouse.gov/the-press-office/2015/11/30/fact-sheet-visa-waiver-program-enhancements>.

<sup>12</sup> <https://www.whitehouse.gov/the-press-office/2015/11/30/fact-sheet-visa-waiver-program-enhancements>

<sup>13</sup> <http://travel.state.gov/content/visas/en/visil/visa-waiver-program.html>

able to prevent violent extremists from entering their countries undetected.”<sup>14</sup> The report states that three of the top ten countries producing the 25,000 foreign fighters (that number is now 30,000) known to have traveled to ISIS controlled territories are VWP countries. In September, France was fourth with 1,550 of its citizens having gone to ISIS and Germany and the United Kingdom are tied for eighth with 700.

For every one of these individuals from VWP countries, there is not only the possibility of returning home to recruit others or commit terrorist attacks as seen in Paris this past month, but it is possible that with access to a lost or stolen valid machine-readable passport issued prior to 2006, they will be able to fraudulently enter the U.S. relatively easily based on a false name and document if they have never attempted U.S. entry before and our terrorist or foreign national databases do not currently hold their fingerprints. More alarming is that since the U.S. does not read the ePassport chip currently, it is possible to abuse the ePassport system as well.

However, much of the world does understand the value of a biographic + biometric border system. More than 80 countries now have ePassports whose embedded chips contain information that replicate the MRZ on the passport and add in at least a photo that can be retrieved using facial recognition software. I have been told that 34 of the VWP countries have added both face and fingerprints to their passport e-chips.

While ePassports are flourishing, the world is catching up with actually reading these chips to enhance security. The U.S. still does not systematically read the chips, but nor can they. In fact, a 2014 European Commission Schengen Final Smart Border Technical Report (not available to the public) states that the European countries within Schengen system cannot read the fingerprints on the e-chips.

***Recommendation 3:*** All VWP countries should be required to replace all valid machine-readable passports with ePassports immediately to reduce the risk of fraud associated with lost and stolen passports and the priority use of such passports for terrorist travel. Such ePassports should include the bio page contents and facial image as they do today (ironically, U.S. facial image quality is considered the worst in the world), as well as fingerprints and the visa itself.

***Recommendation 4:*** All VWP countries should be required to provide the PKI to open and read their face and fingerprint images or templates on the chip to authenticate the passport and verify the identity of the traveler.

***Recommendation 5:*** All VWP countries should be required to contribute to, and use, INTERPOL's lost and stolen passport database, as well as its foreign fighter database, in a timely manner.

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<sup>14</sup> House Homeland Security Committee, "Foreign Fighter Final Task Force Report" (Sept. 29, 2015) at <https://homeland.house.gov/wp-content/uploads/2015/09/TaskForceFinalReport.pdf>.

### Enhancing the Electronic System for Travel Authorization (ESTA)

The Electronic System for Travel Authorization (ESTA) is a statutory requirement mandated by the Implementing Recommendations of the 9/11 Commission Act of 2007<sup>15</sup> for participating VWP tourist or short term business travelers. ESTA is an automated, biographic system that makes an initial determination of visitor eligibility visitors without a visa to the United States, where a Customs and Border Protection (CBP) inspector will make an admission determination upon arrival, usually at an air port of entry. ESTA applications for all travelers, including babies, must be submitted prior to travel, and failure to comply with the ESTA process may result in denial of check-in on the day of travel although it is still possible to attain an ESTA approval same day. Canadians and Mexicans arriving at U.S. land ports of entry are exempted from ESTA.<sup>16</sup>

The fee for the ESTA application is \$14, with \$10 going to the travel industry, and the remaining to CBP.

**Recommendation 6: Authorize an increase in ESTA fees for the purpose of establishing CBP Preclearance at designated VWP airports.** For example, a \$6 increase in the current \$14 paid by VWP travelers for submitting the online ESTA application today could be increased to a \$20 fee. (An additional \$6 is not much in relation to the cost of travel itself). However, this \$6 increase applied to the average of 20 million VWP travelers per year could raise an additional \$120 million/year in additional revenue, and do so in a way that would minimize the impact on appropriation requests. (See Recommendation #9 on Preclearance as a requirement for VWP eligibility.)

By way of comparison, visa integrity processing protects the U.S. from foreign nationals who threaten public health and safety or national security, while at the same time welcome legitimate foreign nationals who bolster the U.S. economy and foster international exchanges. Balancing these dual, and some would say competing, missions is an ongoing challenge.

More specifically, the non-immigrant visa process<sup>17</sup> for non-VWP countries includes biometric identity verification, an interview, robust database checks and opportunities for greater investigation. In short, the non-immigrant visa process is significantly more secure than the ESTA process. More specifically, processing of visas for tourist or short term business non-immigrants usually includes the following processing to which ESTA applicants are not subjected:

<sup>15</sup> Pub.L. 110-53 at <http://www.gpo.gov/fdsys/pkg/PLAW-110publ53/html/PLAW-110publ53.htm>.

<sup>16</sup> For more on ESTA processing see Lisa Seghetti, Congressional Research Service "Border Security: Immigration Inspections at Ports of Entry" (Jan. 26, 2015) <https://www.fas.org/sgp/crs/homesec/R43356.pdf>.

<sup>17</sup> Visas are processing by the Department of State Consular Affairs under the auspices of over 20+ statutes.

Non-Immigrant Visa Process Requirements not Required by VWP ESTA Travelers
Personal interviews are required for all nonimmigrant visas. 22 C.F.R. § 42.62 However, in defined circumstances waivers may be granted to children under age 14, persons 79 years or older, diplomats and representatives of international organizations, aliens who are renewing a visa they obtained within the prior 12 months, and individual cases for whom a waiver is warranted for national security or unusual circumstances. 22 C.F.R. § 41.102. The ESTA process does require in-person interviews for those whose application produces a hit in US terrorist watch-list.
Physical and/or mental examination [Sec. 212(a) inadmissibility grounds]
Consular Consolidated Database screening [biographic and biometric database] including screening of 143 million visa applications dating back pre 9/11 [includes 75 million face photos, digital images of visa applications since 2001, and 10 fingerprint scans]
Capture and check of 10 fingerprints in DHS OBIM IDENT system for prior immigration identity information and in FBI NGI for criminal/terrorist check.
Background check in Consular Lookout and Support System (CLASS), uses name searching algorithms to match names to potential derogatory information including prior visa issuance, denials [info from DHS, FBI, DEA re individuals who may pose a threat]
Security Advisory Opinions (replaced by Kingfisher Expansion) whereby 100 percent of all visa applications examined to identify any connections to terrorism by comparing applicant data to the classified data holding in FBI Terrorist Identities Datamart Environment (TIDE) database [reducing SAOs by 80%] enabling DHS, FBI, Terrorist Screening Center to proactively respond in coordinated manner. Nonimmigrants denied visas based on terrorist grounds of inadmissibility were close to 1200 in 2014.
Kingfisher real time review of issued visas based on emerging threats
Visa revocation authority
ICE Office of International Affairs expert advice and investigation onsite via DHS Visa Security Units authorized to conduct terrorist investigations and forensic document examination; these deployed at high risk diplomatic posts
Visa issuance includes biometric identifiers (e.g., scans of the right and left index fingers) in addition to the digitized photograph that is linked to OBIM's IDENT for verification upon admission at POEs

*This table was derived from CRS Report R43589 "Immigration: Visa Security Policies" (Nov. 18, 2015) by Ruth Wasem at <https://www.fas.org/spp/crs/homsec/R43589.pdf> and CRS Report RL32564 "Immigration: Terrorist Grounds for Exclusion and Removal of Aliens" (Jan. 12, 2010) by Michael John Garcia and Ruth Wasem at <https://www.fas.org/spp/crs/homsec/RL32564.pdf>.*

**Recommendation 7: Conduct a full assessment of ESTA vetting versus non-immigrant visa vetting, and determine what elements of consular processing both essential to national security and feasible to include in the ESTA process.**

These include biometric identity verification, current interview requirements, access to robust database checks within the U.S. and with our VWP country partners, opportunities and procedures to deter fraud in the online ESTA application process and opportunities for greater terrorist and forensic investigation offered by ICE's Visa Security Units and State Department's Diplomatic Service. For example, there are only

19 existing Visa Security Units while there are 225 U.S. visa-issuing posts worldwide. With VWP countries such as France, Germany and the United Kingdom among the top ten countries producing foreign fighters, semi-permanent VSUs in VWP designee countries should be considered.

***Recommendation 8: Consider establishing Visa Security Units in VWP countries known to have a high concentration of ISIS foreign fighters, at least for the duration of the assessed threat.***

### **Enhancing Preclearance**

Today CBP has 15 Preclearance offices in Canada, Ireland, and the Caribbean. These offices were set up under The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) in response to the February 1993 terrorist attack on the World Trade Center. The lead perpetrator, Ramsey Yousef (nephew of Khalid Sheikh Mohamed who later was integral in operationalizing the 9/11 attacks), had boarded a plane from Europe with a fake European passport, threw that passport in the plane toilet, then claimed asylum upon landing and was paroled into the U.S. In a post-1993 World Trade Center bombing atmosphere, the purpose of Preclearance was to keep inadmissible terrorist aliens from departing for the U.S. as Yousef had done and then claiming asylum upon arrival.

IIRIRA required the implementation of legacy Immigration and Naturalization Service pre-inspection (now Preclearance) programs at select airports overseas. The 9/11 Commission supported this program, and its first statutory vehicle for its recommendations, The Intelligence Reform and Terrorist Prevention Act of 2004, required DHS to meet a 15 foreign airport minimum and authorized up to 25 airports.

***Recommendation 9: Require every VWP member to have in place an operational CBP Preclearance program at its highest volume U.S.-bound international airports or other relevant ports. CBP officers should have full authority to conduct full inspections of travelers and their luggage, collect biometrics and verify identity, and refuse clearance if necessary. This is the most logical operational means of collecting biometrics and verifying identity within the current ESTA program.***

CBP is currently in negotiations with seven other VWP participating countries: Belgium, Japan, Norway, Netherlands, Spain, Sweden, and the United Kingdom. This work should be encouraged and supported with appropriate authorization and appropriation and/or ESTA fee increase. Priority should be given to those nations assessed at being most at risk for terrorist travel.

### **Curtailing Use of Citizenship for Sale for Visa-Free Entry to the United States<sup>18</sup>**

In a BBC New York article from June 2014 entitled “Where is the cheapest place to buy citizenship?” it estimates that several thousand people a year spend a total of \$1.9 billion dollars to acquire second and third passports. The largest buyers are those from China, Russia and the Middle East. Countries struggling to make ends meet have noticed the interest and some are providing citizenship with no or minimal residency requirements for large sums of cash. Some of these countries happen to be our island neighbors whose citizens are not required to obtain a visa for short visits to the U.S. and include St. Kitts and Nevis (the first country to do so in 1984), Antigua and Barbuda, Dominica, and Grenada. These island offerings range from \$100,000 by Dominica to \$400,000 in Antigua and Barbuda. St. Kitts is the no. 1 selling “second passport” in the world, and in 2011 had to stop selling to Iranians due to U.S. pressure, who were buying to bypass U.S. sanctions.

Others offering passports for large sums of “investment cash” for minimal residency requirements that can lead to citizenship are VWP countries. Australia, Austria, Belgium, Bulgaria, Cyprus, Hungary, Malta, the Netherlands, Portugal, Singapore, Spain, United Kingdom and the United States all offer such programs. Cyprus and Malta grant passport access with a simple investment; the other countries require a term of residency, usually in excess of \$1 million. The Austrian passport is considered of extreme high value, enabling its buyer access to 171 nations in the world visa-free, including the United States.

***Recommendation 10: Make ineligible for the VWP program any country that place citizenship without residency for sale.***

***Recommendation 11: For those that offer second passports after minimal residency, require that the appropriate country authority notify the U.S. of any individuals who currently “bought” access to their VWP passport, and the particulars of that passport. Such individuals must be notified that they are exempt from VWP status in regard to the U.S. and thus must apply for visas for all U.S. travel.***

### **Biometrics in Support of Identity Intelligence Operations**

Assuring that foreign national identities are biometrically vetted across the border system against all intelligence data available to our government, including those identities acquired by the intelligence community, Department of Defense, the FBI and the DHS Office of Identity Management IDENT system, is critical. This includes persons unknown to the system - whether Special Interest Aliens who cross illegally between the ports of entry, or refugees, or travelers. There is a pilot ongoing now in that regard, the Identity Intelligence (I2B) Pilot. Its purpose is to “assist the

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<sup>18</sup> BBC, New York “Where is the cheapest place to buy citizenship?” by Kim Gittleton (June 4, 2014) at <http://www.bbc.com/news/business-27674135> and “10 Best Second Passports and Citizenship by Investment Programs” by Christian Reeves (August 12, 2015) at <http://premieroffshore.com/10-best-second-passports-and-citizenship-by-investment-programs/>.



#### HUNGARIAN INVESTMENT IMMIGRATION PROGRAM [sic]

Europe's newest and most attractive investment immigration program presents an exceptional opportunity for getting PR in an EU and Schengen member state, and live, do business, or travel freely to and within Europe. In exchange for a safe and state-guaranteed investment of EUR 300,000 to be returned at the end of the 5-year term, applicants of all nationalities can obtain permanent resident permits with only a single visit to Hungary (and a 60,000-euro processing fee). Invest for 5-years – and get lifetime residency for the entire family in a matter of weeks!

IMPORTANT! Currently the Hungarian Immigration Office is experiencing delays due to the high popularity of the program.

#### The Hungarian residency bond program

Hungary's immigrant investor program (also known as "golden visa") has the following benefits in comparison with other similar programs:

- the cheapest government-backed, risk-free investment offer in Europe
- fast: get residency in just a few weeks
- only one visit required to Hungary and no obligatory stay afterwards
- investment covers the whole family (spouse and any children who are under 18 at the completion of the application process)
- no minimum education or health check
- no country of origin restrictions

#### Residence permit in Hungary – benefits:

- visa-free travel into and within the Schengen zone
- no minimum stay in Hungary
- the possibility to live and work in a safe and central European location
- lifetime residency in exchange for just 5 years' financial commitment

#### Is it possible to get citizenship by investment in Hungary?

Yes and no. Currently, you need to have permanent residency in Hungary for several years before you can apply for citizenship and get a Hungarian passport. However, there is a modification to the Hungarian immigration law in the works that would speed up this process for participants of the investment immigration program. Speak to one of our experts and get the latest updates directly!

Online advertisement at <http://helpers.hu/services/immigration/investment-program/>

Department of Homeland Security (DHS) with determining whether this modality can augment existing biometric screenings for Syrian refugee applicants and also identify a threat-nexus for a subset of non-U.S. persons who attempt illegal entry.”<sup>19</sup> More specifically, the pilot, according to the accompanying DHS privacy assessment, seeks to (1) identify unknown terrorists seeking refugee status; (2) provide actionable information on unknown persons who have attempted illegal entry; and (3) inform DHS on how interoperable, accurate and thus useful intelligence community biometric information is to their border operations.

**Recommendation 12: The effort to create a concerted biometric identity vetting for foreign nationals that integrates foreign national data and data acquired by the intelligence community should be supported and appropriately expanded to all recommended classes of foreign nationals as deemed appropriate to the threat of terrorist travel.**

<sup>19</sup> <http://www.dhs.gov/publication/dhsallpia-054-identity-intelligence-biometrics-12b-pilot>

### Biometric Exit

At least 32 countries have biometric entry or entry/exit border control. The U.S. only has biometric entry control and even today, a “biographic-only” approach to exit continues, at least for now. Today’s immigration exit system requires advance passenger data and name records of foreign nationals who have checked in for departure, which are then logged into the immigration arrival-departure database. While our current biographic-only system is the best it can be, operating in real time between airlines and DHS, a biographic-only system will always be unable to confirm identity. This is the case with the online ESTA application as well. The only way to confirm identity is through biometric means such as facial recognition software, iris scans, or fingerprints. In addition, a biometric solution is the only solution that provides the benefits for government, the traveler, the airport, and the airline (or, in the case of the sea ports, the sea carrier).

**The Problem with Names.** A serious issue that remains unsolved more than a decade after 9/11 is misspelled or inaccurately recorded names that are the foundation of a biographic-only system. The 19 9/11 hijackers collectively had over 300 spellings of their names. Boston Marathon bomber Tamerlan Tsarnaev’s name was misspelled on a manifest list of a flight to Russia, meaning that the FBI did not have the benefit of an important lead in investigating his terrorist ties. While that particular problem has been fixed, simply requiring a “next generation” version of such software will not solve the problem. Merely enhancing software that picks up name anomalies can never be sufficient because thousands of varieties of uncommon names from all over the world are spelled differently in English or even purposefully misspelled. Nor does such software pick up complete biographic identity changes or outright fraud, a much more nefarious problem that biometrics solves in seconds.

Identity verification produces actionable information. When an individual purchases a plane or boat cruise ticket, the federal government (indeed, most all governments) require advance passenger identity information, including Passenger Name Records (PNR) taken by airlines. This information is then turned over to government authorities for risk assessments. Upon arrival at the airport for departure, the identity associated with the passenger must be verified. The seconds it would take to process a biometric solution is essential to assuring that the name matches the individual, eliminating nearly all varieties of fraud.

**Recommendation 13: VWP countries should be required to implement a biometric entry/exit system.** Those within Schengen should assure that exterior borders - vehicular, air, rail and sea - have an integrated person-centric biometric entry exit system for Schengen residents while interior borders both record travel and biometrically verify the traveler. Such information should be available upon request to U.S. authorities in terrorism investigations on an as needed basis.

### Improvements at U.S. Ports of Entry

There are 327 official ports of entry in the United States. VWP's value and security is at least in part determined by ports of entry processing, mostly air. It is worth noting, however, that an ISIS or other terrorist who fails at obtaining a VWP passport, a visa, or refugee status may well seek support of a human trafficker willing to help illegally cross our 6,000 miles of physical border. Thus, it is imperative that CBP have the best tools available to identify individuals seeking to hide their true identity, or simply become anonymous, no matter where that individual is encountered. In regard to the VWP, however, the greatest immediate concern remains strengthening processing at air ports of entry and implementing biometric exit capabilities.

In 2007, the 9/11 Commission Implementation Act amended certain sections of the Immigration and Naturalization Act (8 U.S.C. 1187) pertaining to the control of foreign nationals' travel. The law reiterated the need for exit data and required exit data collection apply to all foreign nationals entering under the Visa Waiver Program. The amendment in section 217(h) mandates that air carriers be required to "collect and electronically transmit" passenger "arrival and departure" data to "the automated entry and exit control system" developed by the federal government.

The amendment to section 217(i) mandates that "the Secretary of Homeland Security shall establish an exit system that records the departure on a flight leaving from the United States of every alien participating in the visa waiver program" that

- (1) shall--(A) match biometric information of the alien against relevant watch lists and immigration information; and
- (B) compare such biometric information against manifest information collected by air carriers on passengers departing the United States to confirm such aliens have departed the United States.

The issue with overstay remains a valid one. As recently as 2013, even after a scathing 2011 GAO report that stated that overstay had not been reported on since 1994 and there were 1.6 million unmatched records of individuals who the U.S. did not know whether they were still in the U.S., or had departed, in a 2013 update to that report the GAO stated:

As of April 2013, DHS continues to maintain more than 1 million unmatched arrival records in ADIS [Arrival Departure Information System]. GAO's preliminary analysis identified nonimmigrants traveling to the United States on a tourist visa constitute 44 percent of unmatched arrival records, while tourists admitted under a visa waiver constitute 43 percent. The remaining records include various types of other nonimmigrants, such as those traveling on temporary worker visas.<sup>20</sup>

<sup>20</sup> GAO-13-602T Report: IMMIGRATION ENFORCEMENT: Preliminary Observations on DHS's Overstay Enforcement Efforts by Rebecca Gambler (May 21, 2013) at <http://www.gao.gov/products/GAO-13-602T>

The issue of VWP tourist overstay (which should be same individuals who are filing ESTA applications to gain admission) remains. Implementation of a biometric exit at all ports of entry, with initial emphasis on air ports of entry, is now heightened by the terrorist threat. Implementation is necessary sooner than ever to provide (1) the adequate data to know who is here and who is not, and (2) enable the next step of determining who is a security risk and who is not. In full recognition that CBP is working diligently to improve both air entry and seeks to test air exit capabilities (that is the goal) in 2016, Congress can remain helpful to CBP by mandating requirements for improved processing that will eliminate the need for subsequent CBP justifications.

For example, CBP conducted a successful facial comparison pilot earlier in 2015 at Dulles International Airport on U.S. citizens that simply compared the U.S. passport face image to the live person seeking admission. The purpose of the pilot, in part, was to assure against the known trafficking in U.S. passports that enables foreign nationals to pose as U.S. citizens and thereby avoid the ten fingerprint capture that is mandatory for all foreign nationals, with few exceptions. Such facial comparison between the passport and traveler seeking admission is essential. While the pilot is being expanded to other airports currently, CBP does not have a mandate to operationalize this essential border security check. Congress should do so.

***Recommendation 14: Support a deployment of biometric exit at all air and land pedestrian ports of entry as soon as possible as required under current law.***

***Recommendation 15: Require all U.S. ports of entry to have the capability to conduct one to one facial recognition check against stored digital photo and fingerprints in ePassports for all travelers.***

***Recommendation 16: Provide appropriate support modernization of the DHS Office of Biometric Identity Management so that the program can efficiently and accurately process not just fingerprints as is the current practice, but implement multi-modal biometric processing to include facial images (collected at U.S. ports of entry, iris images (collected by the Border Patrol and some consular offices), with the ability to expand to voice recognition and other biometric modes over time as necessary.***

### **Improvements in U.S. Interagency Coordination**

In the House Homeland Security Committee's Foreign Terrorist Travel Task Force Report of September 2015, the Committee outlined the continual failure of any administration since 2004 to establish at the DHS a Terrorist Travel Program Office, a key border recommendation from the *9/11 Commission Final Report*. In addition, the report chronicles the failure of the "Department of State and Department of Homeland Security to prepare a strategic plan to target and disrupt individuals and organizations at home and in foreign countries that are involved in the fraudulent production, distribution, or use of visas, passports and other documents used to gain entry to the

United States. This strategic plan is to emphasize individuals and organizations that may have links to domestic terrorist organizations or foreign terrorist organizations.”<sup>21</sup>

The report further found that dozens of government projects exist to combat terrorist travel, most operating independently and none within an overarching framework that assesses the threat nor coordinates a government-wide delineation of roles and responsibilities. The following recommendations are mostly in line with Task Force recommendations.

***Recommendation 17:*** DHS should lead the standup Terrorist Travel Program Office in conjunction with the Department of State, FBI, relevant members of the intelligence community. The office could be overseen by the National Security Council to assure its status and relevance as an ongoing federal government national security requirement.

***Recommendation 18:*** This Terrorist Travel Program Office should conduct a full audit of current terrorist travel preventive actions and produce a strategy to combat terrorist travel both domestically and internationally.

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<sup>21</sup> House Homeland Security Committee, “Foreign Fighter Final Task Force Report” (Sept. 29, 2015) at <https://homeland.house.gov/wp-content/uploads/2015/09/TaskForceFinalReport.pdf>.

Mr. DESANTIS. Thank you.

The chair now recognizes Mr. Jenkins for 5 minutes.

#### STATEMENT OF BRIAN MICHAEL JENKINS

Mr. JENKINS. Chairman DeSantis, Chairman Jordan, Ranking Member Lynch, Ranking Member Cartwright, members of the committee, thank you very much for inviting me to testify on this important issue. There are two ways a foreign terrorist organization can carry out attacks in the United States. One is by persuading followers here to carry out attacks on their behalf. And certainly both Al Qaeda and more recently ISIL have exhorted their supporters here to do that. Both have had limited success in persuading some individuals here to carry out some attacks, in some cases with lethal consequences as we have seen. Their greater success is limited by the lack of traction that their ideology is having in the community here and by the remarkably effective efforts of domestic intelligence in uncovering and thwarting a number of these threats.

The second way is by recruiting operatives abroad and then sending them into the United States to carry out attacks. If we look at the recent history, we see that the threat has been mainly from homegrown terrorists. Of the 134 persons who since 9/11 have carried out or plotted terrorist attacks here on behalf of jihadist ideology, 96 of them were U.S. citizens, 19 were legal permanent residents. In other words, 86 percent of these individuals were radicalized while they were living here. Eight more came into the country on various kinds of visas. One came in or attempted to come in on the Visa Waiver Program. That was Richard Reid, the so-called shoe bomber. Three had earlier crossed the Mexican border illegally. The remaining seven were asylum seekers, refugees, or others. That is not to say that all of those came here with the intent of carrying out terrorist attacks.

Now, the good news is that these numbers are small. There's no obvious hole in the fences. Those who entered used several paths depending on individual opportunities. The most common way was simply ordinary visas. And I do want to underscore here that it's not always clear that the visa interview is going to be better at picking up some of these people than the system we have in place for a visa work waiver.

While we may, however, draw some comfort from the fact that terrorists are not pouring into the country, there's no basis for complacency here. The threat is dynamic. Circumstances change. Our security must adjust. And looking ahead, there are some obvious concerns. The conflicts in Syria and Iraq will certainly continue for the foreseeable future. It may take years for the campaign currently directed against the so-called Islamic State to succeed in scattering it or defeating it. Meanwhile, ISIL's ideology continues to exert a very powerful pull. The numbers are not precise, but all estimates of the number of foreign fighters in Syria keep going up despite the bombing campaign. There's also a difference here, I think we're beginning to see between those foreign fighters particularly from the West who are going to Syria and Iraq and the previous cohorts of those who went abroad to join other jihadist fronts in the past. This group is younger. It is attracted by ISIL's well-

advertised violence, certainly not put off by that fact. It appears to be a more troubled population in Syria and Iraq. Some of these people are going to be participating in atrocities. That's going to change them. And while they are there, they're going to be subject to a continuing bombing campaign, which may strengthen their commitment and desire for revenge. So this is certainly going to be a long-term problem.

Our ability to vet and screen entries into this country depends a great deal on intelligence. And, indeed, it depends, in part, on our partners' intelligence holdings. And the problem here is that the European authorities are currently being overwhelmed simply by the numbers of individuals that they have to, they have to deal with. Therefore, I think it has to be our operative presumption that terrorist operatives, including returning foreign fighters, will continue to look for ways to penetrate our security and get into the country to carry out attacks, as well as recruit others already here to carry out attacks on their behalf. I look forward to your questions.

[Prepared statement of Mr. Jenkins follows:]

## Inspiration, Not Infiltration

### Jihadist Conspirators in the United States

Testimony at a hearing on Terrorism and the Visa Waiver Program

Presented before the House Oversight Committee, Subcommittee on National Security and Subcommittee on Health Care, Benefits, and Administrative Rules on December 10, 2015

Brian Michael Jenkins

CT-477

RAND Office of External Affairs

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**Brian Michael Jenkins<sup>1</sup>**  
**The RAND Corporation**

***Inspiration, Not Infiltration:  
 Jihadist Conspirators in the United States<sup>2</sup>***

**Before the Committee on Oversight  
 Subcommittee on National Security  
 Subcommittee on Health Care, Benefits, and Administrative Rules  
 House of Representatives**

**December 10, 2015**

Chairman Jordan, Chairman DeSantis, Ranking Member Lynch, Ranking Member Cartwright, and Members of the Subcommittees, thank you for inviting me to address the important issue of whether terrorists are able to exploit the Visa Waiver Program to enter the United States.

Even before last month's horrific attacks in Paris, concern about the growing number of Western recruits joining the Islamic State of Iraq and the Levant (ISIL) and other jihadist groups in Syria and Iraq and the exodus of refugees flooding Europe from the Middle East and North Africa have led the House and the Senate to hold urgent hearings focusing on whether terrorists could exploit the Visa Waiver Program or infiltrate the deluge of refugees to enter the United States.<sup>3</sup>

Today's testimony offers a different approach and will examine a broader topic: how terrorists may enter the United States. Al Qaeda and some of its affiliates, and now the so-called Islamic State and its adherents, seem determined to carry out terrorist attacks in the United States. To do so, they must remotely inspire individuals already here to take action on their behalf (the so-called

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<sup>1</sup> The opinions and conclusions expressed in this testimony are the author's alone and should not be interpreted as representing those of RAND or any of the sponsors of its research. This product is part of the RAND Corporation testimony series. RAND testimonies record testimony presented by RAND associates to federal, state, or local legislative committees; government-appointed commissions and panels; and private review and oversight bodies. The RAND Corporation is a nonprofit research organization providing objective analysis and effective solutions that address the challenges facing the public and private sectors around the world. RAND's publications do not necessarily reflect the opinions of its research clients and sponsors.

<sup>2</sup> This testimony is available for free download at <http://www.rand.org/pubs/testimonies/CT447.html>.

<sup>3</sup> Brian Michael Jenkins, *Containing Middle East Terror: Measures to Reduce the Threat Posed by Foreign Fighters Returning from Syria and Iraq*, Testimony presented before the House Homeland Security Committee, Subcommittee on Border and Maritime Security, March 17, 2015; *The Continuing Lure of Violent Jihad*, Testimony presented before the House Homeland Security Committee, March 24, 2015; *There Will Be Battles in the Heart of Your Abode: The Threat Posed by Foreign Fighters Returning from Syria and Iraq*, Addendum to Testimony before the Senate Homeland Security and Governmental Affairs Committee on March 12, 2015, April 17, 2015; and *The Implications of the Paris Attack for American Strategy in Syria and Homeland Security*, Testimony presented before the Senate Homeland Security and Governmental Affairs Committee, November 19, 2015.

“self-radicalized” or homegrown terrorists), or they must try to get terrorist operatives into the country. Disrupting their planning must be an urgent priority with respect to both scenarios.<sup>4</sup>

That leads to the first question: How have those who have plotted terrorist attacks entered the United States in the past?

A review of how terrorists got here, which we will come to in a moment, can help guide where the United States needs to prioritize its efforts and resources.

Security has become an increasingly important aspect of screening immigrants and temporary visitors (including tourists) who come to the United States, and various security enhancements have reduced some of the obvious vulnerabilities. These measures also may have a deterrent effect, but as long as these terrorist organizations exist, the operative presumption must be that they will keep trying to carry out attacks here. How terrorists got here in the past shows us some important points, but may not be a reliable indicator of how terrorist organizations may attempt to bring violence here in the future.

That leads to the second question: How might terrorists in the future try to overcome the security measures in place to prevent their entry?

Addressing this question may help identify some remaining vulnerabilities.

### **A Long-Term Problem**

Concern about how to keep terrorists out of the country is not a new problem for the United States, nor is it one that will go away any time soon. While current events at home and abroad understandably drive our concern, it is important to recall that the threat of foreign-inspired terrorism reaches back before 9/11 to the terrorist attacks and plots of the 1990s—and even as far back as the early 1970s—and that the threat is likely to continue years into the future. It is the nature of contemporary conflict.

In 1973, Khalid Duhham Al-Jawary, acting on behalf of the Palestinian terrorist group Black September, flew from Jordan via Canada to New York, where he rigged car bombs to explode at three Israeli targets in New York City. Ironically, Al-Jawary (a citizen of Iraq and Jordan) entered

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<sup>4</sup> I would like to thank Richard Daddario, David Lubarsky, and my RAND colleagues Laura Baldwin, Jayme Fuglesten, Andrew Liepman, and Henry Willis for their reviews and helpful comments, and Janet Deland and Valerie Nelson for their editorial assistance.

the United States claiming to be enrolled in training for a commercial pilot's license—the same purpose the 9/11 hijackers gave. Owing to faulty circuitry, the bombs he constructed, which could have caused massive damage, failed to detonate. Al-Jawary was able to escape the country and was not apprehended until 18 years later. He was sentenced to 30 years in prison, but was released in 2009 and deported.

In the 1993 World Trade Center bombing, homegrown terrorists were assisted by bomb-maker Ramzi Yousef, who entered the United States on an Iraqi passport, then claimed asylum. To help him construct the bomb, Yousef enlisted Abdul Rahman Yasin, a U.S.-born citizen whose family had moved back to Iraq when he was a young child. Yasin used his U.S. citizenship to obtain a passport and returned to the United States eight months before the bombing.

After the World Trade Center bombing, authorities interrupted a follow-on plot to blow up additional targets in New York. Most of the conspirators in what became known as the Landmark Plot were U.S. legal permanent residents as a result of marriages later suspected to have been fraudulent.

One of the two would-be suicide bombers targeting New York's subway system in 1997 entered the country on a transit visa, which he overstayed. The other had a long record of illegal entries from Canada, but when Canada refused to take him back, he was placed on parole awaiting a hearing.

In 1999, as part of the broader Millennium Plot to carry out simultaneous attacks in the Middle East and the United States, Ahmed Ressam planned to bomb Los Angeles International Airport. He entered the country on a fraudulently obtained Canadian passport, but was stopped and arrested by U.S. Border Patrol agents. The 9/11 hijackers all entered the country on tourist, student, or business visas.

Since 9/11, al Qaeda's jihadist ideology has inspired more than 50 terrorist plots in the United States, most of them interrupted by authorities. Al Qaeda also has made several attempts to bomb flights bound for the United States. Two of these involved foreign recruits (Richard Reid, the "shoe bomber," and Umar Abdulmutallab, the "underwear bomber") who were able to obtain visas and board U.S. aircraft in Europe.

In addition, two Iraqis who were implicated in attacks against U.S. forces in Iraq were mistakenly allowed to enter the United States. Once their connection to Iraqi extremists was uncovered, they

were investigated, arrested and convicted for continuing to support extremist groups in Iraq, although they had not been involved in any terrorist plotting in the United States.

Since 1990, the United States has had a total of 182 terrorists who, inspired by jihadist ideology, have attempted to carry out attacks in the United States or on U.S.-bound flights—137 involved in post-9/11 terrorist attacks or plots, the 19 9/11 hijackers (plus the 20th hijacker, Zacarias Moussaoui, who entered the country and took flying lessons but did not participate in the 9/11 attacks), and the 25 pre-9/11 conspirators from the 1990s.<sup>5</sup> These numbers derive from ongoing analysis of publicly available records. They will be periodically augmented and corrected as additional information becomes available.

The good news is that 182 is a relatively low number of perpetrators (although with the disastrous outcome of 9/11), especially when spread over nearly 26 years. For the more than 14 years since 9/11, the total comes to 120, an average of about nine persons a year.

#### **How Did They Get Here?**

It is important to emphasize that the majority of terrorist conspirators discovered during the past 25 years were already here. They did not need to travel to the United States, they needed no documentation—they were Americans. In some respects, identifying terrorist operatives overseas and preventing them from coming here is the easy part. Identifying enemies among us is the big challenge.

Of these 182 persons mentioned above, 101 were U.S. citizens (at least 57 of them were born in the United States, 38 were naturalized, and six were U.S. citizens for whom details were not available). An additional 28 were legal permanent residents. Given the time it takes to become a U.S. citizen or even acquire legal permanent resident status, this means that at least 129 (71 percent) of the 182 were homegrown terrorists—that is, they were probably radicalized while living here. This appears to be the prevailing pattern. Few of the terrorist plots in the United States have involved recent arrivals. Three of the 1993 World Trade Center bombers; both of the would-be subway bombers in 1997; Ahmed Ressam in 1999—the 9/11 hijackers, of course—and,

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<sup>5</sup> This is according to information that appeared in earlier RAND publications and was updated for this hearing. See Brian Michael Jenkins, *Stray Dogs and Virtual Armies: Radicalization and Recruitment to Jihadist Terrorism in the United States since 9/11*, Santa Monica, Calif.: RAND Corporation, OP-343-RC, 2011; and *When Jihadis Come Marching Home: The Terrorist Threat Posed by Westerners Returning from Syria and Iraq*, Santa Monica, Calif.: RAND Corporation, PE-130-1-RC, 2015. I am grateful to my RAND colleagues Andriy Bega and Anita Szafran for their assistance in assembling the information and constructing the new spreadsheets.

since 9/11, a couple of others, came to the United States with the express purpose of carrying out a terrorist attack. The rest are homegrown.

Three of the four conspirators named in the 2006 plot to blow up fuel pipelines at John F. Kennedy International Airport in New York were foreigners who were arrested abroad—they did not enter the United States and therefore we do not count them here. Of the 50 who entered the country (as opposed to those already here for a while), 32 had some type of temporary visa. (Twenty of these came on tourist visas, five on student visas, one on a business visa, one on a transit visa, the others on unidentified visitor's visas.) At least one-third of the visa holders overstayed their visas. The others came as refugees or asylum seekers, crossed the border illegally, or used other means of entry. Information was unavailable for two entrants.

Counting only the 134 persons involved in terrorist plots after 9/11 (and excluding the three foreigners who were arrested abroad), 96 of them (or 72 percent) were U.S. citizens; another 19 were legal permanent residents. In other words, this indicates that 115 (or 86 percent) were long-term residents of the United States. Only eight (6 percent) of these 134 were in the country on some type of temporary visa. (The remainder entered the United States by a variety of other means and information is lacking for one.)

Looking at the 25 pre-9/11 and the 20 9/11 conspirators—45 in all, 31 were in the country on temporary status—only 14 (31 percent) of the 45 were U.S. citizens or legal permanent residents. The greater percentage of long-term residents in the post-9/11 terrorist plots may reflect increased scrutiny of entry visas after 9/11.

Unlike Europe, the United States has yet to see returnees from the conflicts in Syria and Iraq involved in terrorist plotting in this country. This is a development to watch for.

Two of the 182 conspirators identified to date entered the country as refugees (plus the two Iraqi refugees who were arrested in Kentucky in 2011). Two more of the plotters were in the United States as asylum seekers. Another plotter was identified as an "immigrant" without further details. Three of the plotters had entered the country illegally by crossing the Mexican border.

**Just three of the jihadist-inspired conspirators since 1990 entered the United States under the Visa Waiver Program.** Ahmed Ajaj, a terrorist operative trained in explosives, flew into the United States in 1992 on the same flight as Ramzi Yousef. He attempted to enter the country on a Swedish passport bearing another name but altered with his photograph. The alteration was crudely done, and he was sent to secondary screening, where immigration officials found two

other passports in his luggage. Detained by authorities, he later pleaded guilty to using an altered passport and was sentenced to six months in jail, although he continued to keep in contact with Yousef while the latter built the bomb that would be used in the 1993 World Trade Center bombing. Ajaj was released just days after the 1993 bombing but was then rearrested and convicted of involvement in the plot. Meanwhile, Yousef, who claimed asylum upon his arrival, was released pending a court hearing.

Despite reportedly being on a French watch list for suspected involvement in terrorist activities, Zacaria Moussaoui, the 20th 9/11 hijacker, was granted a visa waiver as a French citizen and allowed to enter the United States.

As a British citizen, shoe-bomber Richard Reid also was granted a visa waiver and allowed to board an airplane headed to the United States in December 2001. Reid's passenger profile and behavior at the airport attracted the attention of airline security authorities, who prevented him from boarding the flight. Later questioned and cleared by French authorities, he boarded the same flight the following day.

All three cases involving the Visa Waiver Program could have had serious consequences. However, Ajaj was put in jail, Moussaoui was not able to participate in the 9/11 attack, and Richard Reid's explosive device malfunctioned. Intelligence cooperation has improved since 2001, while visa waiver requirements have increased.

#### **Jihadist Conspirators in the United States since 9/11**

U.S. citizens	96
Legal permanent residents	19
Temporary visas	8
Visa Waiver Program	1
Illegal crossing of border	3
Other (asylum, refugee, etc.)	7
<b>TOTAL</b>	<b>134</b>

What conclusions can we draw from this historical record?

**The total number involved in jihadist terrorist plots in the United States is relatively low.** Al Qaeda's long campaign to inspire Americans to carry out attacks in the United States has produced meager results. Few Americans have responded, and most of their attacks have been amateurish; although some of their attacks were still lethal, they lack expertise. ISIL's effective use of social media has lured a greater number of followers to come to the Islamic State in the Middle East but has not produced a wave of terrorism here. Intelligence efforts abroad and in the United States have disrupted most of the terrorist plots.

**Most of the conspirators have been U.S. citizens or legal permanent residents radicalized in the United States.** Since 9/11, the principal problem has been homegrown terrorism, not terrorists entering the country from abroad, although again underscoring the point above that jihadist propaganda has produced a low yield of terrorist attacks in the United States.

**The failure to persuade Americans to carry out attacks may increase pressure on jihadist groups to infiltrate terrorist operatives to carry out attacks, recruit local confederates, and provide technical assistance.** However, recruiting locals likely would expose the jihadists to discovery here, especially if they attempt to involve a larger number of attackers—such as the eight people directly involved in the recent Paris attacks. All it takes is one wrong choice, one person to betray the operation.

Theoretically, terrorist infiltrators have a number of options. They can try to enter the United States as refugees or request asylum upon arrival. They can apply for various entry visas, or if they are from one of 38 countries currently in the Visa Waiver Program, they can go through the procedures for a visa waiver. They can try to enter by posing as someone else, using counterfeit or altered travel documents. Or they can attempt to sneak across one of the land borders. None of these possible entry routes offer terrorists easy access.

**Terrorists who tried to get in used many of the potential paths—visas of various types, asylum requests, fake marriages, and so on.** The entries are distributed fairly evenly across the many approaches. This likely represents the variety in the opportunities available to the small number of individuals who attempted entry. That is, each approach offered different advantages and disadvantages, and each followed the path that was the best one for them at the time. The resulting pattern is more a function of individual circumstances rather than a reflection of underlying vulnerabilities.

**In the past 25 years, only two refugees have been convicted of involvement in terrorist plots.** This does not count the two Iraqis, who should not have been allowed in the country but who were not plotting terrorist attacks here. Moreover, refugees wanting to come to the United States often have to wait months, even years, before gaining approval. It is a slow route and one of the most scrutinized, which may explain why terrorists have not used it.

**Only three would-be terrorists entered the country under the Visa Waiver Program, and none in the 14 years since Richard Reid's attempt to sabotage a U.S.-bound airliner.** However, the potential return from Syria of thousands of fighters with European passports will require increased vigilance. The new visa waiver application will ask specifically about travel to Syria, Iraq, or other conflict zones. The applicant may lie about it, putting the burden on intelligence collection to have accurate, up-to-date information about foreign fighters. Better information sharing, both within Europe and between Europe and the United States, is essential to ensuring that individuals known by one country to be affiliated with terrorism are known to all. Information within the European community must flow as easily as travelers can.

**Few would-be terrorists run the border.** One would-be bomber tried to enter the United States with a legitimate, although fraudulently obtained, Canadian passport, but he was stopped at the border for other reasons. Three persons illegally crossed the border from Mexico and, years later, became involved in a terrorist plot. In 2011, a radical Muslim cleric reportedly paid traffickers in Mexico to smuggle him into the United States but was arrested by Border Patrol officials. U.S. land borders are porous. Citizens from Mexico and Central America comprise the bulk of the immigrants illegally crossing the border, but immigrants from Middle Eastern countries and other non-European nations also have used this route for many years.

**The most common way foreign participants in terrorist conspiracies have entered the United States has been through obtaining ordinary visas for tourism, business, or student purposes.** Those who managed to enter successfully navigated the application and interview process. Since only eight such entries have occurred since 9/11, it is difficult to draw conclusions, except that it is not certain that procedures governing visa approval for non-visa-waiver citizens are necessarily better than those in place for granting visa waivers.

Moreover, **any reduction in entries through the Visa Waiver Program would increase the workload for processing visas, including interviews, which could degrade their quality.** Even spending a few minutes with each additional applicant would require significant reinforcements to the consular corps. (Nearly ten million nonimmigrant visas are were issued in 2014.)



Overstaying visas occurs in many of the cases. This is a problem that Congress has addressed several times. Tracking visitors' exits and visa overstay continues to be a major problem.

#### **Americans Who Went Abroad to Join Jihadist Fronts**

The data above include only individuals who have been involved in terrorist plots in the United States (or on U.S.-bound flights). Another 140 U.S. residents are known to have left home to join or try to join jihadist fronts abroad, or to seek instruction and gain experience that could then be used to plan attacks at home. Those who returned to participate in terrorist plots in the United States already have been counted in the above analysis. Others, frightened or disillusioned by what they saw, came home to lie low. However, in recent years, a growing number have left the United States seemingly for good to live or die in the ranks of ISIL or other foreign jihadist organizations in Syria and Iraq.

We have information on 134 of the 140. Of these, 115 (86 percent of the 140) were U.S. citizens, 18 were legal permanent residents, and one was a Canadian citizen. Foreigners residing in the United States on temporary visas do not show up in this group.

ISIL propaganda has been more successful than al Qaeda in attracting Americans to join its ranks abroad and also has been a point of inspiration for a number of recent terrorist plots in the United States. Thus far, no American returnees from Syria and Iraq have been involved in known terrorist plots in the United States.

Americans returning from Syria and Iraq, along with foreign fighters going back to visa waiver countries, as well as others, will pose a continuing terrorist threat, although it is important to point out that this group is among the most closely scrutinized. For reasons discussed below, this is, however, a long-term problem.

#### **Assessing the Current Situation in Syria and Iraq**

Before looking at the terrorist threat ahead, it is necessary to understand the dynamics of the conflicts in Syria and Iraq, which will continue to fuel that threat. Let me offer a brief assessment of the current situation.<sup>6</sup>

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<sup>6</sup> This summary is drawn from a more recent report: Brian Michael Jenkins, *How the Current Conflicts Are Shaping the Future of Syria and Iraq*, Santa Monica, Calif.: RAND Corporation, PE-163-RC, 2015.

*The fighting in Syria and Iraq will continue*

**Right now the situation is at a military stalemate.** By stalemate, I mean that the insurgents arrayed against the Syrian government and ISIL forces in Iraq cannot overthrow governments in Damascus or Baghdad, but for the foreseeable future, neither government will be able to restore its authority throughout national territory.

**Sectarian and ethnic divisions now drive the conflicts,** which have become an existential contest for all of the local parties—it is a fight to the death or, at least, exhaustion.

**Syria and Iraq are now effectively partitioned**—Iraq into relatively homogenous Shia, Sunni, and Kurdish zones, and Syria into a messier mosaic. This partition is likely to persist.

**Foreign powers have significant stakes in the conflicts, but they have competing interests.** Absent major military investments, outsiders cannot guarantee the victory of local allies.

*The world will be dealing with the fallout of this conflict for years to come*

The fallout includes a continuing terrorist threat, returning foreign fighters, and a deluge of refugees.

**ISIL's ideology continues to exert a powerful pull.** The U.S.-led coalition bombing campaign in Syria and Iraq, along with ground offensives by Iraqi government forces and Kurdish fighters, has recaptured some territory from ISIL, but the number of individuals joining or planning to join ISIL has not diminished. ISIL is calling on more to come.

ISIL portrays its struggle in apocalyptic terms as the final showdown between believers and infidels. This encourages extreme action and individual sacrifice. I suspect that as ISIL is put under increasing military pressure, we will see more references to the end of times, more calls to its supporters to carry out attacks lest they be left behind and miss their shot at paradise.

The volume of recruits, potential recruits, and returning fighters appears to be overwhelming authorities in Europe. While the number of Americans wanting to go to Syria has increased, it remains a fraction of the number of Europeans who are joining ISIL's cause.

As a consequence of the destructive style of fighting in the current conflicts, especially in Syria, 12 million refugees have been internally displaced or have fled the country. Another 4 million have fled or have been internally displaced in Iraq.

Hundreds of thousands of these refugees have headed to Europe, raising fears that terrorists can hide among the refugee masses to gain entrance into a country. Thus far, we have seen little evidence of this, although one or two of the terrorists in the Paris attack may have arrived in Europe disguised as a refugee. This is still being investigated.

The purpose of this sober assessment is to underscore that our exertions on behalf of security cannot be anaerobic. While providing for the common defense, the United States must preserve its open society and the ability of its citizens to travel abroad to visit, study, and conduct commerce (which means that others must be able to come here). Risk cannot be reduced to zero.

### **Looking Ahead**

Disengagement from the conflicts raging across Africa, the Middle East, and South Asia is tempting but dangerous. Both al Qaeda and ISIL continue to exhort their affiliate groups and individual followers abroad to carry out terrorist attacks on their behalf. Leaving them alone will not change their behavior. Jihadist ideology is inherently aggressive. Perpetual war is fundamental to the jihadist belief system—without continued armed struggle, there is no al Qaeda, no ISIL.

Military progress against ISIL paradoxically could make things worse in the short run. As pressure increases, ISIL may become more determined to carry out major terrorist attacks in the territories of its tormentors in order to erode their support for the continuing anti-ISIL campaign, demonstrate its continuing strength, and maintain morale among disheartened followers.

After the Russians intervened in the conflict and started bombing extremist targets in Syria, pro-ISIL terrorists sabotaged a Russian airliner. Losses on the ground in Iraq to Kurdish and other Iraqi forces preceded the attacks in Paris. Without asserting that these terrorist attacks were centrally directed, they do suggest a correlation between battlefield setbacks and retaliation via terrorist attacks. U.S. bombing of ISIL is cited as a major motive by terrorist conspirators in the United States. We can probably expect more terrorism as the campaign against ISIL progresses.

If ISIL is crushed, its local supporters will go underground, as they did before in Iraq, to continue the fight—but its foreign fighters cannot easily survive a clandestine struggle. They will go on to other fronts or return home. It is likely that some will be bent upon revenge.

In response to continuing terrorist threats, the United States has erected 21st-century walls: increased scrutiny of travelers, more fields to be filled out in entry applications, bigger intelligence databases, longer watch lists, identity checks requiring biometric confirmation. These have made us safer, but they must remain filters, not barriers to travel and commerce.

Back to our question at the outset: How might those determined to carry out attacks in the United States attempt to overcome these defenses?

Hoping that U.S. or European intelligence efforts will not identify everything, would-be attackers may still try to attempt to enter the country by obtaining visas or visa waivers. "New persons," supported by fabricated documents, may be created electronically. Terrorist plotters may also seek to recruit "clean skins"—those not likely to be on any watch lists—for training abroad. To further reduce the likelihood of raising suspicion, terrorist groups could try to train recruits in countries other than Syria or obvious conflict zones.

The 1993 World Trade Center bombing and the recent terrorist campaign in France involved combinations of remote direction, locally recruited participants, and external technical assistance. The recent attacks in France have involved foreign inspiration and assistance, returning foreign fighters, and local confederates. We must be constantly aware of new organizational configurations created by terrorists to increase their ability to carry out attacks on U.S. soil.

### **Intelligence Is Key**

Past successes (as well as failures) show that much depends on intelligence efforts. The immediate post-9/11 environment saw unprecedented cooperation among intelligence services and law enforcement organizations worldwide, which made the terrorists' operating environment a lot more hostile. And if some terrorists slip through these defenses, prevention will depend on domestic intelligence efforts to uncover recruiting and preparations.

Recent attacks suggest shortcomings in European coordination, which is critical to both European and U.S. efforts to monitor terrorist movements and thwart tomorrow's terrorist attacks. The security enhancements added to the visa waiver application and screening of other visa applicants from other countries depend on having the information necessary to audit what applicants claim.

We now have systems in place that allow all visa applications to be compared with the entirety of U.S. terrorism-related intelligence holdings, including what foreign intelligence services provide.

What the United States needs is full access to European passenger information and more data on European foreign fighters.

**BRIAN MICHAEL JENKINS**

Brian Michael Jenkins serves as the Senior Advisor to the President of the RAND Corporation. He is also the Director of the National Transportation Security Center at the Mineta Transportation Institute. From 1989 to 1998, Mr. Jenkins was the Deputy Chairman of Kroll Associates, an international investigative and consulting firm. Responsible for the firm's crisis management practice, he directed the responses to kidnapping and extortion cases worldwide. Before that, he was Chairman of RAND's Political Science Department where, from 1972 to 1989, he also directed RAND's research on political violence.

Mr. Jenkins has a B.A. in Fine Arts and a Masters Degree in History, both from UCLA. He studied at the University of Guanajuato in Mexico and in the Department of Humanities at the University of San Carlos in Guatemala where he was a Fulbright Fellow and recipient of a second fellowship from the Organization of American States.

Commissioned in the infantry at the age of 19, Mr. Jenkins became a paratrooper and ultimately a captain in the Green Berets. He is a decorated combat veteran having served in the Seventh Special Forces Group in the Dominican Republic during the American intervention, and later as a member of the Fifth Special Forces Group in Vietnam (1966-1967). He returned to Vietnam on a special assignment in 1968 to serve as a member of the Long Range Planning Task Group; he remained with the Group until the end of 1969 receiving the Department of the Army's highest award for his service. Mr. Jenkins returned to Vietnam on a third special assignment in 1971.

In 1984, Mr. Jenkins served as an advisor to the Long Commission, created to investigate the 1983 bombing of the U.S. Marines Barracks in Beirut. In 1985, he served as an advisor to the Inman Panel (the Secretary of State's Advisory Panel on Overseas Security). In 1986, he served on the commission to establish new security specifications for the Embassy of the Future. And in 1989-90, he was an advisor to the Presidential Commission on Aviation Security and Terrorism created to investigate the PanAm 103 bombing.

Since the early 1970s, Jenkins has served as a consultant in a number of negotiations to bring about the release of hostages kidnapped for ransom or political reasons. In the late 1970s and early 1980s, Mr. Jenkins served as a consultant to the Italian government and Italian corporations in dealing with terrorist attacks. From 1985 to 1986, Mr. Jenkins also served as an advisor to the Catholic Church and from 1986 to 1991 as an advisor to the Church of England in dealing with the kidnappings of Western hostages in Lebanon.

Following the World Trade Center bombing in 1993, Mr. Jenkins, while at Kroll Associates, was part of the team that identified terrorist threats and developed new security measures for the World Trade Center.

While at Kroll Associates and subsequently as an independent consultant, Mr. Jenkins has directed investigations dealing with economic espionage, international financial fraud, corruption, and organized crime.

In 1996, President Clinton appointed Mr. Jenkins to be a member of the White House Commission on Aviation Safety and Security. From 1999-2000, he served as an advisor to the National Commission on Terrorism and since 2000 he has served as a member of the U.S. Comptroller General's Advisory Board. As Director of the National Transportation Security Center at the Mineta Transportation Institute, Mr. Jenkins since 1997 has directed the institute's continuing research on protecting surface transportation against terrorist attacks.

Mr. Jenkins has served as a Special Advisor to the International Chamber of Commerce and is a member of the board of advisors to the ICC's investigative arm, the Commercial Crime Services. Over the years, Mr. Jenkins also has served as a consultant to or carried out assignments for a number of government agencies. As part of its international project to create a global strategy to combat terrorism, the Club of Madrid in 2004 appointed Mr. Jenkins to lead the international working group on the role of intelligence. He currently is a member of the Aspen Institute's Secretary of Homeland Security Advisory Group as well as a member of the World Economic Forum's Global Agenda Council on Terrorism.

Mr. Jenkins is the author of *International Terrorism: A New Mode of Conflict* (1974), the editor and co-author of *Terrorism and Personal Protection*, (1984) a textbook on kidnapping negotiations). He is the co-editor and co-author of *Aviation Terrorism and Security* (1998), and a co-

author of *The Fall of South Vietnam* (1976). He is the author of *Unconquerable Nation: Knowing Our Enemy, Strengthening Ourselves* (2006), *Will Terrorists Go Nuclear?* (2008), and *The Long Shadow of 9/11: America's Response to Terrorism* (2011). His latest book is *When Armies Divide: The Security of Nuclear Arsenals during Coups, Revolts, and Civil Wars* (2013).



Mr. DESANTIS. Thank you.

Mr. Gude, for 5 minutes, you're recognized.

#### STATEMENT OF KEN GUDE

Mr. GUDE. Thank you, Chairman DeSantis, Chairman Jordan, Ranking Member Lynch, and Ranking Member Cartwright, and all the members of the committee. I appreciate the opportunity to testify before you today on this critical issue.

In the wake of the attacks in San Bernardino and also the attacks in Paris, it is important that we understand what is the best way forward to improve national security programs that protect the American people. In my view, that is to manage and minimize the risk rather than an attempt to completely eliminate the risk simply because we cannot eliminate a risk in the open society in which we live.

What we should be working on is working together to reassure the American people that the steps that we are taking to protect them are adequate to manage that risk. And in light of that, I want to say about the Visa Waiver Program reforms that were passed earlier this week that, while I don't agree with every aspect of that bill, I do think it was in keeping with the working-together aspect and identifying genuine vulnerabilities and trying to improve those security programs related to those vulnerabilities without shutting down access to the United States.

What I think is unacceptable and dangerous in this time is to try and exploit the understandable and reasonable fears of the American people for political gain and push a jittery public towards hatred and prejudice. And I think that not for partisan reasons but because it is genuinely dangerous to the American people because it plays right into the hands of ISIS.

Before I get to my specific points about the Visa Waiver Program and other aspects of how we can protect the homeland, I want to elaborate on why I think it does play into the hands of ISIS to engage in rhetoric and actions directed at Muslim Americans and Muslims in the United States. ISIS has an explicit strategy—they talk about it in English all the time—to polarize Western societies as part of their effort to create a clash of civilizations. Now, their interpretation of a clash of civilizations is the West versus Islam, with ISIS representing Islam. Now, that is completely erroneous. ISIS does not represent Islam. ISIS is not a civilization. We are making a mistake to play into that framing of the issue and that ideology.

There can be no justification for joining ISIS. I'm not trying to rationalize any decision by anyone that they join ISIS. But we have to understand what motivates people to do so. And the alienation of Muslim communities in the West is one of the aspects that increases the capability of ISIS to recruit members into their ranks. Ignorance of that is not strength. Ignorance of that is a weakness on the part of our strategy. And we must do all that we can to eradicate that from our policy and our rhetoric. Now, specifically on the Visa Waiver Program, while I think it was important to address these vulnerabilities, one aspect that I think is necessary should these changes become law is that Congress now has the responsibility to fund and resource the consulates in visa waiver

countries to ensure that they can adequately manage what will likely be a much higher level of visa applications than they're traditionally used to because if they are visa-waiver countries, they probably don't have to deal with this very much. And we would not want to create that as a barrier to entry into the United States simply from a resource problem.

Getting to another aspect that was addressed or raised briefly by Chairman DeSantis, which is the refugee question, I join with Secretary Albright, Secretary Kissinger, many other former national security leaders, and I urge the Congress to reconsider the plan that would effectively shut down Syrian refugees entering the United States. The program is very rigorous. It is the most rigorous process to enter the United States of any way that you can enter the United States legally. I believe that the program adequately manages the risk. And should that come up before this Chamber again, I urge you to reconsider.

Lastly, I want to raise a point that Chairman DeSantis identified in his testimony, which is that we have a challenge for people who are in the United States and radicalized when they are here, legally or whether they've always been here. One of the things that I find hard to reconcile with the demand for the virtual elimination of the risk from Syrian refugees is an acceptance and tolerance of risk that individuals who have been identified as suspected of being tied to terrorism can freely purchase weapons in the United States. I find that—it's just hard for me to understand how, on one side, we seek to eliminate the risk from Syrian refugees; on the other side, we seek to tolerate risk at a very high level of suspected terrorists getting their hands on the most dangerous weapons.

With that, I will conclude. And I look forward to your questions. Thank you.

[Prepared statement of Mr. Gude follows:]

Testimony of Ken Gude  
 Senior Fellow at the Center for American Progress  
 Before  
 The House of Representatives Committee on Oversight and Government Reform  
 Subcommittee on National Security  
 And  
 Subcommittee on Health Care, Benefits, and Administrative Rules  
 For  
 Hearing on Terrorism and the Visa Waiver Program  
 December 10, 2015

Thank you Chairman Chaffetz, Ranking Member Cummings, the Chairs and Ranking Members of the two subcommittees, and all the Members of the Committee on Oversight and Government Reform, for inviting me to testify this morning. I am grateful for the opportunity to discuss my views on how we can best respond to the evolving tactics of ISIS and other terrorist groups to best protect the U.S. homeland from attack.

Improving national security programs that protect the American people is about managing and minimizing risk, because it is not possible to completely eliminate the risk of violence—whatever the motive—in an open society. The attacks in Paris and San Bernardino have understandably caused anxiety among many Americans. It is natural to be frightened by such senseless and brutal violence. We cannot help but imagine ourselves, our loved ones, our friends caught up in such terror.

In these difficult times, it is incumbent upon political leaders to reassure the American people that they are taking all of the appropriate steps to keep them safe now and in the long term. Our leaders must acknowledge shortcomings and work together across the aisle to improve our ability to meet a very real threat. What is unacceptable and dangerous to American security are the kind of rhetoric and policy proposals that attempt to exploit Americans' reasonable fears for political gain and try to push a jittery population toward increased hatred and prejudice. This distracts from real security needs with sensational fear mongering not based on facts and only plays into the hands of ISIS.

In addition to the responsibility to protect Americans, good governance requires that policymakers constantly strive to improve security measures and the efficacy of programs designed to screen entry into the United States, not only after new threats emerge, but all the time. Policy changes driven largely by fear in the immediate aftermath of terrorist attacks rarely prove wise in the medium and long term. While the vote to enhance the security procedures in the Visa Waiver Program on Tuesday was more measured and focused than other previous examples, it did move quickly and without process established to reconsider them should the security environment change. Even so, these changes addressed some potential

vulnerabilities without overly damaging a program that is vital to America's economic prosperity and openness.

Towards that end and at the direction of President Obama, the Departments of State and Homeland Security is now reviewing the K-1 visa program that allows fiancées of American citizens to enter the U.S. and was the program used by one of the alleged shooters in San Bernardino.

Additionally, we should be looking at other common sense reforms that would enhance the security of Americans, such as exploring public-private partnerships to increase our ability to combat terrorist recruiting online and steps to make it more difficult for those suspected of involvement in terrorism from being able to purchase the most dangerous weapons.

What we must avoid, however, is the kind of knee-jerk reaction in both our policies and our rhetoric that only plays right into the hands of ISIS. A centerpiece of ISIS strategy in the West is to provoke an anti-Muslim backlash by Western societies. ISIS leaders state this explicitly in their doctrine and their publications. They see an anti-Muslim backlash in the west as necessary to move the world toward their main narrative of a clash of civilizations between the West and Islam, with ISIS representing the only valid form of Islam.

We can and must be ruthless in defeating ISIS and the abhorrent ideology that drives it. Most of that effort must be undertaken at its source, in Syria and Iraq working with our allies and partners in the region. We can only do that if we join together with the overwhelming majority of Muslims that hate ISIS just as much—or more—and are dying in far greater numbers under the brutal assault of ISIS. Only our combined strength can destroy this terrorist group.

#### **Anti-Muslim Backlash Is a Threat to American Security**

Hateful rhetoric and discriminatory policies that target Muslims are morally wrong and genuinely threaten the safety of Muslims in the United States. We have already seen an increase in hate crimes and discrimination against American Muslims. Beyond these very important concerns about Islamophobia, too little attention is paid in our policy and political debates to the clearly stated goal of ISIS to provoke Western societies to alienate their Muslim populations through words and deeds.

The horrific violence that was, for a time, limited to ISIS's main area of operations in Iraq and Syria has recently spread to countries near and far. The bombings in Ankara and Beirut, the downing of a Russian airliner over Egypt's Sinai Peninsula, and the bombings and shootings in Paris mark a shift in ISIS's strategy to take its war to the next stage.<sup>1</sup> We do not yet know the full extent of the connection of ISIS to the San Bernardino shootings or whether ISIS leadership played any role in directing that attack. In any event, these planned attacks are not merely the actions of nihilists or random killings to slake a rampant bloodlust. Rather, according to

Jason Burke, journalist and author of numerous books on Al Qaeda and other terrorist groups, ISIS has three goals: to terrorize, mobilize, and polarize.<sup>2</sup>

The first objective of any terrorist organization, including ISIS, is to intimidate civilian populations and force governments to make rash decisions that they otherwise would not choose. William McCants, a scholar at The Brookings Institution, wrote in the wake of the Paris attacks that the leaders of ISIS “have thought long and hard about the utility of violence and the value of scaring ordinary people.”<sup>3</sup> By denying us freedom from fear, terrorists hope we will dismantle our other freedoms – like the freedom of religion, speech, or assembly – and be drawn into a conflict that saps our strength in the Middle Eastern desert. Fear driven by brutality is an effective method of social control.

The strategic mastermind behind the rise of ISIS, a former colonel in Saddam Hussein's Iraqi intelligence service who went by the pseudonym Haji Bakr, plotted ISIS's growth through the systematic application of incredible violence.<sup>4</sup> Haji Bakr's plan called for “the elimination of every person who might have been a potential leader or opponent.”<sup>5</sup> It proved successful in gaining control of the Syrian city of Raqqa, and under Bakr's leadership, ISIS began using this strategy to expand to areas outside of its original base in Syria and into Iraq. This provided the basis for declaring a caliphate in June 2014.

ISIS's second objective is to motivate its supporters and enhance its legitimacy in the areas where it has seized control. A 2004 essay called “The Management of Savagery”—written by Abu Bakr Naji for the precursor to ISIS, Al Qaeda in Iraq—outlined many elements of the strategy that ISIS now pursues. It describes that “its specific target is to motivate crowds drawn from the masses to fly to the regions which we manage, particularly the youth.”<sup>6</sup>

Scott Atran, the director of research at France's National Center for Scientific Research, wrote of ISIS that the complexity of the Paris attacks and the clear success at recruiting French and EU nationals “enhances its legitimacy in the eyes of its followers.”<sup>7</sup> Multiple teams operating in different areas of the city, attacking simultaneously and with varied methods, recalls spectacular terrorist attacks such as Mumbai in 2008 or 9/11 and demonstrates disciplined military tactics. ISIS said of the recent attacks that it left “Paris and its residents ‘shocked and awed,’” clearly a reference to the U.S. description of the bombing campaign in Iraq in 2003, as well as how ISIS hoped the attacks would be received among its supporters.<sup>8</sup>

The third objective, which Burke describes as “the most important,” is to generate a response that will alienate Muslim populations from their governments, particularly in the West, and thus increase the appeal of the ISIS caliphate among them.<sup>9</sup> Harleen Gambhir of the Institute for the Study of War, identifies this as part of “ISIS's plan to eliminate neutral parties through either absorption or elimination, in preparation of eventual all-out battle with the West.”<sup>10</sup>

Preparation for that all-out battle is central to understanding how ISIS sees the world. Its English-language magazine, *Dabiq*, is named after a Syrian city featured in a prophecy in which, according to McCants, the Prophet Muhammad “predicts the Day of Judgment will come after the Muslims defeat Rome at al-Amaq or Dabiq.”<sup>11</sup> An essay in the February 2015 edition of *Dabiq* describes the world as comprised of “two camps before the world for mankind to choose between, a camp of Islam ... and a camp of kufr—the crusader coalition.”<sup>12</sup> In between those two camps is something that ISIS calls “the grayzone,” composed of either “hypocrites” or “‘independent’ and ‘neutral’ Islamic parties that refuse to join the Khilafah [Caliphate, or ISIS].”<sup>13</sup>

It is the Muslims in this so-called grayzone that are the target of the ISIS effort at polarization. The essay in *Dabiq* cited above is titled “The Extinction of the Grayzone.” ISIS uses the existence of its self-described caliphate in Iraq and Syria and its terrorist attacks outside of its area of operations to compel “the crusaders to actively destroy the grayzone themselves.”<sup>14</sup> This will happen, ISIS argues, because “Muslims in the West will quickly find themselves between one of two choices, they either apostatize ... or they perform hijrah [emigrate] to the Islamic State [ISIS] and thereby escape persecution from the crusader governments.”<sup>15</sup> ISIS wants a clash of civilizations between itself and the West, after all Muslims have either abandoned the faith or joined ISIS. Essentially, the subsuming of all existing Muslim nations into the caliphate is a precursor to the final war with the rest of humanity.

#### **Access and Screening on Entry to the United States**

Many of the changes to the Visa Waiver Program that passed the House this week represent the right way to go about adopting new security measures at our borders and beyond—increasing intelligence gathering capabilities and tightening security protocols, but importantly, not shutting down whole programs or denying access in an arbitrary manner. I may not agree with every aspect of the bill and would have preferred a mechanism that would have required Congress to revisit some of these changes in the future. Critically, however, the impact of the changes only adds levels of screening to the entry process and still provides a pathway into the United States for all affected individuals should their visa application be approved.

The K-1 visa program that allows fiancé(e)s of United States citizens to enter the country provided they intend to marry within 90 days of entry has come under scrutiny because one of the alleged shooters in the San Bernardino attack entered as the fiancé of the other shooter. Although we do not yet know whether any derogatory information could have been obtained had the background and security checks been more rigorous than they already are—we do not, at this point, know the trajectory of the couple’s radicalization, for instance—it makes sense to step back and assess the current background and security check process.

I recognize that the House has already acted on this issue, but should it come before this body again, I join with former Secretaries of State Henry Kissinger and Madeleine Albright, and former Generals Michael Hayden and David Petraeus, and

urge the House to reconsider its action to effectively shut down the Syrian and Iraq refugee programs.

This action was taken in great haste in the wake of the ISIS attacks in Paris and with incomplete information about the role, if any, Syrian asylum seekers played in that attack. With the benefit of a little more time and hindsight, it is now possible to recognize that this program has sufficient safeguards to adequately manage the risk associated with accepting Syrian and Iraqi refugees. The system of screening and background checks for Syrian and Iraqi refugees is already the most rigorous for any entry system into the United States. Each refugee goes through 21 separate steps before being admitted into the United States, a process that takes on average two years.

Shutting down this program in an effort to eliminate any risk associated with Syrian and Iraqi refugees would be counterproductive. It would only intensify the pressure on countries in the region and our European partners and contribute to the cycle of destabilization that would likely exacerbate the refugee problem in the future. Thus the pursuit of a zero risk policy may actually increase the risk rather than eliminate it.

At the same time, we should always explore ways to improve the security check process. The administration could direct law enforcement and intelligence agencies to devote greater staff and resources to the background and security check process. Congress should support those efforts through increased appropriations. The United States also could help to lead a multilateral effort to initiate more intelligence-gathering efforts in the refugee camps. This could be done by conducting more interviews and collecting more biometric and biographic data.

#### **Other Steps to Protect the Homeland**

The ability of terrorist groups like ISIS to use modern communications technology, particularly social media, to transcend national boundaries, spread their messages of hate and violence, and recruit new members has prompted fresh calls for technology companies to do more to fight terrorism. There is likely more than can be done, for example, greater resources devoted to working with law enforcement and intelligence agencies to block ISIS and other terrorist affiliated social media accounts spreading hateful propaganda.

It is, however, a policy debate that should be approached with caution. First, often the best way to identify suspected terrorists is through monitoring known social media accounts linked to terrorist groups. There is a risk that we may inadvertently shut down a critical path for detecting and preventing terrorist attacks. Second, these issues are extremely complex and given the technology involved there is little understanding of the appropriate trade offs between security and privacy involved in certain decisions.

Both House Homeland Security Committee Chairman Michael McCaul and Senate Minority Leader Harry Reid have recently and separately propose a national commission to examine the issues related to security, privacy, social media communications, and encryption in the context of the current threats we face.<sup>16</sup> Such a commission could be the ideal forum to give these issues the level of consideration they need and deserve.

One common sense reform that would help manage the risk of additional terrorist attacks is making it more difficult for those suspected of links to terrorism to purchase the weapons of mass murder. Current federal law prohibits access to firearms for nine categories of dangerous people in the United States but inclusion on the consolidated terrorism watch list is not one of them.<sup>17</sup>

We know that international terrorist groups are seeking to exploit this vulnerability. For example, an al Qaeda video tells its followers that, "America is awash with easily obtainable firearms... So what are you waiting for?"<sup>18</sup> The GAO found that that individuals on the terror watch list were successfully able to purchase a firearm more than 2,000 times over a ten-year period.<sup>19</sup>

Opponents of this measure—often the same people that demand zero risk on refugees—claim that the terrorism watch list "contain a significant number of errors," of people that should not be on the lists and therefor should not be used to restrict the ability to purchase weapons.<sup>20</sup> That argument accepts a level of risk associated with the possibility that a suspected terrorist could easily purchase the most dangerous weapons is very hard to reconcile with the demand of zero risk in other areas.

Additionally, concern that the terrorism watch list has too many false positives can be overcome with a strong process that allows individuals erroneously denied a gun to reverse the decision and be removed from the watch list. Rep. Peter King and Sen. Dianne Feinstein have a bill that would establish such a robust process while at the same time prevent those the government suspects of links to terrorism of purchasing the kinds of weapons used in the San Bernardino attacks. The fact that the alleged perpetrators were not on a terror watch list or no-fly list should not give us comfort when thousands on those lists are buying weapons.

## **Conclusion**

ISIS is not going to win this war. Its apocalyptic worldview and horrific violence will always prevent the group from obtaining broad support from any population, even if they are cowed into submission under ISIS brutal control. Ultimately, there is no amount of alienation or discrimination that could drive sufficient numbers to ISIS to affect the ultimate outcome of this conflict. What is in doubt is the duration of the battle and how bloody it will be.



To best protect the homeland, we must manage and minimize the risk of terrorist attack by constantly examining our security structures and enacting measured reforms when new vulnerabilities emerge. The worst way to protect the homeland is to engage in wild demagoguery and Islamophobia that has too often typified the public debate in the wake of Paris and San Bernardino.

Should the United States fail to snap out of this spasm of anti-Muslim sentiment that has followed in the wake of the Paris attacks, then the level of alienation that is currently more prevalent in Europe could become common here. This would provide ISIS with additional fuel to prolong this war and increase the loss of innocent lives. If, however, the United States and other Western societies view our fellow citizens—who happen to be Muslim and want freedom, democracy and justice as much as we do—as our partners in defeating the objectives of ISIS, and if we make common cause with the overwhelming majority of Muslims around the world who want to destroy ISIS, then this will be a shorter conflict with far fewer lives lost.

We cannot account for the utter barbarism of ISIS. But we are in complete control of how we react to it.

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<sup>1</sup> Eric Schmitt, "Paris Attacks and Other Assaults Seen as Evidence of a Shift by ISIS," *The New York Times*, November 22, 2015, available at [http://www.nytimes.com/2015/11/23/world/europe/paris-attacks-isis-threatens-west.html?\\_r=1](http://www.nytimes.com/2015/11/23/world/europe/paris-attacks-isis-threatens-west.html?_r=1).

<sup>2</sup> Jason Burke, "Islamic State 'Goes Global' with Paris Attacks," *The Observer*, November 14, 2015, available at <http://www.theguardian.com/world/2015/nov/14/islamic-state-goes-global-paris-attacks>.

<sup>3</sup> Will McCants, "How the Islamic State Declared War on the World," *Foreign Policy*, November 16, 2015, available at <https://foreignpolicy.com/2015/11/16/how-the-islamic-state-declared-war-on-the-world-actual-state/>.

<sup>4</sup> Christoph Reuter, "Secret Files Show Structure of Islamic State," *Spiegel Online International*, April 18, 2015, available at <http://www.spiegel.de/international/world/islamic-state-files-show-structure-of-islamist-terror-group-a-1029274.html>.

<sup>5</sup> Ibid.

<sup>6</sup> William McCants, translator, "The Management of Savagery by Abu Bakr Naji" (Cambridge, MA: John M. Olin Institute for Strategic Studies at Harvard University, 2006), available at <https://azelin.files.wordpress.com/2010/08/abu-bakr-naji-the-management-of-savagery-the-most-critical-stage-through-which-the-umma-will-pass.pdf>.

<sup>7</sup> Scott Atran and Nafees Hamid, "Paris: The War ISIS Wants," *The New York Review of Books*, November 16, 2015, available at <http://www.nybooks.com/blogs/nyrblog/2015/nov/16/paris-attacks-isis-strategy-chaos/>.

<sup>8</sup> Madison Pauly, "The Latest Issue of ISIS's Magazine Is As Terrible As You'd Think," *Mother Jones*, November 18, 2015, available at <http://www.motherjones.com/mojo/2015/11/isis-magazine-dabiq-paris-beirut-russia>.

<sup>9</sup> Burke, "Islamic State 'Goes Global' With Paris Attacks."

<sup>10</sup> Harleen Gambhir, "ISIS Global Intelligence Summary: January 7 – February 18" (Washington: Institute for the Study of War, 2015), available at [http://www.understandingwar.org/sites/default/files/INTSUM\\_Summary\\_update.pdf](http://www.understandingwar.org/sites/default/files/INTSUM_Summary_update.pdf).

<sup>11</sup> William McCants, "ISIS Fantasies of an Apocalyptic Showdown in Northern Syria," The Brookings Institution, October 3, 2014, available at <http://www.brookings.edu/blogs/markaz/posts/2014/10/03-isis-apocalyptic-showdown-syria-mccants>.

<sup>12</sup> ISIS, "The Extinction of the Gray Zone," *Dabiq*, February 2015, available at <https://ansarukhilafah.wordpress.com/2015/02/14/the-extinction-of-the-grayzone/>.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Julian Hatttem, "Homeland Chair Moves to Rein In 'Dark' Networks," *The Hill*, December 7, 2015, available at: <http://thehill.com/policy/cybersecurity/262322-homeland-chair-moves-to-rein-in-dark-networks> And, Office of Senator Harry Reid, "Senate Democrats Announce Legislation to Defeat ISIS And Keep America Safe," Press Release, December 7, 2015, available at: [http://www.reid.senate.gov/press\\_releases/2015-12-07-reid-senate-democrats-announce-legislation-to-defeat-isis-and-keep-america-safe](http://www.reid.senate.gov/press_releases/2015-12-07-reid-senate-democrats-announce-legislation-to-defeat-isis-and-keep-america-safe)

<sup>17</sup> Center for American Progress, "The Terror Gap," Fact Sheet, November 20, 2015, available at: [http://www.reid.senate.gov/press\\_releases/2015-12-07-reid-senate-democrats-announce-legislation-to-defeat-isis-and-keep-america-safe](http://www.reid.senate.gov/press_releases/2015-12-07-reid-senate-democrats-announce-legislation-to-defeat-isis-and-keep-america-safe)

<sup>18</sup> Sudip Bhattacharya, "Al Qaeda Video Resurfaces Urging Radicals to Buy Guns in U.S," CNN.com, April 12, 2013, available at: <http://www.cnn.com/2013/04/11/politics/al-qaeda-video/index.html>

<sup>19</sup> Center for American Progress Fact Sheet, at note 17.

<sup>20</sup> Shahien Nasiripour, "Rubio Questions Legitimacy of Terror Watch Lists," *The Huffington Post*, December 6, 2015, available at: [http://www.huffingtonpost.com/entry/rubio-terror-watch-lists\\_566442c1e4b072e9d1c67df3](http://www.huffingtonpost.com/entry/rubio-terror-watch-lists_566442c1e4b072e9d1c67df3)

Mr. DESANTIS. Thank you. Thank you.

The chair now recognizes himself for 5 minutes.

Ms. Kephart, given the recent events in Paris, what improvements could be made to the vetting process for visa applicants generally in order to protect the security of the United States? And what lessons are there to be learned with regard to our immigration system from past terrorist attacks?

Ms. KEPHART. I think the visa system itself—do you want the visa-free system or the visa system?

Mr. DESANTIS. Both. Because I think that we have to look at the visa system in order to evaluate the visa-free system. I think there's problems with both.

Ms. KEPHART. Right. So, on page 14 of my written testimony, I have a chart there which pulls together the elements that visa has today and the visa process has today that the ESTA process for visa-free travel does not. There are a number of elements there I think in the visa travel that can be brought into the visa-free. The biggest one I think—without demeaning the value of the ESTA process itself because it does have value—is to add the biometric screening to it. I think it's very difficult to do that necessarily with the individuals within the Visa Waiver Program. You really have to do that in a controlled environment, which is why I recommend preclearance be a mandated requirement for VWP status.

So, for visa-free, I think adding the biometric and the vetting before they travel to the United States and make that a complete vetting process, what you're not going to get with that, which visas do have today, is the interview necessarily, although you could have secondary inspection available there. And you're not going to have that time to do what they do at consular offices now, which is, for those that have it, the visa security units that do the extra immigration check through ICE, HSI, or the National Counterterrorism Center intelligence checks. You're not going to have that ability to do an in-depth, in-your-own-time check.

The visa process I honestly think has done a really good job, the State Department, of bettering itself over the course of time. The one thing that has happened is they've peeled back a little bit on the interviews. And they made some requirements there.

Mr. DESANTIS. They —missed Tashfeen Malik, who had been going back and forth—

Ms. KEPHART. Yeah. Yeah.

Mr. DESANTIS. —from Saudi Arabia to Pakistan and had been radicalized—now they say—before she came here.

Let me just ask you this. We passed a bill this week. That does not—that bill may be a first step, but that does not solve all the problems, correct?

Ms. KEPHART. That's correct.

Mr. DESANTIS. And we talk about some of these other countries. But a country like Belgium does not really do a very good job at providing the type of information that we would expect in order to be sure that the people who are getting visa-free travel. So somebody in a place like Molenbeek, they can basically, even under this bill, they're still going to be able, if they have a passport, to come to the United States. Is that your understanding?

Ms. KEPHART. Yes.

Mr. DESANTIS. Ms. Burriesci, senior DHS officials told the Government Accountability Office in April of 2013 that the Department had not reported overstay rates because it did not have sufficient confidence in the quality of the overstay data. And so they said that they couldn't reliably report overstay estimates in accordance with the statute. The GAO went on to link the lack of confidence in overstay data to current biographical data system and lack of a biometric system to verify the identities of alien travelers. Why did DHS officials tell the GAO that it did not have confidence in the biographic system in 2013?

Ms. BURRIESCI. During that time, we were still working to connect some systems, some biographic systems, to exchange data between agencies within DHS. And one of the issues, once you are enhancing your systems, you can't kind of go back and see the data that, you can't unfix what you, what was in the past. So we have worked the last several years to improve those data exchanges and make sure that data is flowing in order to be able to develop accurate numbers moving forward.

Mr. DESANTIS. So you have confidence in it now, unlike Secretary Napolitano did not have confidence, you think now, standing here today, that the system is good and trustworthy?

Ms. BURRIESCI. We have certainly increased confidence since that time, absolutely.

Mr. DESANTIS. But that may not be sufficient.

Let me ask you, Ms. Kephart, to comment on specifically, if a terrorist it able to come through the Visa Waiver Program, supposed to be here 90 days, but in point of fact if they come here and they need a 6-month time period in order to orchestrate and conduct an attack, is there really a significant risk to them that they are going to be removed from this country on the 91st day?

Ms. KEPHART. Not unless they come across criminal law enforcement and there's some connection to a terrorist watch list, no.

Mr. DESANTIS. Exactly.

Let me ask Mr. Jenkins and Ms. Burriesci. Is DHS currently—well, let me ask Ms. Burriesci this first one—is DHS currently monitoring individuals who have recently traveled to countries, such as Syria and Iraq, where radicalization or training efforts are obviously readily apparent?

Ms. BURRIESCI. So if there was continuous travel that had a nexus to the United States, we would certainly have that information. If there's not a nexus to the United States and, say, one of our VWP countries are aware of that travel, they are absolutely reporting foreign fighter information to us. That's one of the benefits of the VWP program.

In cases if it's unknown to the VWP country, unknown to the United States, there's no nexus; that is a potential that we would be unaware of that travel. That's why when individuals travel to the United States, we also do have algorithms running in the background for the checks that we do conduct to do our best to match up what we might term as, like, broken travel because it doesn't have that nexus.

Mr. DESANTIS. Let me ask Mr. Gude, one of the statements in your report was from a woman who said ISIS wouldn't be here if there wasn't Islamophobia. Do you believe that that statement is

true? In other words, would you subscribe the motivation for the World Trade Center bombing in 1993 to a reaction against Islamophobia?

Mr. GUDE. No.

Mr. DESANTIS. What about the Khobar Towers in 1996? No, correct?

Mr. GUDE. No. But what I would say—

Mr. DESANTIS. The 9/11 attack?

Mr. GUDE. I'm sorry?

Mr. DESANTIS. The 9/11 attack?

Mr. GUDE. No.

Mr. DESANTIS. Right. So these people have an ideology independent of anything, our policies or what we do. I mean, do you agree with that?

Mr. GUDE. I certainly do. But I would say that simply because they have their own motivations, they certainly don't need an excuse to attack us. And, again, I'm not trying to rationalize any decision to do so. But I think our own ignorance about what does motivate them in some way and what does alienate populations, particularly in Europe, they have a much more serious problems with this in Europe than we do here in the United States, but this, if we create a system or we create a situation in which Muslims feel like they need to be separated from society, that makes it much more easy and makes them—some of them—much more susceptible to the kinds of sophisticated recruiting techniques that ISIS employs and not—and we should be making it harder for them, not easier.

Mr. DESANTIS. What strikes me is that some of the people who have been very successful terrorists have been educated, you know, middle, higher income people that actually had a lot of opportunities. And so I'm not saying that we don't need to be sensitive to the broader populace. But I think that it's not something that is being done necessarily in reaction to our policies.

And you talked about managing the risk of terrorism rather than eliminating the risk of terrorism. And you cited the refugee—you acknowledge that there is risk with the refugee program, given the FBI Director's statements that they cannot vet all the people that are coming.

Mr. GUDE. Of course, there's risk. And that's why they established the most rigorous screening system.

Mr. DESANTIS. But it's a screening system, as Mr. Jenkins points out. Some of the people who have come and have committed terrorist acts have come through the refugee program. I think the question is, what is your tolerance for risk? I think most Americans, if they think that there's a chance, even if you're 99 percent accurate out of 10,000 people that you're bringing over here, and you're talking about 100 people that you'd be bringing into the country that would potentially do harm. So I think how you deal with the risk, I think that your testimony suggests you would have more tolerance than I think most Americans would be.

I'm out of time. Let me recognize Mr. Lynch for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

I want to thank all the witnesses. You've already been helpful in some respects. I do want to go over our vetting process and screen-

ing process because there's some statements out there that are really in conflict. Some of the witnesses have pointed to the weaknesses. Others have pointed to the strengths.

In one of our previous hearings, we had the Department of Homeland Security Inspector General John Roth testify both before our committee and before Homeland Security. Before the Homeland Security Committee in June, he pointed out that, despite rigorous processes, that TSA did not identify 73 individuals with links to terrorism because TSA was not cleared to receive all the terrorism databases that other agencies had and did not have access to current interagency watch list guidance. So the Office of Inspector General did something very simple, he asked for the TIDE list, the terrorist, you know, terrorist—T-I-D-E.

Ms. BURRIESCI. Identities Datamart Environment.

Mr. LYNCH. There you go, Terrorist Identities Datamart Environment. It's basically the terrorist watch list. He took that list, and then they did a merge with people who were working in secure locations at our Nation's airports. So they merged the two lists. And there were 73 individuals who were on both lists, the TIDE list, and they were working in secure locations with credentials, you know, they had those credentials around their necks working at secure locations. So that makes me worry. That makes me worry that—now, I originally thought they were DHS employees—and I was wrong—because DHS was screening them. But they were actually working for contractors within the airport, airlines, or maintenance people. But the problem is, you got these people who are on the terrorist watch list and they're working in secure areas at the airports; scares the hell out of me.

So now we have this situation going on with the Visa Waiver Program. And we're screening them. Now, in fairness, OIG, the Office of Inspector General, Mr. Roth said he did not fault TSA because they didn't have access to that intel; they weren't given those lists. So I'm not going to hold their feet to the fire here, because they didn't have the information. But I damn well am sure they're going to get it because we can't have that happening.

So, Secretary Burriesci, have we, because of that situation, and also DHS said at the time: Okay, we got to straighten this out. We're going to take steps. We'll do a deep dive on these 73 people, figure out what the indicia of terrorist connection is, and take appropriate action.

And I am assuming that that has happened. I hope that's not a leap of faith. Nevertheless, the vetting process, the screening, have we got that straightened out so that all the bad guys are on the lists that all our people see who are screening?

Ms. BURRIESCI. I'll start by saying the interagency does the very best it can to make sure we have the most solid, consolidated terrorist watch list. And I believe the United States has the best terrorist watch list. The Terrorist Screening Database is the United States Government's consolidated terrorist watch list. That is a different database than TIDE, the one you mentioned. TSA does screen all airport workers, as well as all of its other credentialed populations, against the terrorist watch list.

Mr. LYNCH. Okay. Now, just for my own education, was the National Counterterrorism Center that did this merge that allowed 73

people with secure, you know, credentials in the airports that are on the TIDE list, is that list better? Is it the serious characters? Is it a—I know one of these lists is 900,000 people. I think that's the TIDE list, right? So is the broader list better? Or is the narrowest list better? What is the distinction here?

Ms. BURRIESCI. So the terrorist watch list, the Terrorist Screening Database, owned and operated by the Terrorist Screening Center, holds all of the known and suspected terrorists. That's our bad guy list. That's what we're going to screen all of our credentialed population—

Mr. LYNCH. So the people at the National Counterterrorism Center, they don't have bad guys?

Ms. BURRIESCI. The TIDE database, yes, has all the people in the Terrorist Screening Database in it, as well as other individuals. And I highly recommend you have a closed session with NCTC to discuss that because they can go into significant detail with you.

Mr. LYNCH. We've had them in. Just so you know, we had them in. Just so you know, there are no good guys on that list that was given to me. Are you saying that there's good guys on that list?

Ms. BURRIESCI. On which list? I'm sorry.

Mr. LYNCH. The National Counterterrorism Center's TIDE list.

Ms. BURRIESCI. I'm saying that there are individuals who have been cleared and have no nexus to terrorism. And we make sure that we do not—

Mr. LYNCH. While they're on the list or after they've been cleared from the list?

Ms. BURRIESCI. I highly recommend that you have a in detailed session with them because—

Mr. LYNCH. As long as you're not putting a fiction out there that we've got good guys on one list that we're using, as long as you're not saying that.

Ms. BURRIESCI. Sir, we recurrently vet all individuals against the Terrorist Screening Database that have access to our secure areas of our airports. It's recurrently vetted. TSA will know in real time—

Mr. LYNCH. Just to be clear because if the National Counterterrorism Center has a list of good guys, then we're in serious trouble. I need to drag them in here and say: What are you doing? I wish I had them here now because we have—

Ms. BURRIESCI. They could go into detail in a closed session on anything. I'm sure they would be happy to do that.

The OIG report wasn't about individuals though. And I did want to correct that. It was records. So when TSA did an additional scrub, it was less than that.

Mr. LYNCH. It was 69 instead of 73. Are you going to hang your reasoning on that argument?

Ms. BURRIESCI. Absolutely not.

Mr. LYNCH. Okay. So it's 69 and not 73. I'll give you that.

Ms. BURRIESCI. And TSA has access to the TIDE database as well. What they're seeking, what the OIG's report was alluding to is giving them automated access. So just to clarify, there are some nuances.

Mr. LYNCH. Yeah. Well, I bristle at the fact that I got pushback that I was wrong because these were contractors that were in se-

cured areas with security credentials and they weren't DHS employees, like that's somehow vitiates the blame here. The idea is that you have people on the terrorist watch list working in secure areas at the airports. That's the point I'm trying to get at. It's the vetting process, the screening process that we are being told over and over again that is so robust and impervious. So let's work together here. And let's not be in denial. Let's just say: Okay, we got some stuff we need to fix. And let's fix it. I'm with you.

Ms. BURRIESCI. Sir, I'm always willing to fix anything in terms of security.

Mr. LYNCH. All right.

Ms. BURRIESCI. DHS' mission is to prevent terrorism. I just wanted to clarify—

Mr. LYNCH. All right.

Ms. BURRIESCI. —that those individuals were not on the terrorist watch list.

Mr. LYNCH. Wait a minute. Well, I need to go back here again. They are on the National Counterterrorism Center's list of people with connections—let me read what the inspector general said again.

And you missed them. You missed them. You didn't have the chance to even review what they were guilty of because you completely missed them. So you didn't vet them. That's why they're working at the airports.

Let me just go back to what the inspector general did. He pointed out that, despite rigorous processes, TSA did not identify 73 individuals with links to terrorism because TSA is not cleared to receive all terrorism categories.

Hello. So you didn't vet them. How do you know they were good guys?

Ms. BURRIESCI. And all I'm clarifying, sir—I'm not disputing what you read in the OIG report. I'm just saying that that—

Mr. LYNCH. You are. You are. He just said "links to terrorism," and you're saying no.

Ms. BURRIESCI. Because NCTC's database is not the terrorist watch list. The terrorist watch list—

Mr. LYNCH. I understand the distinction between the two lists.

Ms. BURRIESCI. So TSA—

Mr. LYNCH. But you didn't have the other list. TSA did not have the other list.

Ms. BURRIESCI. TSA has access to the list but not in an automated fashion—

Mr. LYNCH. This is the problem. Right here, this discussion, you and I, this is the problem. This is the problem.

You're saying that because these people have links to terrorism but they weren't on that list—they were on another list. So, even though they have links to terrorism, you're going to let them work in secure areas of the airport, no problem. Nothing to see here, let's move along.

Are you kidding me? That's why we have—look, there is, like, 75 percent of the American people who don't believe we have a plan, that the administration has a plan to deal with this. This is why. This is why. I'm on your side. I'm trying to make this safer, and



all I'm getting is resistance that they weren't on that particular list. Give me a break. Come on.

Let's work together here just to make the airports safer. And if we have a problem, if we have a gap, say, "We had a gap, we are going to fix it," rather than doing this silly dance that they are not on the list that you go by.

Ms. BURRIESCI. Absolutely, sir, I want to work with you. And I'm happy to go into detail and——

Mr. LYNCH. All right. I'll yield back.

Ms. BURRIESCI. —on all the classified pieces——

Mr. DESANTIS. The gentleman's time has expired.

The chair now recognizes Mr. Russell for 5 minutes.

Mr. RUSSELL. Thank you, Mr. Chairman.

We've been struggling with the number of folks that are on the terror watch list. As Members of Congress, we're trying to determine what that number is and are having to rely on open source information.

So, Secretary Burriesci, could you, even in ballpark terms, tell us what is the size of that list?

Ms. BURRIESCI. I don't actually have that off the top of my head, but I can get back to you.

Mr. RUSSELL. Can you give us an estimate where we didn't have to rely on open press reports? Is it between one and a million? I mean, what would be your number?

Ms. BURRIESCI. I really just don't even want to speculate on a wrong number, but I'm happy to call my——

Mr. RUSSELL. You can't even speculate on the size of the list.

Ms. BURRIESCI. —interagency partners and get back to you on that.

Mr. RUSSELL. Ms. Kephart, would you enlighten us, please?

Ms. KEPHART. My information is a few years old. I was about to meet——

Mr. RUSSELL. A few years old. Yeah.

Ms. KEPHART. —with Mr. Healy of the Terrorism Screening Center a few years ago where he was able to give me information he said I could make public. At that time, I did so, and, at that time, there were 10,000 to 20,000 terrorists in the U.S., on U.S. soil, that the FBI knew about. That's what I know.

Mr. RUSSELL. People suspected, that were under suspicion.

Ms. KEPHART. The folks that were on the terrorist screening watch list, to have reasonable suspicion that they were indeed involved with terrorism, that legal level that is a little bit above, in terms of evidence, of the TIDE list, which is just a conglomeration of people we think could be involved.

Mr. RUSSELL. Can this committee get a number? I mean, we have people of all——

Ms. KEPHART. That's up to the administration, sir. I'm private.

Mr. RUSSELL. We have the Nation, you know, on every side of this issue—407 people on the House floor, I mean, if that's not darn near unanimity, I don't know what is in this building, that voted for this visa waiver protection because we feel that that is where the greater threat lies. We can discuss the other aspects. But we can't even get good figures in an open hearing that would be, oh, rounded to the nearest 100,000, say.

Can you give us a number?

Ms. BURRIESCI. Sir, I just want to make sure that the number is accurate. And I will—

Mr. RUSSELL. Oh, sure, but we—

Ms. BURRIESCI. —make sure the Terrorist Screening Center is responsive to that request.

Mr. RUSSELL. Okay. Thank you. And I guess we'll have to rely on our First Amendment and reporters that would dig, because, you know, we're just the Oversight and Government Reform Committee. What business is it of ours, constitutionally, to get these numbers?

Could you speak to the passports for sale on Malta, Secretary Burriesci?

Ms. BURRIESCI. I don't have information on that.

Mr. RUSSELL. Well, you just gave us some of these concerns in your testimony today, such as passports that would be for sale in Malta and not going through a vetting process, and that caught my attention. So I would like you to comment.

Ms. BURRIESCI. That was in Ms. Kephart's testimony.

Mr. RUSSELL. Oh, I'm sorry, Ms. Kephart.

My apologies, Madam Secretary.

Ms. BURRIESCI. That's okay.

Ms. KEPHART. So Malta and Cyprus are the two visa waiver countries right now that sell citizenship for a price, with no residency requirements and very little vetting. Other countries, including ourselves, also make long-term residency and passports available based on investment.

But the countries that absolutely sell it outright with no vetting procedures in place, I think, are a little bit dangerous. And, of course, Malta and Cyprus have had serious financial issues—

Mr. RUSSELL. But these are among the 38, Cyprus and Malta—

Ms. KEPHART. Yes, they are. They're visa waiver countries right now.

Mr. RUSSELL. Okay. Thank you so much.

And, Mr. Chairman, I just want to address one thing that was made in some opening testimonies—or, not testimonies, but comments of our committee. As probably the only firearms manufacturer in Congress, there's a lot of very inaccurate information that's being thrown out there.

One, if you are a nonresident immigrant alien, you cannot purchase a firearm. If you're on any visa waiver, it is unlawful, it is against the law to purchase a firearm. And you certainly can't walk into any facility and purchase explosives. And I would be happy to educate any member on this committee on what 18 U.S. Code is on the sale of firearms. We are wasting a lot of time and effort on that.

Mr. Gude, you said that you didn't totally agree with every aspect of what 407 Members of Congress voted for this last week. I would be curious what you didn't agree with.

And then you said that we should not be on the hook to fund higher standards. Pray tell why other nations should have our money when we're trying to protect our shores. If they want a visa waiver, why should we pay for that? Don't you think they should? I am curious to your logic here, sir. Could you please enlighten me?

Mr. GUDE. On the last part, I'm not sure I follow that question.

Mr. RUSSELL. Well, let me reiterate it, with the chairman's indulgence. You said that we would have to—these, you know, changes in the Visa Waiver Program, that we would have to allow, you know, funding for these other countries to handle that.

Mr. GUDE. Yeah, our own consulates in those countries. If you're in a visa waiver—if you're a consulate in a visa waiver country, you probably do not have a large number of staff there to process visa applications. So U.S. Government employees in U.S. embassies and consulates in visa waiver countries. That was the point that I was making.

Mr. RUSSELL. Well, I think those countries, if they want this, that they certainly could assist in the expense of that. And—

Mr. GUDE. But excuse me, if I could just—that situation is analogous, sir, it's exactly the same to what every U.S. embassy and consulate has in a non-visa-waiver country. It shouldn't be an additional burden; that we would think that if we were going to change the rules about how people in visa waiver countries get into the United States, I think it's completely reasonable, then, to say that we have to ensure that our U.S. Government offices are fully resourced in order to handle that change.

Mr. RUSSELL. Well, sure. And when you look at China, who is not one of the 38 countries, they send a lot of people here. They have more people in this country on permanent residencies of some nature than I have in my whole State, as a population. And they don't have the visa waiver. And I think that we can make these accommodations and still protect the United States of America.

And, with that, Mr. Chairman, thank you for your indulgence, and my time has expired.

Mr. DESANTIS. Thanks. The gentleman's time has expired.

The chair now recognizes Mr. Cartwright for 5 minutes.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

And, again, I thank the witnesses to this joint subcommittee hearing of the Oversight and Government Reform committee.

You know, my friend Mr. Russell of Oklahoma just intoned the phrase, "We are only the Oversight and Government Reform Committee," and he was saying so quite tongue-in-cheek, and I want to amplify on that a little bit.

You know, all of us, every single Member of Congress, regards as our most solemn duty the protection of the American public. And we all feel that way on this committee. And I must say that I have some very close and dear friends on the other side of this dais; we all feel the same way. And we're all looking for strength and unity. And our common purpose is protecting the American people. And we're having this hearing to that end.

Now, you know, we've been talking about vetting processes and screening processes. And, you know, here on Oversight and Government Reform, when we take testimony, we have our own vetting and screening processes. In fact, one of them is a form that we call the Truth in Testimony form, and all witnesses are required to fill it out.

Ms. Burriesci, you're with DHS—Secretary Burriesci. Is it a correct fact that a company called MorphoTrak has a contract with DHS right now?

Ms. BURRIESCI. I actually don't know the answer to that, but I can check. I don't have any contracts in my area.

Mr. CARTWRIGHT. Well, as a matter of fact, it does. In fact, I have a news article here that indicates U.S. Citizenship and Immigration Services, which is a part of DHS, recently entered into a \$13.6 million contract with MorphoTrak for a fingerprint scanning system.

And I'd like to enter this into the record, Mr. Chairman.

Mr. RUSSELL. [Presiding.] Without objection.

Mr. CARTWRIGHT. And this is about you, Ms. Kephart. I'm looking at your financial disclosure on the Truth in Testimony form, and I'm going to read it. There are only three questions on the form.

"Please list any Federal grants or contracts you have received since October 1, 2012. Include the source and amount of any contract." You wrote, "None." This is your handwriting; am I correct in that?

Ms. KEPHART. Yes, it is, sir.

Mr. CARTWRIGHT. Number two, "Please list any entity you are testifying on behalf of and briefly describe your relationship with those entities." You wrote, "No. However, to be clear, I'm testifying in personal capacity, although I am with a leading biometric company, MorphoTrak, as of September 2015."

And then question number three says, "Please list any Federal grants or contracts, including subgrants or subcontracts, received since October 1, 2012, by the entities you listed above. Include the source and amount of each grant or contract." And you wrote, "None," although you had listed MorphoTrak in the immediately preceding answer.

Ms. KEPHART. Correct.

Mr. CARTWRIGHT. And I guess the question is, Ms. Kephart, you knew we would be counting on you to be completely honest in filling out our Truth in Testimony form, didn't you?

Ms. KEPHART. And I was, sir.

Mr. CARTWRIGHT. Okay.

Ms. KEPHART. This is my 19th time before Congress testifying on issues of border security, national security, and—

Mr. CARTWRIGHT. Right. So you're not a rookie here. In fact, you're a lawyer, aren't you, Ms. Kephart?

Ms. KEPHART. Yes, I am. And—

Mr. CARTWRIGHT. So when you see—

Ms. KEPHART. —I was not with MorphoTrak in 2012, sir.

Mr. CARTWRIGHT. —a Truth in Testimony form that says list the entities above that you have contracts with the Federal Government and you wrote, "None," are you saying that's correct, even though there's a \$13.6 million contract with DHS?

Ms. KEPHART. Sir, I am testifying in my personal capacity, not on behalf of MorphoTrak. So, yes, I filled out the form in terms of my personal capacity. However, if you would like me to go back and change the form and list those contracts, I'm happy to do so. USCIS has nothing to—do with this testimony.

Mr. CARTWRIGHT. Well, what we're interested in here is that our forms get filled out correctly and that we have the complete con-

text. So when we hear from a witness like you—I mean, part of your testimony is recommending that we implement——

Ms. KEPHART. And my written testimony, sir, includes that discussion on MorphoTrak. I was completely honest.

Mr. CARTWRIGHT. Part of your testimony is that we implement recommendations; three of them are to implement biometrics.

Ms. KEPHART. Which I have testified about many times.

Mr. CARTWRIGHT. The company you work for makes and sells biometrics. Are you saying it's a matter of complete indifference to you whether your employer——

Ms. KEPHART. Yes.

Mr. CARTWRIGHT. —gets this business?

Ms. KEPHART. Yes, sir, I am.

Mr. CARTWRIGHT. You're saying it is. Okay.

Well, here's the point. House Rule 10 requires this form to give committee members, the public, and the press a more detailed context within which to view the testimony. And we expect, Ms. Kephart—listen, you're not a rookie at this.

Ms. KEPHART. I am happy to go back and redo it, sir.

Mr. CARTWRIGHT. We expect you to fill out the form correctly so that we on the Oversight and Government Reform Committee and the American public listening to this testimony can view your testimony and your recommendations in the complete context, not a partial context, not a half-truth, the whole truth.

Will you do that in the future, Ms. Kephart?

Ms. KEPHART. I will absolutely—if you would like, sir——

Mr. CARTWRIGHT. Thank you.

Ms. KEPHART. —I will redo it today.

Mr. CARTWRIGHT. I yield back.

Mr. RUSSELL. The gentleman yields back.

The chair now recognizes the gentleman from Ohio, Mr. Jordan, for 5 minutes.

Mr. JORDAN. Thank you, Mr. Chairman.

Ms. Burriesci, earlier this week, the chairman of the Homeland Security Committee gave an important speech where he talked about extremist groups, terrorist groups that are trying to exploit the refugee program. So, like Mr. Russell just a few minutes ago, I would like to see if you can give us some numbers just so the committee and the American people have this information.

How many Syrian refugees have entered the United States in the last year?

Ms. BURRIESCI. Sir, I didn't bring any of the refugee numbers with me because I was prepared to talk about visa waiver. But I can certainly have us send that to you.

Mr. JORDAN. Do you know how many Americans have traveled to Syria in the last year?

Ms. BURRIESCI. I don't have that number on me either.

Mr. JORDAN. So you wouldn't know how many Americans have traveled and then returned?

Ms. BURRIESCI. I don't have that number on me.

Mr. JORDAN. How many Visa Waiver Program overstays are there currently in the United States?

Ms. BURRIESCI. Sir, I didn't bring that number with me.

Mr. JORDAN. Ms. Burriesci, when I look at the witness list, you've got the longest title, "Deputy Assistant Secretary, Screening Coordination, Office of Policy, Department of Homeland Security." You've got the longest title.

And it says "Screening Coordination." Now, what screening are you coordinating? Is that just intra-agency, or is that interagency?

Ms. BURRIESCI. It's both.

Mr. JORDAN. It's both. So it's all of that.

Ms. BURRIESCI. I coordinate across DHS components as well as—

Mr. JORDAN. And the two biggest issues right now that we're dealing with relatively, we had these terrible tragedies, terrible terrorist attacks, and we're talking about the refugee issue and the Visa Waiver Program issue, and you can't give us any numbers on either program?

Ms. BURRIESCI. Sir, I came prepared to talk about the Visa Waiver Program.

Mr. JORDAN. And I just asked you how many Visa Waiver Program overstays are there, and you said you don't know.

Ms. BURRIESCI. Sir, I don't have a number. The Visa Waiver Program—

Mr. JORDAN. So when I ask how many overstays of the Visa Waiver Program may have traveled to Syria before they got here, do you know that number?

Ms. BURRIESCI. Sir, if a Visa Waiver Program national has—a citizen of a Visa Waiver Program country, rather, has traveled to Syria, Iraq, or a conflict zone and they are considered a foreign fighter, that VWP country—

Mr. JORDAN. I'm not asking that. I'm saying someone from Great Britain comes to the United States on a Visa Waiver Program and they are now an overstay, do we know if that person, who is here today—maybe they're not even an overstay—do we know if that person has been to Syria before they came to the United States? Do we know that?

I mean, I know this is what our bill that we just passed earlier this week is trying to get to. I'm asking, do we know that information now?

Ms. BURRIESCI. So that's why we have the IC involved and there's an intelligence assessment, and we use—

Mr. JORDAN. I wasn't asking that. Do we know that? Do you know the number?

Ms. BURRIESCI. I don't know the number, but that's why I'm trying to explain that the—

Mr. JORDAN. But do we have people who are in that category I just described, come from a Visa Waiver Program country, they are here today and may have been in Syria or Iraq or somewhere there before they came here? Do we know that?

Ms. BURRIESCI. If a citizen of a VWP country has traveled to one of those areas, there's a nexus to United States, or the VWP partners shared that information with us, yes, we know that information, and we will vet against it. We will also use our algorithms—

Mr. JORDAN. But could they be here right now is my question.

Ms. BURRIESCI. I don't have that answer, sir.

Mr. JORDAN. All right.

Well, how about, can you tell me anything about the no-fly list then? You can't tell me anything about those—how does a person get put on—the criteria for that? Can you tell me anything about that?

Ms. BURRIESCI. Sure. The no-fly list is a subset of the overall screening database. The interagency works together. The Terrorist Screening Database is owned and operated by the Terrorist Screening Center, as I said earlier. There are criteria to get on that that are agreed to—

Mr. JORDAN. How many American citizens are on that list right now? Can you give me that number?

Ms. BURRIESCI. I'm sorry, sir?

Mr. JORDAN. How many American citizens are on the no-fly list right now?

Ms. BURRIESCI. I know there are American citizens on the list. It is an extremely small number, but I don't have my numbers with me. But, again, that is something I can easily get back to you afterwards.

Mr. JORDAN. Ms. Burriesci, I've asked you the number of Americans who've traveled to Syria, you don't know; the number of Americans who may have traveled and returned, you don't know; the number of Syrian refugees who have entered the country in the last year, you don't know; the number of Visa Waiver Program overstays, you don't know; the number of visa waiver overstays who may have been to Syria before they came here, you don't know; and the number of American citizens on the no-fly list, and you don't know.

And yet you are the Deputy Assistant Secretary for Screening Coordination, Office of Policy, Department of Homeland Security, in front of the Oversight Committee, and you can't give us one single number to some, I think, pretty basic questions?

Ms. BURRIESCI. Some of those statistics aren't held by DHS, and so that's why I would like to work with my interagency partners to get you—

Mr. JORDAN. That's why I referenced your title. You're the one who's the screening coordinator for all this, and you said you were interagency. That's why I referenced your title. It seems to me, when you come in front of this committee, you should have that information.

Ms. BURRIESCI. I'm a DHS employee. I am a DHS career civil servant employee. And I will work with my interagency partners, but they're the authoritative source for a lot of those numbers that you mentioned.

Mr. JORDAN. If you could get us those numbers and the ones Mr. Russell asked for, that would be very helpful.

I thank you, Mr. Chairman.

Mr. RUSSELL. And if I may answer one of your questions, according to the Department of State, for fiscal year 2015, up to the 18th of November, there were 1,810 Syrians that had come into the country on the refugee program.

The chair now recognizes the gentlelady from New Jersey, Mrs. Watson Coleman.

Mrs. WATSON COLEMAN. Thank you, Mr. Chairman.

And thank you to the witnesses for being here.

On Sunday, President Obama took the rare step of addressing the Nation from the Oval Office to discuss the recent terrorist attacks in San Bernardino and Paris and the rising level of unprecedented violence that the world is facing.

In Sunday's address, only his third from the Oval Office, the President called on Congress to take specific and immediate steps to protect the American public from further acts of terrorism. The President, however, was clear that those steps should not be driven by fear.

Here is what he said, and I quote: "Our success won't depend on tough talk or abandoning our values or giving in to fear. That's what groups like ISIL are hoping for. Instead, we will prevail by being strong, smart, resilient, and relentless and by drawing upon every aspect of American power."

The threat of ISIS is real. It is ultimately the goal of ISIS to instill fear, causing us to make decisions we would not otherwise make. And we must resist that urge to live in fear.

Mr. Gude, you have written about the exploitation of fear to influence public policy, and you said something in your testimony today that I want to highlight. You said, and I quote, "What is unacceptable and dangerous to American security are the kind of rhetoric and policy proposals that attempt to exploit Americans' reasonable fears for political gain and try to push a jittery population," which is an understatement, "toward increased hatred and prejudice."

What are the dangers of fear-based policy?

Mr. GUDE. Well, I think there's two things.

One, it is often the case that when we make policy decisions in the immediate aftermath, with incomplete information and motivated out of a sense of fear, those policies over the medium and long term don't particularly turn out as we intended.

Secondly, I think that when we create a climate of fear and suspicion within the United States we risk alienating Muslim Americans and our Muslim populations, making it a situation in which they are more susceptible to the kind of sophisticated recruiting techniques that ISIS employs.

Now, again, I want to reiterate that I am not rationalizing any decision to join ISIS. Everyone has the agency, they make their own decisions, and there is no justification for joining a group like ISIS, whether or not you intend to commit violence.

But it is incumbent, I think, on policymakers to understand the motivations for why people do join ISIS and make it much more difficult for ISIS to get people into their ranks.

Mrs. WATSON COLEMAN. The President also called for the rejection of discrimination and proposals to treat Muslim Americans differently. Do you agree?

Mr. GUDE. Yes. Absolutely.

Mrs. WATSON COLEMAN. Discriminatory policies are inconsistent with the Constitution but also seem counterproductive from a security standpoint. What effect do these policy ideas have on ISIS and similar terrorist organizations?

Mr. GUDE. Well, the narrative that ISIS is using, both talking to people who are already in its ranks and trying to recruit them, is



that we are in a clash of civilizations, where the crusaders, or the West, versus ISIS, representing Islam. And when we in the West buy into that rhetoric, describe it as a clash of civilization, it makes it easier for ISIS to sell that narrative.

What they are trying to do, they divide the world into three groups—the West, ISIS, and in the middle they call something called the gray zone. Now, their description of the gray zone is targeted at Muslims who live in the West and have not yet joined ISIS, not yet come to the caliphate, as they describe where they are in Iraq and Syria. And their effort is to literally destroy that gray zone by pushing Muslims toward ISIS.

Now, when we in the West engage in an anti-Muslim backlash, we make that job easier. Now, again, I want to reiterate that there is no justification for making that decision. But, in our own actions and in our own policies, we should understand what ISIS is trying to do and not play right into their hands.

Mrs. WATSON COLEMAN. Much of this anti-Muslim rhetoric has surrounded this Syrian refugee population, who a recent Cato Institute report found to pose no significant threat to the United States. Specifically, Cato found in a November 18, 2015, report titled, quote, “Syrian Refugees Don’t Pose a Serious Security Threat,” that, I quote, “Of the 859,629 refugees who have entered the United States since 2001, 3 have been convicted for planning a terrorist attack abroad and exactly zero have perpetrated domestic attacks.”

With the rise of ISIS and the growing number of threats against the United States, we are seeing more and more suggestions for policies that lead to unintended consequences of trampling on the civil rights and liberties of American Muslims, and these ideals are inconsistent with ours.

Thank you.

Thank you, Mr. Chairman.

Mr. RUSSELL. The gentlelady yields back.

And the chair now recognizes the gentleman from South Carolina, Mr. Mulvaney.

Mr. MULVANEY. Thank you, Mr. Chairman.

I’m going to try and get to something that might be a little bit more simple, a little bit more straightforward, which is going back to something I heard during the opening testimony of Ms. Kephart and Ms. Burriesci.

And I apologize. When you have a last name like “Mulvaney,” it gets mispronounced a lot. So I apologize if I’m butchering yours—about the Visa Waiver Program, the basics of it.

Here’s my question to both of you. I am a French national. I’m born there, I’m living in one of the suburbs, I have become a radicalized Islamist. Can I get on an airplane tonight to come to the United States of America?

Ms. Burriesci?

Ms. BURRIESCI. You’re doing great with the name.

Mr. MULVANEY. Thank you.

Ms. BURRIESCI. A French national who wants to come to the United States for business or tourism reasons would require an ESTA. For any other reason, they would require a visa. The checks would be the same—

Mr. MULVANEY. I want to get in as quickly as I possibly can. I want to say I'm a tourist. Because I want to come here and blow something up. Could I get on the plane tonight and do that?

Ms. BURRIESCI. If we have that derogatory information, absolutely not, regardless of—

Mr. MULVANEY. But tell me the process I have to go through before I can get on the airplane.

Ms. BURRIESCI. You have to have—so you have to fill out an online application or a visa application, again, depending on your purpose for coming to the United States, and those are vetted.

Regardless of either, the same biographic checks are occurring. You're hitting the Terrorist Screening Database, the terrorist watch list, you're hitting State Department's holdings, you're hitting DHS holdings, you're hitting the National Counterterrorism's holdings. And you're going to be recurrently vetted.

If we have derogatory information that you have ill intent, you're a terrorist, you're a known or suspected terrorist, absolutely not. Either one, you're going to get denied.

Mr. MULVANEY. So, regardless of whether or not I'm a terrorist, I'm a French national with a French passport, and I just decide tonight that I want to get on an airplane and come to New York, I have to go through the process that you just mentioned.

Ms. BURRIESCI. Absolutely. Nobody can just walk on a plane and come to the United States.

Mr. MULVANEY. Ms. Kephart, is that right?

Ms. KEPHART. Yes, it's right, as long as the terrorist has decided to use his real identity.

So, yes, Kelli Ann's process is, indeed, correct. You have to fill out an online ESTA process. You can even do that process at the airport. But it's only biographic, and that's the difference.

Mr. MULVANEY. Okay. And let's build on that a little bit. How long does it take to do that? You say I can do it at the airport.

Ms. Burriesci, how long does it take me to actually go through that vetting process? Again, I'm assuming that I'm not lying yet. I haven't stolen passports; that's a different issue. I'm not trying to hack a computer. I'm just an ordinary French citizen with a passport. How long does it take to do that?

Ms. BURRIESCI. It's a short period of time to clear, assuming everything is coming back green. Certainly, if there's a flag of any kind, you're referred to the nearest consulate.

Mr. MULVANEY. Okay. So if there's no flag—because what we're hearing now is that, while some of the terrorists in France, in the Paris bombings, were on some lists in France, others were not. So those folks, apparently, would not have come up on your background check, your vetting process.

Am I saying anything that's inaccurate so far? If we didn't know about them and the French didn't know about them, they would have cleared those background checks, right?

Ms. Kephart is saying yes.

Ms. BURRIESCI. Yes. The response would have been the same, whether it was an ESTA or a visa.

Mr. MULVANEY. Okay. So how long would it have taken to go through that process?

Ms. BURRIESCI. The ESTA application vetting is not a long period of time. You can do it that day.

Mr. MULVANEY. Okay.

Ms. BURRIESCI. Yes, sir.

Mr. MULVANEY. Okay. So I guess what I'm hearing then—and what I'm always concerned about is if I'm getting good information and the folks I represent are getting good information. And what I am hearing is that if I read something on the Internet, saw it on the news, heard it on talk radio, that said that at least some of the Paris bombers could have come into this country and we would never have known about it because of the Visa Waiver Program, that is a true statement.

Ms. BURRIESCI. I would really have to refer you to the FBI's Terrorist Screening Center for additional information other than what I've already said.

Mr. MULVANEY. That's fine. Let's assume, then, for my question that the French didn't know they were potential terrorists and we didn't know they were potential terrorists. They would be able to come in the same day.

Ms. BURRIESCI. If there is no derogatory information—

Mr. MULVANEY. I'm not trying to accuse you of not doing your job. I'm just getting trying to get information.

Ms. BURRIESCI. No, I understand, sir.

Mr. MULVANEY. Okay.

So, Ms. Kephart, how do we fix that?

Ms. KEPHART. As I discussed in my testimony, I think the win-win for everybody—for DHS, for the program itself, for the traveler—is establishment of preclearance and making that mandatory, something DHS has been pursuing for a while.

They're having trouble because every country they have to develop an MOU with. If you made it part of the Visa Waiver Program and established some requirements, I think it would make it easier for Customs and Border Protection to do that negotiation and to get that vetting prior to boarding, which is what everybody is always concerned about.

Mr. MULVANEY. Very quickly to both you ladies—and I'm going to go a little bit over time but not too much—is the bill that the House passed earlier this week on a large bipartisan margin, does that actually help the situation?

Ms. BURRIESCI. Yes—oh.

Mr. MULVANEY. Ms. Kephart?

Ms. KEPHART. Go ahead.

Ms. BURRIESCI. Yes, sir. The bill adds practical security value in many areas.

Mr. MULVANEY. Ms. Kephart, do you agree with that?

Ms. KEPHART. It does—it reiterates current law. I don't think it goes too much further than what we have on the books right now. The requirement regarding information regarding people who have traveled to terrorist known spots, that's going to be very difficult to enforce, I think.

So I think it's a very good start. I really appreciate that it was bipartisan and the White House is on board and this is moving forward together, but—

Mr. MULVANEY. Last question.

Ms. KEPHART. —we need more.

Mr. MULVANEY. I appreciate the indulgence. Last question. Are we more at risk from someone traveling here from the United Kingdom, which is a Visa Waiver Program country, because of the information we get from them, or are we more at risk from someone traveling from Russia, which does not participate in the Visa Waiver Program?

Ms. Burriesci?

Ms. BURRIESCI. Sir, I certainly that think the Visa Waiver Program adds additional security value than just vetting the traveler alone. Because we have those information-sharing arrangements, they are sharing their known or suspected terrorists and foreign fighters with us. They are meeting security standards—

Mr. MULVANEY. Because the U.K. participates in the program, they give us information that other countries that do not participate in the program do not.

Ms. BURRIESCI. That's exactly right, sir.

Mr. MULVANEY. Do you agree with that, Ms. Kephart?

Ms. KEPHART. Well, I think the difference with U.K. is it's one of the Five Eyes countries, so we have better information-sharing with them than we do even with some of the other visa waiver countries. So perhaps you take a country like Belgium, which is not one of the Five Eyes—and then I still think the Visa Waiver Program offers the opportunity to land in the United States in a more vulnerable way than the visa process does, although there are some benefits that Ms. Burriesci has discussed.

Mr. MULVANEY. Thank you, Mr. Chairman.

Mr. RUSSELL. The gentleman yields back his time.

And the chair now recognizes the gentlelady from Michigan, Mrs. Lawrence, for 5 minutes.

Mrs. LAWRENCE. Thank you, Mr. Chair and Ranking Member.

I just want this on the record, that we passed a bill before we had this dialogue. And, to me, in Congress, that is not the process that the American people want us to do. This dialogue is important, and it should have happened prior to us voting on the bill.

I'm going to bring up an issue that I have continuously talked about. Gun violence has been an issue that I've been focused on since my time in Congress, particularly my district, which has been plagued with gun violence. This is the first year in history of our country that gun deaths are tracking to be the leading cause of deaths of Americans age 15 through 25. We are losing a generation to senseless gun violence.

The issue is becoming more disturbing when we hear that there is the possibility that terrorists, identified terrorists, are able to legally purchase weapons that they need to commit act of violence simply because of a loophole in the law.

Mr. Chair, I wanted to enter into the record the GAO statement and letter dated March 6, 2015, if I may.

Mr. RUSSELL. Without objection.

Mrs. LAWRENCE. The Government Accountability Office recently analyzed FBI data on background checks for firearm-related purchases for individuals on the terrorist watch list between February 2004 and December of 2014.

Mr. Gude, are you familiar with this recent GAO study?

Mr. GUDE. Yes.

Mrs. LAWRENCE. According to this GAO report, individuals on the terrorist watch list attempted to purchase firearms or explosives in the U.S. at least 2,233 times, of which 2,043 of those sales were approved.

Mr. Gude, that means that 91 percent of the attempts by suspected or known terrorists to purchase firearms were approved. Is that correct?

Mr. GUDE. To my knowledge, yes.

Mrs. LAWRENCE. In just the 2-year period between January 2013 and December of 2014, individuals on the terrorist watch list were involved in firearm-related background checks 485 times, of which 455 were approved. That is a 94-percent approval rate. Anyone that hears that number should have a sense of concern.

My question to you, sir, is that, while we have individuals who are legally not restricted—and we're talking about individuals coming to this country. Tell me, what is your opinion on the concern on the purchases of guns by those who have been identified as terrorists?

Mr. GUDE. Thank you for your question. It is an issue of grave concern. And I want to applaud all the members of the committee for their attention to the details in the questions that the panel has received trying to identify where the actual risks are in our system. This strikes me as one of our serious risks.

In his opening remarks, Chairman DeSantis identified that one of the categories of potential terrorist attacks are people who are radicalized in the United States. There would be no visa waiver or visa program or screening at the border that would catch those individuals. We are relying on the information that our intelligence agencies and our law enforcement community have about those individuals to ensure that they can detect and prevent any plots that target Americans here in the United States.

It is hard for me to reconcile the level of risk tolerance that many are advocating for entry into the United States, which is understandably extremely low and one that I broadly support, with what is the level of risk tolerance for individuals who are on the terror watch list, who we either know or suspect of links to terrorism, to be able to buy semiautomatic assault weapons.

Now, any process that restricts the access to purchasing weapons must also include an opportunity for a redress there. You know, if there's an error in the list, if you were erroneously denied purchase, there ought to be a robust process for you to be able to have that decision overturned if it is incorrect.

But the notion that we should allow potential errors in the system to prevent us from denying easy access to the most dangerous firearms to people that we think are terrorists is just mind-boggling.

Mrs. LAWRENCE. Thank you.

Mr. Chair, I just want to end with this chilling comment by a senior Al Qaeda operative. And I quote: "America is absolutely awash with easily obtainable firearms. You can go to a gun show and pick up a fully automatic assault rifle without background checks. So what are you waiting for?" That is one part of the radicalization.

The other thing I want to say before I close is that the comprehensive and deliberate policy to fight against terrorism is absolutely our job in Congress. And this issue should be just as much a part of the debate and a part of the discussion.

And the next time we have someone coming here from the Department of Homeland Security, I would hope that they would have more data and be better prepared so that we can get more information.

Thank you.

Mr. RUSSELL. And the gentlelady has yielded back her time.

I wish to address one item. You cannot purchase a fully automatic anything at a gun show. They are controlled by the Bureau of Alcohol, Tobacco, and Firearms with a \$200 tax stamp. It takes months of approval, if approved, extensive checks. There is a lot of inaccurate information out there, and I would just correct the panel member on this issue.

An assault rifle is a select fire rifle that you can switch from semiautomatic to fully auto. You cannot go and purchase one of those anywhere. And we should not take the bait on ISIS propaganda. And while we're having these discussions, we can't, on suspicion alone, allow our constitutional liberties to fall prey to such inaccurate nonsense.

And, with that, I would like to turn over the chair—well, actually, I will turn to and recognize Mr. Mica from Florida, and then I will turn over to the chair.

Mr. MICA. Well, thank you.

And, again, the gentlelady preceding me mentioned about the deaths in the United States with firearms. And most of those weapons are obtained illegally. And it appears even in the San Bernardino case that some of the weapons were obtained illegally. So they are available.

In France, they probably have the tightest gun control measures, and I'd love to share with you a list of the weaponry that was assembled in the latest Paris attack. And I was over and actually saw the sites of the Hebdo and the deli attack. And I saw the weaponry that was assembled there with a very, very, very, very, very tight gun control.

I have a question first for the Homeland Security witness. Okay. We had this female terrorist in San Bernardino, and she was granted a visa to enter the United States, a fiance(e) visa, as far as we know. Do you think that is the case, or you—

Ms. BURRIESCI. She did have a K-1 visa, yes.

Mr. MICA. Okay. And to do that, she had to submit to an interview. Is that correct?

Ms. BURRIESCI. Yes, with State Department.

Mr. MICA. So she had an interview. She also had to provide some biometrics. Is that correct?

Ms. BURRIESCI. Yes, sir. Biometrics and biographic information and an interview—

Mr. MICA. But biometric?

Ms. BURRIESCI. All of them as part of the visa application.

Mr. MICA. Okay. So that's the same method, though, that pretty much we will be adopting should the Visa Waiver Program we just—we just considered before Congress pretty much the same

thing, an interview and biometric, because that's what is missing. If you want to come in on a visa waiver, you don't have to go through that now. Is that the case?

Ms. BURRIESCI. All those checks occur, and it's a matter of the timing of where they occur.

Mr. MICA. But, again, we're talking about doing the same kind of thing we did with her.

Ms. BURRIESCI. There—

Mr. MICA. Yes. Yes. The answer is yes. I'll answer my own question.

Okay. So a French passport, if you entered as a French citizen, does it contain biometric?

Ms. BURRIESCI. So all the visa waiver programs are issuing e-passports, and the minimums—

Mr. MICA. Do they have biometric?

Ms. BURRIESCI. So the minimum standard for—

Mr. MICA. Do they have biometric?

Ms. BURRIESCI. Yes, sir. It has a digital photo in it. Yes.

Mr. MICA. A photo. Do they have fingerprints?

Ms. BURRIESCI. Many visa waiver programs also include—not many. I'm not actually—

Mr. MICA. Some do.

Ms. BURRIESCI. —sure of the number, but some have fingerprints.

Mr. MICA. But some don't.

Ms. BURRIESCI. But some don't, similar to the United States doesn't—

Mr. MICA. And many entry points in the United States do not have the capability of fingerprint verification, do they?

Ms. BURRIESCI. I'm sorry, I missed the beginning of your question.

Mr. MICA. Many entry points in the United States do not have the ability or the capacity to confirm fingerprint identification.

Ms. BURRIESCI. So all of our ports of entry do capture and run checks on biometrics. If you're referring to the e-Passport itself, all CBP—

Mr. MICA. When you come across the Mexican border, all of those folks coming in are, in fact—their fingerprints are being checked?

Ms. BURRIESCI. Yes.

Mr. MICA. Ms. Kephart says no.

Ms. BURRIESCI. It depends if we're talking about the e-Passport or just—

Mr. MICA. No, just people coming—

Ms. BURRIESCI. Everybody coming into the country—

Mr. MICA. No, they are not.

Ms. BURRIESCI. —yes, we take their prints for individuals coming into the country. Visa Waiver Program or visa, we're taking people's prints and we're running checks on them.

Mr. MICA. A French citizen who comes into the United States is coming in with a passport that might have photographic information embedded in it, but they don't have fingerprint.

Ms. BURRIESCI. But they're going to see a CBP officer and they're going to have their fingerprints taken.

Mr. MICA. Every French citizen who comes in?

Ms. BURRIESCI. Yes, sir.

Mr. MICA. And we have the capability at every border to capture that, and we're doing it with all foreign nationals that are coming in?

Ms. BURRIESCI. The person is going to provide their prints right there at the POE, and we are going to run checks.

Mr. MICA. And Ms. Kephart is saying no.

Ms. BURRIESCI. We read their e-Passports and pull up their digital photo. So we're not lifting fingerprints from the passport; we're actually taking it from the passenger.

Mr. MICA. But they're not embedded in that, so you don't know what—

Ms. BURRIESCI. So most countries—not most countries. Most e-Passports, if you do have fingerprints on the chip—

Mr. MICA. Yes. But, again, you're saying “most,” not “all.” And we don't do this with all, and we have no capability for all.

Ms. BURRIESCI. We do have the capability, sir, to read the e-Passport, and we do take—

Mr. MICA. But you keep talking about the e-Passport, and a lot of these are not e-Passports.

Let me ask you a question. When you go through and grant a visa, are the State Department folks who are doing the interviewing, are they all checking these folks against the U.S. no-fly list?

Ms. BURRIESCI. Yes, sir.

Mr. MICA. They are?

Ms. BURRIESCI. Yes. ESTA or visa, everybody gets run against the terrorist watch list.

Mr. MICA. No, I didn't ask about the terrorist watch list.

Ms. BURRIESCI. Oh, did I misunderstand?

Mr. MICA. I asked about the no-fly list. I think there's—

Ms. BURRIESCI. The no-fly list is a subset—

Mr. MICA. —400,000 people.

Ms. BURRIESCI. I'm sorry. I don't mean to interrupt. The no-fly list is a subset of the overall terrorist watch list.

Mr. MICA. But my question was the no-fly list.

Ms. BURRIESCI. Yes, they are run against the no-fly list.

Mr. MICA. Okay.

And the problem you have is, we've seen with the latest incident we have certain protections, we had an interview of this individual, and that individual defied us. I mean, the same system you put in place we may be putting in place for visa waiver. You don't know what is in people's hearts and minds. These people are already, some of them, are—one was embedded, one came in, and it's very difficult.

I don't have time to get into profiling, but there's some commonality to all of these folks. I won't get into that today. And I think we have to go beyond what we're doing now or we're not going to stop these individuals.

And I yield back the balance of my time.

Mr. MULVANEY. [presiding.] I thank the gentleman.

We'll now recognize the lady from the District of Columbia, Ms. Holmes Norton, for 5 minutes.

Ms. NORTON. Thank you very much, Mr. Chairman.



I'm going to tell you, because I represent the Nation's capital, my district is caught both ways. On the one hand, we have very much approved the Visa Waiver Program. About the only tourists who don't come to the Nation's capital are international tourists—that is to say, where there are more to come, on the one hand. And yet the Nation's capital is a major terrorist target. So that balance is very difficult for us.

On the terrorist watch list, Ms. Burriesci, you have been asked endlessly about the numbers on that list or the no-fly list. I am far less interested in the numbers than I am in the controversy surrounding that list.

Those who want people to be able—and, by the way, there is a bipartisan bill, Peter King's bill, that would say, once you get on that list, you can't by a gun. I am cosponsor of that bill. But, of course, there have been attempts to pass a "no gun if you're on that list," tries here in the House and the Senate.

Since 9/11, there has been endless controversy that those who want people to be able to buy guns no matter what have, frankly, used, and that is the inaccuracy—the so-called inaccuracy, because that's really my question—of the terrorist watch list and the no-fly list.

Could I ask you, what attempts have been made to address the accuracy issue that has now sent some people—I think the ACLU is in court on the inaccuracy of the issue on behalf of some people who were on the list who shouldn't have been on the list. Can you give us any information on how or what you are doing to clean those lists so that they are accurate?

Ms. BURRIESCI. Yes, ma'am. Thank you for asking that question.

Not only are there robust criteria to even get on that list, but that list is reviewed regularly by the Terrorist Screening Center that owns it—

Ms. NORTON. So, because I only have 5 minutes—

Ms. BURRIESCI. —to make sure that—

Ms. NORTON. So it's reviewed regularly. And does that mean that you are regularly putting on and removing names and that you believe that the list is basically accurate?

Ms. BURRIESCI. Ma'am, there are people that get on the list and change status on the list on a daily basis.

Ms. NORTON. How about people who have the same name? You know, we always talk about people named John Kennedy or some such name, Eleanor Holmes Norton maybe. Do you deal with people who have common names?

Ms. BURRIESCI. So there is something called the DHS Traveler Redress Inquiry Program. It is a one-stop shop for the—it's operated out of TSA, but it's a one-stop shop for all travelers.

Ms. NORTON. If you are on the list and shouldn't be on the list, is there an appeal process so you can get off the damn list?

Ms. BURRIESCI. I'm sorry?

So you can apply through TRIP if you feel that you've been—

Ms. NORTON. So there is an appeal process.

Ms. BURRIESCI. If your travel has been delayed, you can apply there. And if you're not that Burriesci—

Ms. NORTON. I wish you would provide—

Ms. BURRIESCI. —then you get a number that you—

Ms. NORTON. I wish you would provide us some information on the process being used so the chair will have it to check on the accuracy, because I have another—

Ms. BURRIESCI. Certainly.

Ms. NORTON. —question.

Ms. BURRIESCI. Certainly.

Ms. NORTON. It's on the EB-5 program. Again, my district has used the EB-5 program. You know, of course, that that is a program that allows investment in exchange, I believe, for a visa. And you have to say that you're going to provide 10 permanent jobs. There are things that have been built in the District of Columbia, big things, using that program.

How are those people vetted, EB-5 investment visas? Do they go through the normal visa process, or do they go through some other process?

Ms. BURRIESCI. I know vetting is done on those, but I don't have the specifics on the EB-5. That's not one of the areas I have concentrated on and have information. But that is something, certainly—

Ms. NORTON. Ms. Kephart, do you know anything about that?

Ms. KEPHART. I have in the past, and I'm really sorry, but I don't have it at the—

Ms. NORTON. Mr. Chairman, could I ask that that information be provided to this committee?

This has been a popular program here and across the United States. We need more information on visas in connection with that program, as well. It's not only the person; it's relatives that can come in.

Thank you very much, Mr. Chairman.

Mr. DESANTIS. [presiding.] We will be doing a hearing on the various visa programs, and I think that that will obviously be one that will be grist for the mill.

Okay. The chair now recognizes the gentleman from North Carolina, Mr. Meadows, for 5 minutes.

Mr. MEADOWS. Thank you, Mr. Chairman.

And thank each of you for your testimony.

Ms. Burriesci, let me come to you and follow up where Mr. Jordan left off on visa overstays.

In part of your testimony here today, you said you're making progress, that the quality of the data with regards to visa overstays is improving, I think. Is that correct?

Ms. BURRIESCI. Yes, sir.

Mr. MEADOWS. Okay. So if the quality of the data is improving and yet—so you're able to testify to that, but you have no idea how many people overstay their visas. Do you have any idea? A ballpark?

Ms. BURRIESCI. Sir, we have preliminary numbers—

Mr. MEADOWS. And what would those be?

Ms. BURRIESCI. —that the Department has compiled, and we are doing a thorough review of those numbers because we know how important they are. The Secretary has—

Mr. MEADOWS. Well, the Secretary—let's get to that. The Secretary, in testimony—

Ms. BURRIESCI. —ensured we do our due diligence on these numbers.

Mr. MEADOWS. No, but the Secretary, in sworn testimony before Congress in 2013, said that she would get them to Congress by December of 2013, and here we are almost 2 years later. So how long does it take to verify the numbers?

Ms. BURRIESCI. Sir, we know how important these numbers are, and we—

Mr. MEADOWS. That's not what I asked. I said, how long does it take to verify the numbers?

Ms. BURRIESCI. Well, at that time, we were still looking back at data that was from where the systems were not working well together. And now they are—

Mr. MEADOWS. Okay. Is it true—

Ms. BURRIESCI. —better at giving us additional—

Mr. MEADOWS. All right. Is it true that you have an internal memo that goes through your agency, or at least to some in your agency, that would indicate the number of visa overstays?

Ms. BURRIESCI. Yes, sir. It—

Mr. MEADOWS. I thought it was. I have information that would indicate that it is. So what number is on that internal memo?

Ms. BURRIESCI. It is a draft interim entry/exit—

Mr. MEADOWS. That's not what I asked. That's a great answer to a question I didn't ask.

Ms. BURRIESCI. I'm sorry.

Mr. MEADOWS. What number is on that internal memo?

Ms. BURRIESCI. I can—

Mr. MEADOWS. Ballpark. I'll give you plus or minus 10,000. What ballpark?

Ms. BURRIESCI. I'll take that back to the Department, sir.

Mr. MEADOWS. Is it less than a million?

Ms. BURRIESCI. Sir, I will—

Mr. MEADOWS. Have you seen the memo?

Ms. BURRIESCI. I have, but it has been a little while since I have seen it.

Mr. MEADOWS. All right. So you have seen it. You looked at a number. Was the number greater than a half-million?

Ms. BURRIESCI. Sir, I don't have a number to—

Mr. MEADOWS. So you're refusing to answer the question. It's not that you don't know. Is that correct?

Ms. BURRIESCI. Because the numbers are still going through finalization, I'm not authorized to provide a draft number.

Mr. MEADOWS. Okay, but Federal law requires that you report that to Congress, does it not?

Ms. BURRIESCI. Yes, sir, the Department is responsible to do that.

Mr. MEADOWS. So at what point are you going to comply with Federal law?

Because, in 2011, the number was 1.6 potential visa overstays—million, 1.6 million. In 2013, according to GAO, it was potentially 1 million visa overstays. How many visa overstays does it take to take down the Twin Towers?

Ms. BURRIESCI. Sir, I can't answer that.

Mr. MEADOWS. So when is this committee going to get the information on visa overstays?

Ms. BURRIESCI. I understand the urgency that you're asking that question. And I'll make sure that that gets back to my front office.

Mr. MEADOWS. Listen, they already have the request. At what point are you going to comply with Federal law and give it to this committee? At what point? I mean, or maybe I'll ask it a different way: What justification do you have to violate Federal law?

Ms. BURRIESCI. Sir, I will take back exactly what you're asking and make sure that my front office is aware—

Mr. MEADOWS. Do we have to subpoena the numbers?

Ms. BURRIESCI. I don't have a better answer for you today. I'm sorry, sir.

Mr. MEADOWS. All right. So if we're looking at the visa overstays—and we're sitting here debating about a Visa Waiver Program, and yet the very instance of visa overstays and the potential terrorist threat that accompanies that, you're tracking that, and yet the last information that Congress got that was reliable was 1994. Do you not see a problem with that?

Ms. BURRIESCI. I think you should receive the data as soon as it is available. And I will take that back to the—and provide it to my department's front office and make sure that they understand exactly what you're asking.

Mr. MEADOWS. Let me finish by asking, would you think 30 days would be reasonable enough to vet the numbers?

Ms. BURRIESCI. I'm not sure. I don't have a timeframe. But I want to make sure that—

Mr. MEADOWS. So let me make sure I understand this correctly. You can sit here and give us sworn testimony that you're vetting with unbelievable surety from a national security risk all the potential people coming from abroad here and that you can vet those as it relates to national security risk, but you can't vet the number of visa overstays with any degree of certainty in the 2-year period?

Ms. BURRIESCI. Sir—

Mr. MEADOWS. Was that your testimony?

Ms. BURRIESCI. No, sir. We are vetting against law enforcement and counterterrorism and international databases. That is the screening aspect—

Mr. MEADOWS. How hard is it to figure out how many visas overstays we have? That should be easy.

Ms. BURRIESCI. Yes.

Mr. MEADOWS. You got one document; you got one that doesn't match up. What is the difference? It's simple mathematics. I yield back.

Mr. DESANTIS. The gentleman yields back.

You got to do better than that, Ms. Burriesci. This is not inspiring a lot of confidence. And I think that more questions have been raised than answered.

I will now recognize Ms. Lujan Grisham for 5 minutes.

Ms. LUJAN GRISHAM. Thank you, Mr. Chairman.

And, quite frankly, you just stole my opening statement. I mean, we are all here wanting to do the very same thing, to highlight the vast, productive, high-level security effort that, quite frankly, outside sources have done a far better job identifying our strengths

than certainly anybody from the administration today on this panel or prior to this panel.

And in this job, it is our job to make sure that the information and sources that we are seeing, reading, evaluating, gathering, that you can confirm or deny those so that in that reporting process—whether it be through testifying before this committee or providing those reports—that we can do our job effectively by assisting you with policy shifts that enhance your opportunities.

But what we're getting here today is "I'm not sure," "I don't know," "can't do it," "haven't seen it," "can't really tell you." And I'll tell you this, with only three major databases, as I understand it, and doing a quick search while I've been sitting in this committee for the past 30 minutes, I can tell you what the Wall Street Journal says. The Wall Street Journal says that there are 16,000 names on the watch list. On TIDE, there's about 1 million people and that there's a much smaller—they didn't give me a number—on the TSA no-fly list. Now, I don't consider that my staff or anybody on this committee should be using that information as the data points.

But if that's the only place we're getting it, then, Mr. Chairman, I think you should subpoena the Department because my constituents expect me, particularly after the changes that we've made to the Visa Waiver Program, that if you're going to be reporting to me, what confidence do I now have, Secretary, that you're actually going to provide those reports and that our enhanced screenings so that we're evaluating now the threat, the risk of terrorism, that you can do that? With only three lists, my expectation is those numbers would be rote to you, whether or not they're specifically your responsibility out of Homeland Security because we have a Homeland Security Department for exactly those reasons, where we consolidated these efforts and we enhanced the opportunity for collaboration. And you've given me no confidence based on your testimony that you are leading that effort in any meaningful or remarkable way.

Now, I hope I'm wrong. So I'm expecting you and this administration to give this committee and Congress the kind of assurances and security about our screening processes that we deserve and that this country deserves. But I'm really disappointed by this hearing. And I was hoping that I wouldn't be. And, in fact, to that point, just exactly what are you going to do and how are you going to proceed by giving us credible and confident information about assessing the risk, given that one of the issues I get concerned about is the fact that the countries that we're concerned about, the Iraqi and Syrian borders are so porous, how are we going to track folks and what kinds of things can you—without telling me that I should get a classified briefing, and I certainly don't want you to breach any of those classified or protected information. But give me a sense that you are actually doing your job and have some ideas about just exactly how you're going to increase that assessment based on that legislation.

Ms. BURRIESCI. To address several of your points, the action that I'm going to take is going back to the authoritative source for the Terrorist Screening Center to make sure that you get the accurate—to make sure the committee members get the accurate num-

bers. I have a host of stats here, and I just didn't have those on my page.

Ms. LUJAN GRISHAM. That wasn't my question either. I want to talk about the porous borders. You tell me now about the next phase. So I'm disappointed in the current efforts clearly, clearly. I think I can say the vast majority of this committee is. Now tell me about the next phase. Where are you in being prepared to deal with very tough issues? I don't want to diminish those. But where are you in helping us identify better ways to deal with a pretty difficult problem, just given that one example? You've had many today. So the fact that people can travel between those countries which are high-risk areas and we don't know about it, what are you going to do about that from a data security management perspective? Recommend to me.

Ms. BURRIESCI. One of the things that you saw in the White House's announcement last week is asking additional questions and enhancing ESTA further to be able to identify travel that doesn't have—

Ms. LUJAN GRISHAM. Give me a specific.

Ms. BURRIESCI. —a nexus to the United States, which is where, I agree, if there's not a nexus to travel, continuous travel departing from the United States to go to any of those countries, it is much harder for us to find that information. If our foreign partners, whether in a VWP country or not, but if our foreign partners are not also sharing that information with us—and, thankfully, our VWP countries are, when they know that there's a foreign terrorist fighter, sharing that with us—then, yes, that is where that vulnerability lies.

Ms. LUJAN GRISHAM. And, Mr. Chairman, I'm out of time too. You've been incredibly—we want you to answer. And I agree that you are—you are in our communication now giving me a sense that you understand the problem. And I appreciate that. And I didn't mean to make that sound demeaning. But this is a significant problem.

But what are you doing about it? Give me one, give me one specific that you can in the context of this hearing so I know that you're on the right path because that's what I need to explain to my constituents: this is what is happening.

Mr. DESANTIS. The gentlelady's time has expired. We have kind of gone round and round.

Why don't you provide the answer in writing because I don't think we've gotten very good answers right now.

Mr. DESANTIS. And I don't know if it's a lack of preparation or what not. I think it's a good question. So the gentlelady's time has expired.

Ms. LUJAN GRISHAM. Thank you, Mr. Chairman.

Mr. DESANTIS. I'm going to recognize the gentleman from North Carolina for 5 minutes, Mr. Walker.

Mr. WALKER. Thank you, Mr. Chairman.

I appreciate the opportunity.

Mr. Jenkins, you haven't been able to participate a whole lot, but I still wanted to recognize you and thank you for being here. You do great work.

Mr. Gude, you stated earlier that when we make decisions, you said: It is ignorant when we make decisions based on incomplete information.

The statement, "Americans are dying right now because of the existence of Guantanamo; closing it responsibly will save American lives," do you agree with that statement?

Mr. GUDE. I think it has lessened currently as a terrorist recruiting tool. But I certainly think that in the past, it has been a substantial recruiting tool for terrorists.

Mr. WALKER. I don't know if that was a yes or no because that was actually your statement. You also said this: President Barack Obama has done more in a few short hours to protect the security and uphold the values of the United States than his predecessor did throughout his long 8 years in office.

Do you agree that statement is true? Or is that maybe an ignorant statement when you didn't have all the complete information?

Mr. GUDE. No, I remember saying that. And I clearly believe that. It was in response to the President's executive orders on his first full day in office to close down the black site prisons, to end torture, and establish a process to close Guantanamo.

Mr. WALKER. Would you agree, though, we have more information now after 7 years?

Mr. GUDE. Well, I think that a lot of time has passed.

Mr. WALKER. It has. The last statement that you made in the past, and I want to hit a couple you made today. You said America is back and ready once again to lead the community of nations toward a future that is both more secure and more free. It doesn't seem to be working out that way right now, does it?

Mr. GUDE. I think there are clearly threats that we as a country and we as an international community face. But, look, I think that we also forget the state of the world as it existed in early 2009 and late 2008. And I fully, fully believe that the United States is in a stronger position now than it was then.

Mr. WALKER. So basically would it be fair to say you believe right now we're safer as a country than where we were 7 years ago?

Mr. GUDE. Yes.

Mr. WALKER. Okay. Thank you for being on record with that.

Today, you said in regard to Islamic, you said it's impossible to state so boldly that ISIS is a religious sect of Islam. You said it's not. How can you be so bold, in fact, you said you used your word and said it was ignorant to think that way. And you even said we need to eradicate such ideology. I find that interesting that you would talk about not the eradication of ISIS but the eradication of such ideology. Do you think ISIS would agree with you that they're not a religious sect of radical Islam?

Mr. GUDE. I think ISIS is quite clearly trying to represent Islam. But I don't believe that it does. And I think the overwhelming majority of Muslims in the world would agree with me.

Mr. WALKER. How many millions would you suggest hold to this radical sect of Islam?

Mr. GUDE. I can't—

Mr. WALKER. Would you say that there's millions?

Mr. GUDE. No.

Mr. WALKER. You don't believe there's millions that hold to that sect. I would have to share some information accordingly. My concern is that here you are today as a witness talking about the security of our country, the no-fly list, some of the other things. And yet the statements that you're on record seem to be overwhelmingly partisan. And even today, you're on record saying that our country is safer now than where it was even though we're having explosions as far as this no-fly list, this thing, we've got Visa Waiver Programs we're trying to figure out. But you believe that right now we are safer as a country than where we were even when all this information wasn't even discovered?

Mr. GUDE. Yes, I do.

Mr. WALKER. Okay. I have no further questions. Mr. Chairman, I yield back.

Mr. DESANTIS. The gentleman yields back.

The chair now recognizes the gentleman from South Carolina for 5 minutes, Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman.

Ms. Burriesci, how many visa overstays are there in the United States?

Ms. BURRIESCI. Sir, as I said earlier, I don't have that statistic with me.

Mr. GOWDY. Let's use the President's statistics that there are 11 million, and 40 percent of them would be visa overstayers, as opposed to border crossers. Do you take exception with what the President said? Or can we just use that as kind of a baseline?

Ms. BURRIESCI. I, in all honesty, I don't recall what the President said about it. But I'm not sure where those stats are coming from. I just don't have it with me.

Mr. GOWDY. So you cannot tell me how many visa overstayers are in the United States?

Ms. BURRIESCI. I don't have that information with me.

Mr. GOWDY. Is there a list?

Ms. BURRIESCI. There is an interim draft entry/exit report which has overstay data in it.

Mr. GOWDY. No. No. Are—

Ms. BURRIESCI. I—

Mr. GOWDY. Is—there a list of names of visa overstayers?

Ms. BURRIESCI. Oh, so anybody who has overstayed, regardless of if it's a visa or a Visa Waiver Program, those individuals have final removal orders and our Immigration and Customs Enforcement agency receives that list.

Mr. GOWDY. So there's a list?

Ms. BURRIESCI. Yeah.

Mr. GOWDY. Is that a list shared with federally licensed firearms dealers?

Ms. BURRIESCI. I am not sure.

Mr. GOWDY. Well, it is actually currently against the law for anybody who is here illegally or unlawfully to possess or purchase a firearm. And I understood in Mr. Gude's opening, he wants to create a new list of prohibited persons, which just struck me that maybe we ought to find out how good a job we're doing with the current statutes that we have. Do you know how many prosecu-



tions that there were for, say, the last 3 years for folks who tried to purchase a firearm that were not here legally?

Ms. BURRIESCI. No, sir. But I can ask ICE that question.

Mr. GOWDY. Well, it wouldn't be ICE. It would be the Department of Justice.

Ms. BURRIESCI. Then I wouldn't have information because I'm with DHS.

Mr. GOWDY. Well, and the good news for us is we do have that information. And it's an incredibly small number of prosecutions, like less than 100. So you can understand some of our skepticism when we hear folks calling for a new category of prohibited persons that cannot purchase or possess firearms when we've done such a dreadful job with the current categories. It is currently unlawful, illegal for people who are not legally in the country to purchase or possess firearms. And my question is, how many of those folks have been prosecuted?

Ms. BURRIESCI. I would have to—

Mr. GOWDY. And the number is really small. Let me ask you another question about the terrorism list. What process is afforded a U.S. citizen, not someone who has overstayed a visa, not someone who crossed the border without permission, but in the American system, what process is currently afforded an American citizen before they go on that list?

Ms. BURRIESCI. I'm sorry, there's not a process afforded the citizen prior to getting on the list. There is a process should someone feel they are unduly placed on the list.

Mr. GOWDY. Yes, there is. And when I say "process," I'm actually using half of the term due process which is a phrase we find in the Constitution, that you cannot deprive people of certain things without due process. So I understand Mr. Gude's idea, which is wait until your right has been taken from you and then you can petition the government to get it back. I understand that that's his idea. My question is, can you name another constitutional right that we have that is chilled until you find out it's chilled, and then you have to petition the government to get it back? Is that true with the First Amendment?

Ms. BURRIESCI. Sir, there are strict criteria—

Mr. GOWDY. That's not my question, ma'am. That's not my question. My question is what process is afforded a United States citizen before that person's constitutional right is infringed? And he's fine with doing it with the Second Amendment. My question is, how about the First? How about we not let them set up a Web site or a Google account? How about we not let them join a church until they can petition government to get off the list? How about not get a lawyer? How about the Sixth Amendment? How about you can't get a lawyer until you petition the government to get off the list? Or, my favorite, how about the Eighth Amendment? We're going to subject you to cruel and unusual punishment until you petition the government to get off the list. Is there another constitutional right that we treat the same way for American citizens that we do the Second Amendment? Can you think of one? Can you think of one?

Ms. BURRIESCI. I don't have an answer for you, sir.

Mr. GOWDY. I'm out of time. But I've got a couple other questions. And I'm sure the chairman will indulge me. Do you know

whether the female terrorist in California was subjected to an in-person interview before her K visa was issued?

Ms. BURRIESCI. As part of the visa process, yes, that individual was interviewed.

Mr. GOWDY. Do you know who interviewed the person?

Ms. BURRIESCI. I do not have that information. That would be a question to ask the State Department.

Mr. GOWDY. Do you know how long the interview took place, how long it lasted?

Ms. BURRIESCI. That would also be a question for the State Department. They conducted the interview.

Mr. GOWDY. Do you know what investigation, if any, was done into her in terms of education, employment, social media?

Ms. BURRIESCI. Those are all questions that should be referred to the State Department.

Mr. GOWDY. Who has her immigration file?

Ms. BURRIESCI. USCIS would have the immigration file.

Mr. GOWDY. I thought USCIS was a subset of DHS?

Ms. BURRIESCI. Yes.

Mr. GOWDY. And you're with DHS, so why wouldn't I ask you?

Ms. BURRIESCI. So the process would start with USCIS for a K-1 visa.

Mr. GOWDY. I know. And then it goes to the State Department.

Ms. BURRIESCI. And then it goes to the State Department, which is where all the checks to see if that individual is eligible for the K-Y—K-1 visa—I'm sorry, I even lost my own train of thought.

Mr. GOWDY. I know exactly where you're going.

Ms. BURRIESCI. If someone is eligible for the K——

Mr. GOWDY. Mr. Rodriguez was with us yesterday.

Ms. BURRIESCI. Yes. Then the individual would travel to the United States. Of course, there's vetting done on the individual as they travel as any individual is. And then, within 90 days, they can apply for legal permanent residency. And then that is also when USCIS would get involved and do biographic and——

Mr. GOWDY. I understand the process. And I'm out of time.

I'm just going to make this point before I yield back to the chairman: There's an application process—we're not even talking about the Visa Waiver Program; we're talking about the process where there actually is a visa issued—there's an investigation; there's an interview; there's another interview; and yet we still got it wrong. And I would think the chairmen, one of whom is sitting beside me, and Chairman DeSantis and Ranking Member Lynch, I would think that they would be very interested in her immigration file to find out what questions, perhaps, weren't asked that should have been, so we can learn lessons after the 14 are dead, and hopefully, we can learn before there are 14 more dead. So I would encourage you to ask your boss to make that file available to both the ranking member of the full committee, the chairman of the full committee, the ranking member of the subcommittee, and the chairman of the subcommittee.

And, with that, I yield back to the chairman.

Mr. DESANTIS. The gentleman yields back.

So can you provide that by close of business Friday?

Ms. BURRIESCI. I'll take that back. Thank you.

Mr. DESANTIS. Can you do it, though?

Ms. BURRIESCI. I would love to say yes, but I'm not in charge of that. So I want to make sure, if not shorter, yes.

Mr. DESANTIS. Before I recognize the ranking member of the full committee, you can't give us the number of people who are on expired visas? You have staff. Can they just call DHS so we get it before the hearing is over? Do you want to take a 5-minute recess to make that phone call? This should not be very difficult.

Ms. BURRIESCI. To find out—

Mr. DESANTIS. We have had a number of questions about how many people are here on visa—have overstayed their visas. And we've not been able to get even a ballpark estimate about that. I would imagine somebody in this big, sprawling Department has got to have some type of information in that regard. So my question to you is, is there a way that you can get that to us today? Can you make a phone call to do it? Can one of your staff make a phone call?

Ms. BURRIESCI. I will make a phone call. I'm happy to do it.

Mr. DESANTIS. Do you want to recess for 5 minutes and you'll do it?

Ms. BURRIESCI. I'm happy to make a phone call.

Mr. DESANTIS. Okay. Well, the hearing stands in—so we're not going to get—

Mr. CHAFFETZ. Will the gentleman yield?

Mr. DESANTIS. We'll recognize—

Mr. CUMMINGS. No, I don't mind her making a phone call. I appreciate the courtesy, Mr. Chairman. But if you want to make a phone call to help us get issues resolved, I don't mind waiting. I have no problem.

But thank you, Mr. Chairman. I appreciate it, both chairmen.

Mr. DESANTIS. We will stand in recess for 5 minutes. And we'll resume at 12:31.

[Recess.]

Mr. DESANTIS. We'll now come to order.

The chair will recognize the ranking member, Mr. Cummings, for 5 minutes.

Mr. CUMMINGS. Mr. Chairman, before we do that, I want to see if she got the information. I don't want that taken off my time.

Did you get the information?

Ms. BURRIESCI. I did get some information on the VWP overstay numbers. It's at—I couldn't get everything.

Mr. DESANTIS. What's the number?

Ms. BURRIESCI. So the VWP overstay rate is—I'm sorry—for citizens of VWP countries, the overstay rate is around 2 percent.

Mr. DESANTIS. So that means people that have stayed past 90 days when they came in on the Visa Waiver Program? Or is that people who—

Ms. BURRIESCI. Citizens—that's a great question. I believe that is true, yes, for business and tourism reasons, so 91-plus days.

Mr. DESANTIS. Okay. But we will need that in writing. And we want to see where you're getting those numbers, because I know there will be people, probably up here, who will disagree with how those numbers were arrived at.

And, with that, we'll recognize Mr. Cummings for 5 minutes.

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

Ms. Burriesci, as you know, 2 days ago, the House passed legislation to strengthen the security of the Visa Waiver Program, H.R. 158, the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015. Based on the recent terrorist attacks in Paris and San Bernardino, Congress needs to act to close the security gaps in the VWP program, and it's my sincere hope that the Senate will take up the House bill and send it to the President's desk as soon as possible.

Do you believe that H.R. 158 will help DHS' efforts to implement the Visa Waiver Program?

Ms. BURRIESCI. I assume that's directed at me?

Mr. CUMMINGS. Yes, ma'am.

Ms. BURRIESCI. Yes, absolutely, sir. It always helps to codify some of the enhancements in statute because that helps other countries be able to point to our statute and help when they need to make legal changes in their own systems.

And the law has a lot of practical security value—I'm sorry, not the law—H.R. 158 has a lot of practical security value measures in it. So I do think it will assist security, yes, sir.

Mr. CUMMINGS. And the administration called on Congress to enact some of the reforms that are included in H.R. 158. For example, the bill would require that all travelers in the Visa Waiver Program be screened against INTERPOL databases to identify high-risk travelers.

Will putting this requirement in the statute help DHS with encouraging compliance with countries participating in the Visa Waiver Program?

Ms. BURRIESCI. Yes, the requirement that VWP countries use that database to screen, themselves, for their inbound travelers, absolutely. We do it already here in the United States.

Mr. CUMMINGS. Now, the administration also requested that Congress act to accelerate the requirement for 100 percent of VWP travelers to use e-Passports. Why is it important for the VWP travelers to use an e-Passport?

Ms. BURRIESCI. So an e-Passport includes a chip on it, it includes the biographic information on a passport, as well as it holds a digital photo. It's harder to—what's the word for fraudulently mess it up? Sorry for blanking out there for a second. And, therefore, they are more secure, they have more secure features in them.

So we are encouraged by the fact that all VWP countries currently issue e-Passports. And CBP has the capability to read e-Passports at our POEs, at our ports of entry.

Mr. CUMMINGS. You know, Ms. Kephart, I missed your testimony, but I want to make sure we're clear on some things that go to the truth, the whole truth, and nothing but the truth.

Ms. KEPHART. I understand.

Mr. CUMMINGS. And you're sworn, you know. I want to remind you of that.

And the American people get kind of frustrated when they see witnesses come before them who might have an interest in themselves or their companies making a lot of money off of their testimony in some way or another.

I'm not saying that's what you're doing. I just want to be clear. I think it's very important to not only the integrity of this committee but the integrity of this Congress and the people who are watching this that we know exactly what your situation is.

Now, I want to reiterate, you are the director of homeland security solutions for—what's the name of the company?

Ms. KEPHART. It's MorphoTrak, sir.

Mr. CUMMINGS. And your job is to sell biometric technology and systems to the government. Is that correct?

Ms. KEPHART. As of 3 months ago.

Mr. CUMMINGS. Yeah, but you're employed.

Ms. KEPHART. I spent years doing—

Mr. CUMMINGS. You're getting a paycheck.

Ms. KEPHART. Yes, sir.

Mr. CUMMINGS. Right. Okay.

Ms. KEPHART. Absolutely, I do.

Mr. CUMMINGS. That's the big deal. You're getting a paycheck.

Ms. KEPHART. Right. And I am happy—I filled out the form in my personal capacity. I clearly made a mistake, as Mr. Cartwright pointed out earlier. And I am happy to go back and have our legal counsel—engage them and do it correctly.

Mr. CUMMINGS. Well, I just want to make it clear so that the people watching this—

Ms. KEPHART. I didn't do it on purpose, sir.

Mr. CUMMINGS. Ma'am, I'm not saying you that did it on purpose.

Ms. KEPHART. Yeah.

Mr. CUMMINGS. But I'm telling you that when you come before us—

Ms. KEPHART. I understand.

Mr. CUMMINGS. —and you sign these documents, you should pay close attention to what you're doing. Because I can tell you, there are people on this committee, under certain circumstances, that would refer you for some criminal action. I'm just telling you. I've seen it many times.

And so I don't know whether you—I mean, it doesn't take a rocket scientist to read this—this is a pretty simple form.

And so, in fact, your company has millions of dollars in Federal contracts. Is that incorrect? I see you're frowning up, but am I wrong?

Ms. KEPHART. We have Federal contracts, yes, sir.

Mr. CUMMINGS. Does it amount to millions of dollars?

Ms. KEPHART. I actually don't know the answer. A few million dollars, yes.

Most of our work actually is with State and local. We provide the ABIS systems to many of the States that are represented here today, are the criminal biometric systems. Federal, we don't have much of a footprint. We do at DHS recently. We did acquire a USCIS Live Scan for our biometrics, yes.

Mr. CUMMINGS. Okay. So you're telling me you got a couple billion—

Ms. KEPHART. But not with Customs and Border Protection, who I—

Mr. CUMMINGS. Ms. Kephart, I only have a few minutes. I only have a minute.

Mr. DESANTIS. Actually, your time has expired. So are you going to—

Mr. CUMMINGS. Well, I just want to have as much time as Mr. Gowdy had. He had 7 minutes. May I have 1 more minute?

Mr. DESANTIS. Well, we have a classified briefing in a few minutes. I have at least one more witness—three more witnesses on my side. So you made your point. I get it. We bring contractors here all the time that do that.

So the gentleman's time has expired.

I recognize the chairman of the full committee for 5 minutes.

Chairman CHAFFETZ. It is my commitment to the ranking member that we will work together to rectify this. I don't care what side of the aisle, where you are in the political spectrum, you do not come before the United States Congress and fill out a very simple form and get it wrong. Okay? Ever.

Ms. KEPHART. I apologize.

Chairman CHAFFETZ. And that may not cut it. I appreciate the apologies, but that may not cut it. And I'll work with the ranking member on that to follow up. There's no excuse for that.

Ms. BURRIESCI, who do you report to?

Ms. BURRIESCI. I report to Assistant Secretary Seth Stodder.

Chairman CHAFFETZ. And this report that we've been talking about, how long has it been in process?

Ms. BURRIESCI. It has been in process for, I believe, over a year. I don't have the exact timeframe, but it's over a year.

Chairman CHAFFETZ. And are you participant in finalizing that report?

Ms. BURRIESCI. It has been months since I have seen that report.

Chairman CHAFFETZ. Who is in charge of that report?

Ms. BURRIESCI. It is a CBP report.

Chairman CHAFFETZ. Give me a name. When I send the subpoena that was suggested by the Democrats, who do I send it to? I'm going to send it to the Secretary, but who is responsible for this report?

Ms. BURRIESCI. Sir, I believe, if you want—that question, I believe the Secretary of Homeland Security.

Chairman CHAFFETZ. Okay.

Let's move on. The entry/exit program, that's your responsibility, right, in part? You're in charge of screening. How is that coming along, the entry/exit program?

Ms. BURRIESCI. So, actually, we have a lot of good news on the biometric entry/exit front. And we had the pleasure of briefing your staff last week on those—

Chairman CHAFFETZ. I don't want to hear about staff briefings last week. I'm asking you—it is currently law that we're supposed to have an entry/exit program, correct?

Ms. BURRIESCI. Sir, we have exit operational at 10 airports—at 10 locations, sorry, today. We are—

Chairman CHAFFETZ. And there are how many airports overall?

Ms. BURRIESCI. There's hundreds of airports, sir.

Chairman CHAFFETZ. And so we have it at 10 of them. Okay.

Ms. BURRIESCI. I agree, it's not—I acknowledge it is not nationwide, a biometric exit system, today. I acknowledge that.

Chairman CHAFFETZ. What percentage of the people leaving the country are you able to capture?

Ms. BURRIESCI. I may have that with me, but I have to look.

I do not have that. I'm sorry, I do not have that statistic with me.

Chairman CHAFFETZ. When will you give me that statistic?

Ms. BURRIESCI. I will try to get that to you within 24 hours if I can reach—

Chairman CHAFFETZ. Thank you.

Ms. BURRIESCI. —the CBP. Absolutely.

Chairman CHAFFETZ. What percentage of the people coming into the country are fingerprinted?

Ms. BURRIESCI. I believe there are very few exceptions to who would not—

Chairman CHAFFETZ. I think you said earlier all of them.

Ms. BURRIESCI. Everybody gets fingerprinted upon entry. I think there are very few exceptions.

Chairman CHAFFETZ. Can you think of any exceptions?

Ms. BURRIESCI. For some diplomatic visas.

Chairman CHAFFETZ. What percentage—

Ms. BURRIESCI. And I believe there's one more, but I just can't—

Chairman CHAFFETZ. What percentage of the land entrants, people coming across on the land, what percentage of those fingerprints are captured?

Ms. BURRIESCI. I can come back with that.

Chairman CHAFFETZ. You were so certain before. You said it was all of them. So isn't the answer 100 percent or no?

Ms. BURRIESCI. There are a few exceptions. I know there are diplomatic visas, and I believe there may be some exceptions for certain Canadians. And that's why—I didn't intentionally—

Chairman CHAFFETZ. Yeah, but the problem is you are—how long have you been in this role?

Ms. BURRIESCI. In my current role? Since 2012.

Chairman CHAFFETZ. I think we expect you to know this.

What about the seaports? If you come in on a cruise line, what percentage of those people are fingerprinted coming back in?

Ms. BURRIESCI. Sir, I know the policies and the processes. I'm getting asked a lot of very specific stats. And it's not that I don't want to share my stats. As soon as I can get back to the Department and the systems, run them and we get them, I'm happy to share any stats. I'm not trying to at all withhold information.

Chairman CHAFFETZ. Do you know what percentage of the passport chips work?

Ms. BURRIESCI. I didn't realize that they didn't work.

Chairman CHAFFETZ. Okay. So—

Ms. BURRIESCI. I'm sorry, I don't understand where you're—

Chairman CHAFFETZ. It's something like only 60 percent of the time those passport chips actually do work. You're supposed to be the expert on this. I mean, this should be just right off the top of your head. You're coming before Congress, and I recognize that you don't normally come and testify here, but they've spent so much

time briefing and making sure you get it right. You should know that the passport chips don't work. That's a big problem.

Ms. BURRIESCI. Sir, I spent ample time briefing and learning and making sure off the top of my head I knew the Visa Waiver Program and talked about all the security elements. I'm getting a lot of statistical questions that I just don't have with me. But, otherwise, I would absolutely share them with you. And, as I've said, I'm happy to get them to you. I just don't have them with me today.

Chairman CHAFFETZ. The questions that I just asked you, what's a reasonable time for you to get that information?

Ms. BURRIESCI. I will get them—as soon as I have them, I will share them.

Chairman CHAFFETZ. Okay. I yield back.

Mr. DESANTIS. The gentleman's time has expired.

The chair now recognizes Mr. Hice for 5 minutes.

Mr. HICE. Thank you, Mr. Chairman.

Ms. Burriesci, I will just continue. What would it take for a country to be removed from the Visa Waiver Program?

Ms. BURRIESCI. Well, we have a host of things that we can do on a Visa Waiver Program that is not meeting standards, so termination is kind of where we would see the last resort. That doesn't actually help us—

Mr. HICE. Well, that's my question. What would be the last resort? What would it take—

Ms. BURRIESCI. Termination would be the last resort. I mean, that is where—

Mr. HICE. What would it take to be terminated?

Ms. BURRIESCI. —there are strong security concerns or contradictory interests to the United States. That would lead to termination.

Mr. HICE. All right. That's pretty vague. "Strong security concerns," what does that mean?

Ms. BURRIESCI. So when we're reviewing a VWP country, when we go and do our reviews, and even through the continuous monitoring that occurs outside of reviews, we're looking at their counter-terrorism standards, border security, law enforcement, immigration, and document issuance standards.

So if any of those became a concern to the United States, certainly a security concern, that would be one of the things that are considered, among other measures.

Mr. HICE. If I'm hearing you correctly, then, if any one of those issues that you just mentioned became a question for the United States, that country would be terminated?

Ms. BURRIESCI. Well, there's a big scale of whether something becomes a concern and whether it, you know, is of a level—

Mr. HICE. Well, you just said, if any of these were a concern, they would be removed. Is this not what you're saying now?

Ms. BURRIESCI. Well, if something becomes a concern and—it is in the interest of the United States to work with the countries and raise the security standards. So we have other measures besides termination. There's suspension, and there's provisional status. And we also have the ability to lower ESTA validity period, which is—

Mr. HICE. Okay. Well, let's move on. I have several questions. Has removal ever taken place? Has termination taken place?



Ms. BURRIESCI. Yes, sir.

Mr. HICE. How often?

Ms. BURRIESCI. We have done it twice since 2000.

Mr. HICE. Okay. So it's happened twice.

Is there a penalty for a country that fails to share information regarding individuals who may pose a threat to the United States?

Ms. BURRIESCI. We can take a host of actions on a country that isn't sharing, but all the countries—

Mr. HICE. So there is a penalty.

Ms. BURRIESCI. Well, what I'm saying is there are lots of things we can do, and I've named some of them. We can change an ESTA period, we can put a country on provisional status, we can suspend a country, or we can terminate a country.

Mr. HICE. Is that all subjective, or is there a process? When do you know when that occurs?

Ms. BURRIESCI. DHS would never do something without the consultation of State Department, as we do with all things for the Visa Waiver Program. And if something were certainly to rise to that level, we'd bring in our interagency partners, as well, even outside of just the State Department.

Mr. HICE. Okay.

Let's see. I'm assuming that—well, let me ask you this. What about these individuals who are being radicalized who have not been to countries like Iraq or Syria? Is anything being done to monitor that group?

Ms. BURRIESCI. Countries that have been?

Mr. HICE. Individuals who have been radicalized but they have not gone to countries like Iraq or Syria, are these individuals being monitored in any way?

Ms. BURRIESCI. I mean, certainly, if we are aware, the FBI might have an investigation open on them. But, I mean, the greatest concern and the thing, you know, that certainly keeps me up at night is the individuals that we're not aware and that is their mindset and—

Mr. HICE. So you don't know if they're being monitored or not.

Ms. BURRIESCI. That I—

Mr. HICE. You don't know.

Ms. BURRIESCI. I don't know the answer to that.

Mr. HICE. Okay.

I'm assuming you don't know how many passports are reported stolen each year. Is that correct?

Ms. BURRIESCI. I don't know how many are reported stolen each year, but I know that—

Mr. HICE. Do you know what the procedure would be when a passport is reported stolen? How do we make sure that that stolen passport is not used fraudulently by another individual?

Ms. BURRIESCI. So for all manifest data that we receive, we are—I'm sorry—for all travelers coming into the United States, we are running that manifest data against the stolen and lost travel document. Absolutely. And that includes documentation—sorry—that includes records that the United States puts in, VWP countries put in, and other countries.

Mr. HICE. Do you believe the other—well, it looks like my time has expired.

Mr. DESANTIS. The gentleman's time has expired.

We do have this briefing, but I want to give Mr. Carter the last round. So we're going to recognize Mr. Carter for 5 minutes, and then we're going to recess because we do have to go over to the California hearing.

Mr. CARTER. Thank you, Mr. Chairman. I appreciate this.

And thank all of you for being here today.

Ms. Burriesci, let me ask you something. I'm still concerned about this overstay. And one of your other panelists has noted in her written remarks that "the Visa Waiver Program tourist overstay issue remains. The GAO tells us that 43 percent of VWP tourists make up the overstay population in the U.S."

So 43 percent of all the overstay population in the U.S. comes from the Visa Waiver Program is what this is asserting. Would you agree with that, yes or no?

Ms. BURRIESCI. No. As I stated—

Mr. CARTER. Okay. Okay.

Ms. BURRIESCI. —earlier, it is around 2 percent.

Mr. CARTER. No, but she's saying of all the overstay. So that's inclusive of all the other programs, as well.

But you brought us a number of 2 percent. Now, can you tell me what that number is? I mean, 2 percent of what?

Ms. BURRIESCI. I wasn't able to get all that while I was on the phone.

Mr. CARTER. Okay. So you don't know if it's 2 percent of a million, 2 percent of 100,000?

Ms. BURRIESCI. I don't.

Mr. CARTER. Okay. But can you get that for us?

Ms. BURRIESCI. I will take that question back.

Mr. LYNCH. Will the gentleman yield?

Mr. CARTER. I yield.

Mr. LYNCH. The number is 20 million people per year. Two percent comes out to 400,000 per year overstaying their visas under the Visa Waiver Program.

Mr. CARTER. Okay. And I'll reclaim my time.

Tell me, do you know what the average overstay is, what the overage length of time the overstay is?

Ms. BURRIESCI. That's going to vary. Because even if it's 1 day, it's an overstay.

Mr. CARTER. But an average—

Ms. BURRIESCI. I don't have that information.

Mr. CARTER. Okay. Can you get me that information? In other words, of all the overstay, that 2 percent of the—what was it? 400,000—of the 400,000, the average overstay is 3 months, is 6 months, is 9 months, whatever it is.

And then also I'd like to know the longest. I mean, have you got somebody who's been on that list, that overstay list, for 3 years or 5 years?

But, most importantly—and I hope you can answer this here today; you should be able to—what are we doing about it? What are we doing about those people who are on that overstay list?

Ms. BURRIESCI. So when you become an overstay, you have a final removal order. And ICE, which is an agency, Immigration and

Customs Enforcement agency within—Citizenship, not Customs—within DHS is responsible for removing those individuals.

Mr. CARTER. So you turn it over to ICE, and ICE goes and looks for them?

Ms. BURRIESCI. Yes. ICE is the responsible agency to remove overstays.

Mr. CARTER. Okay. Can you tell me what ICE is doing about it? Are they out looking for them right now as we speak?

Ms. BURRIESCI. Every single day.

Mr. CARTER. Every single day they're out looking for this person?

Ms. BURRIESCI. Every single day. Absolutely. And they are prioritizing those that are national security and public safety concerns first, because that's in the interest of the United States.

Mr. CARTER. Okay.

And let me ask you this. What can we do to help you? What can we, as Congress, do to help you with this problem? Tell me. Tell me what we can do.

Ms. BURRIESCI. I am sure ICE has a long list of ways that you can help, and I'm sure they would be very encouraged to be asked that question.

Mr. CARTER. You know, I'm bothered that—"I just pass it off to ICE. It ain't my problem anymore. It's their problem."

Ms. BURRIESCI. No, I'm not trying to pass it off at all, sir. I just don't want to—I want to give you a complete and comprehensive answer. It is a great question. We thank you for asking that question.

Mr. CARTER. Okay.

All right. Let's shift gears here. Let's talk about ESTA, the Electronic System for Travel Authorization. It's an automated, web-based system used to determine an alien's eligibility to travel without a visa in the United States for tourism and business.

Is this the only place, in the United States, or do other countries have this type of program? Are we the only ones with this type of program?

Ms. BURRIESCI. It's a reciprocal program. So United States citizens don't need a visa when we're traveling to VWP countries, as well.

Mr. CARTER. So it is a reciprocal program with the other 38 countries.

Ms. BURRIESCI. Yes.

Mr. CARTER. So they have an ESTA, as well. And you can fill—

Ms. BURRIESCI. I was going to say they might call it something else, but yes.

Mr. CARTER. But it's basically the same thing. And you can fill that application out online, correct?

Ms. BURRIESCI. For some countries, yes.

Mr. CARTER. So, once you're issued that ESTA, how long is it good for?

Ms. BURRIESCI. It's typically good for 2 years.

Mr. CARTER. Two years. Do you think that needs to be tightened up?

Ms. BURRIESCI. So we have the ability to change the ESTA validity period today, but the important thing to remember is an ESTA is actually recurrently vetted. So, for the validity period of 2 years,

if anything changes, if someone ends up on the terrorist watch list, for example, we know real time, and we will revoke or deny that ESTA application.

Mr. CARTER. I understand that, but 2 years is a long period of time.

Ms. BURRIESCI. Well, a business or tourist visa is 10 years. And every 2 years, we're going to—

Mr. CARTER. But two wrongs don't make a right. I mean, come on now. Don't give me an answer saying, "Well, this is even worse."

Ms. BURRIESCI. Well, I think the fact that we're recurrently vetting is going to determine whether somebody—if somebody becomes a national security concern, we get that information in real time, and we're able to take an action on it.

Mr. CARTER. Okay. Mr. Chairman, I yield back.

Mr. DESANTIS. The gentleman's time has expired.

The chair is going to recognize Mr. Lynch for 1 minute.

Mr. LYNCH. All right. Thank you.

Ms. Burriesci, thank you very much. I know it's been a difficult hearing for you.

Those four men to your right, the well-dressed gentlemen in the front row, do they work for you?

Ms. BURRIESCI. Some of them.

Mr. LYNCH. Okay.

Ms. BURRIESCI. Not all of them.

Mr. LYNCH. Well, do you have a numbers guy? Because you really needed your numbers guy today, or your numbers gal.

Ms. BURRIESCI. Well, I have the ESTA numbers, I have the ESTA denial numbers, I have the—

Mr. LYNCH. Well, wait a minute. You had a whole bunch of numbers you didn't have, and we had to recess the hearing. So I have a feeling you're going to be back before this committee again. This issue is not going away. And I would just recommend, next time I want to see you walk in arm-in-arm with your numbers person.

Ms. BURRIESCI. I will have any list of stats for certain.

Mr. LYNCH. Okay.

The other thing is this. I want to follow up on the gentleman's previous question. Twenty million people a year, 2 percent overstay rate, 400,000 people overstaying their visa. So, in addition to what the gentleman asked for, I would also like the country of origin of where those people are coming from and overstaying.

And is there a list, is there a list—you say they prioritize, ICE prioritizes. Is there a list that we're running? Because, you know, obviously, the problem should be self-evident.

Thank you. I yield back.

Mr. DESANTIS. And what we're going to do is we're going to reduce all the questions that we've asked, that we want the information, we're going to reduce that to writing. We're going to send that to you soon. And then you guys can respond to that in due time but, you know, not too long. It should be readily apparent.

And then I am going to make the additional request that the Department produce the file for the committee on Tashfeen Malik. We would like to get that next week. We very well may be back here next week, and that is very, very important for us to see so that we can evaluate as we move into other phases of oversight. When

we're looking at our visa programs, we want to make sure—I mean, clearly, we don't want a visa program that allows somebody like her to come into this country.

So Chairman Chaffetz is recognized.

Chairman CHAFFETZ. Ms. Burriesci, these visa overstay, you should have a list of every one of them, right, by individual name?

Sorry, I need you to say it for the record. Do you have a list of each of their names?

Ms. BURRIESCI. I personally don't, but the Department would have a list of individuals with final removal orders who have overstayed.

Chairman CHAFFETZ. So this is, in part, why we need an entry/exit program, because you don't truly know if they've left, correct? You only know if they've left if they've traveled by airplane, correct?

Ms. BURRIESCI. We have a biographic exit system, but, certainly, including biometrics on exit is an additional certainty, yes.

Chairman CHAFFETZ. Where do you do that? What do you mean, "biographical"? What does that mean?

If you fly into JFK, you travel around, go to New York, and then you decide to go up to Toronto, are you telling me that you're capturing the names of who's leaving? Where do you actually capture the names of people that leave the country?

Ms. BURRIESCI. If it would help, we can provide something written that actually lays out the process of what occurs—

Chairman CHAFFETZ. I think I understand the process.

Ms. BURRIESCI. —if that works.

Chairman CHAFFETZ. It does. I would appreciate that. We'll add that to the list.

Is it fair to say that, most ports, you don't capture who exits the country?

Ms. BURRIESCI. We get the manifest data, and we'll use that, and we use our arrival/departure information system. But—

Chairman CHAFFETZ. Do most people come into this country on airplane, or do they come in by vehicle and car?

Ms. BURRIESCI. I believe—

Chairman CHAFFETZ. Or vehicle, cars, and walking?

Ms. BURRIESCI. I would anticipate it would be air, but I don't know.

Chairman CHAFFETZ. Again, you're in charge of this stuff.

And so when will you get us that information?

Ms. BURRIESCI. I'm not in charge of the operations. But I am in charge of working on the—

Chairman CHAFFETZ. You're in charge of screening. Your title says "screening" in it.

So if they come in on a Visa Waiver Program by air and depart not by air, what percentage of those people do you capture?

Ms. BURRIESCI. So that is what I would say is one of the gaps that we have acknowledged, if someone comes in by air and leaves by land, yes.

Chairman CHAFFETZ. And there are literally hundreds of thousands of people who may have come here legally but now they're here illegally, correct?

Ms. BURRIESCI. I don't have that number with me, but—

Chairman CHAFFETZ. Is it hundreds of thousands of people?

Ms. BURRIESCI. I don't have that information with me.

Chairman CHAFFETZ. The answer is yes, correct? I mean, Mr. Lynch laid it out there for you.

Ms. BURRIESCI. I recognize that I'm under oath, and I just don't want to provide misinformation to you. It is not that I don't want to provide information to you.

Chairman CHAFFETZ. So it's somewhere between hundreds of thousands and potentially the low millions of people that came here legally through the Visa Waiver Program, the topic that we're discussing, and just decided they're not going to leave.

And you should have a list of those people, right? Do you share any of that—who else gets that list? Who do you share that list with?

Ms. BURRIESCI. That list is shared with—it's shared with inter-agency partners, and it's shared across—yeah.

Chairman CHAFFETZ. Who do you share that list with?

Ms. BURRIESCI. I don't have the list with me.

Chairman CHAFFETZ. You're the Deputy Assistant Secretary for Screening Coordination. And in your job description, of the one paragraph on the Web site, you're supposed to be the one that's coordinating with the other departments and agencies.

When you have somebody who's a visa overstay, do you consider that a threat to the United States of America?

Ms. BURRIESCI. Sir, sometimes there are people who overstay that are grandmas that come over to take care of their grandchildren. I wouldn't call them a threat. I'm not saying that they shouldn't abide by the terms of their admission period, but calling them a threat is a totally different, you know, circumstance.

Chairman CHAFFETZ. So you just assume that everybody that comes here on this Visa Waiver Program is not a threat?

Ms. BURRIESCI. I didn't say that either. Anybody who comes and overstays their period of admission here receives that final removal order, and we go after them and prioritize them based on national security and public safety first—

Chairman CHAFFETZ. When do they get—

Ms. BURRIESCI. —using the resources that we have.

Chairman CHAFFETZ. When do they get that removal order?

Ms. BURRIESCI. I mean, you know, if you're here for VWP and it's 90 days, on the 91st day you're considered to be an overstay.

Chairman CHAFFETZ. You said they give them the removal order. Who gives them the removal order?

Ms. BURRIESCI. The removal order would come from ICE.

Chairman CHAFFETZ. And how many—

Ms. BURRIESCI. I can check on the timeframe.

Chairman CHAFFETZ. Will you also give us the list of how many of those have been sent out?

Is it ICE's responsibility to then remove them?

Ms. BURRIESCI. Yes, sir.

Chairman CHAFFETZ. And we'll be inquiring as to how often that happens.

I want to go back to the list. I've probably gone over my time, but when you have somebody who has then overstayed their visit, come here on the Visa Waiver Program, which law enforcement en-

titles do you share that with? Which databases does that go into? Can you name one?

Ms. BURRIESCI. So we will have within DHS who has the final removal orders. I believe it's shared with State and local, but I don't want to say that with certainty right now. So, you know, I will do my very best to get you the information that the Department has on those questions.

Chairman CHAFFETZ. Who is the specific person that would know? You report to? Sorry, you told me earlier. The person you report to is?

Ms. BURRIESCI. Assistant Secretary Seth Stodder. I'm in the Office of Policy.

Chairman CHAFFETZ. And that person reports to?

Ms. BURRIESCI. Assistant Secretary Alan Bersin.

Chairman CHAFFETZ. And that person reports to?

Ms. BURRIESCI. The Secretary of Homeland Security.

Chairman CHAFFETZ. Jeh Johnson.

Ms. BURRIESCI. Yes, sir.

Chairman CHAFFETZ. The request we sent was for Jeh Johnson, and Jeh Johnson sent you as the expert on these topics. So, you know, this is why I think we need help on both sides of the aisle here. But Mr. Johnson, the Secretary himself, has got to come answer these questions.

You strike me as a very nice person, but these are basic questions about the functionality here. And when we're having a congressional hearing, it is a waste of this committee's time to send somebody who doesn't know the answers to very basic questions.

And that's why we will continue to pursue very vigorous oversight and look forward to robust discussions. You're accelerating the need for us to have multiple hearings on this.

I yield back.

Mr. DESANTIS. The chairman yields back.

And we are also anticipating the responses to all the questions that have been asked and, obviously, anticipating being able to review the file for Tashfeen Malik.

Mr. DESANTIS. So I want to thank the witnesses.

The committee stands adjourned.

[Whereupon, at 1:17 p.m., the subcommittees were adjourned.]





## **APPENDIX**

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MATERIAL SUBMITTED FOR THE HEARING RECORD



G A O

Accountability • Integrity • Reliability

United States Government Accountability Office  
Washington, DC 20548

March 6, 2015

The Honorable Dianne Feinstein  
United States Senate

Subject: Update on Firearm and Explosives Background Checks Involving Terrorist Watchlist Records

As you requested, this letter updates information on firearm and explosives background checks involving terrorist watchlist records that we presented in our May 2010 testimony and most recently updated in February 2013.<sup>1</sup> Under the Brady Handgun Violence Prevention Act and implementing regulations, the Federal Bureau of Investigation (FBI) and designated state and local criminal justice agencies use the FBI's National Instant Criminal Background Check System (NICS) to conduct checks on individuals before federal firearms licensees (gun dealers) may transfer any firearm to an unlicensed individual.<sup>2</sup> Also, to assist the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the FBI conducts NICS background checks on individuals seeking to obtain a federal explosives license or permit.<sup>3</sup> Under federal law, there is no basis to automatically prohibit a person from possessing firearms or explosives because they appear on the terrorist watchlist.<sup>4</sup> Rather, there must be a disqualifying factor (i.e., prohibiting information) pursuant to federal or state law, such as a felony conviction or illegal immigration status.

Approximately 21.1 million background checks were run through NICS during calendar year 2013, of which about 9.3 million were processed by the FBI's NICS Section and about 11.8 million by designated state and local criminal justice agencies. In response to a recommendation in our January 2005 report, the FBI began processing all NICS background checks involving terrorist watchlist records in July 2005—including those that were initially generated via state operations—to ensure consistency in handling.<sup>5</sup> According to FBI officials, while the FBI processes these checks, states that initially generated them are required to report the final disposition of every transaction to NICS, including whether the transaction was allowed to proceed or was denied.

<sup>1</sup>See GAO, *Terrorist Watch List Screening: FBI Has Enhanced Its Use of Information from Firearm and Explosives Background Checks to Support Counterterrorism Efforts*, GAO-10-703T (Washington, D.C.: May 5, 2010); and GAO, *Update on Firearm and Explosives Background Checks Involving Terrorist Watch List Records* (Washington, D.C.: Feb. 5, 2013).

<sup>2</sup>Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

<sup>3</sup>See Safe Explosives Act, Pub. L. No. 107-296, 116 Stat. 2135, 2280 (2002) (Title XI, Subtitle C of the Homeland Security Act of 2002), as amended.

<sup>4</sup>The FBI's Terrorist Screening Center maintains the U.S. government's consolidated terrorist watchlist, which contains information about individuals known or suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism and terrorist activities. Applicable records from the watchlist are searched during NICS background checks.

<sup>5</sup>See, GAO, *Gun Control and Terrorism: FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records*, GAO-05-127 (Washington, D.C.: Jan. 19, 2005).

This update provides FBI statistics for calendar years 2013 and 2014. Specifically, from January 2013 through December 2014, FBI data show that individuals on the terrorist watchlist were involved in firearm-related background checks 485 times, of which 455 (about 94 percent) of the transactions were allowed to proceed and 30 were denied, as shown in table 1.<sup>6</sup> Overall, since NICS started checking against terrorist watchlist records in February 2004, FBI data show that individuals on the terrorist watchlist were involved in firearm or explosives background checks 2,233 times, of which 2,043 (about 91 percent) of the transactions were allowed to proceed and 190 were denied.<sup>7</sup> The FBI does not know how often a firearm was actually transferred or if a firearm or explosives license or permit was granted, because gun dealers and explosives dealers are required to maintain but not report this information to the FBI.

**Table 1: Number of National Instant Criminal Background Check System (NICS) Transactions Involving Individuals on the Terrorist Watchlist, February 2004 through December 2014**

Calendar year	Valid matches	Allowed to proceed	Denied
2004 (beginning in February)	48	43	5
2005	149	141	8
2006	179	153	26
2007	287	259	28
2008	246	228	18
2009	272	250	22
2010	272	247	25
2011	142 <sup>a</sup>	130	12
2012	153 <sup>a</sup>	137	16
2013	256	240	16
2014	229	215	14
<b>Total</b>	<b>2,233<sup>b</sup></b>	<b>2,043</b>	<b>190</b>

Source: GAO analysis of FBI data.

<sup>a</sup>Because of an issue with a computer programming change, the FBI could not provide complete statistics for certain NICS background checks that were initiated by state and local agencies during calendar years 2011 and 2012. The NICS Section implemented a technical change in February 2013 to address this issue.

<sup>b</sup>The total number of NICS transactions involving individuals on the terrorist watchlist from February 2004 through December 2014 does not include complete statistics for calendar years 2011 and 2012.

As shown in table 1, because of an issue with a computer programming change, the FBI could not provide complete statistics for certain NICS background checks that were initiated by state and local agencies during calendar years 2011 and 2012. Specifically, NICS was not capturing statistics when agencies did not provide the FBI with information on whether the transactions were allowed to proceed or were denied within 24 hours of the NICS check. The FBI had automatically purged these records from NICS—consistent with federal law—and could not determine how many records had been purged.<sup>8</sup> In February 2013, the NICS

<sup>6</sup>According to the NICS Section, there were no explosives-related background checks processed through NICS during calendar years 2013 and 2014.

<sup>7</sup>Of the 2,233 transactions, 2,230 involved firearm-related background checks and 3 involved explosives checks. All 3 explosives checks were allowed to proceed. As discussed below, the total number of NICS transactions involving individuals on the terrorist watchlist from February 2004 through December 2014 does not include complete statistics for calendar years 2011 and 2012.

<sup>8</sup>In July 2004, the NICS Section implemented a provision in federal law requiring that any personal identifying information, such as name or date of birth, in the NICS database related to certain checks be destroyed within 24 hours after a transfer decision has been made. See Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 617, 118 Stat. 3, 95.

Section implemented a technical change to allow NICS to capture and report complete data on the disposition of all transactions matched to terrorist watchlist records. According to the NICS Section, the reported data for 2013 are complete since the NICS Section manually captured data on transactions initiated by state and local agencies during January 2013.

Of the 30 NICS transactions involving individuals on the terrorist watchlist that were denied during calendar years 2013 and 2014, FBI data show that the reasons for denials included felony conviction, under indictment, adjudicated mental health, misdemeanor crime of domestic violence conviction, fugitive from justice, and controlled substance abuse.

If you or your staff have any questions about this update, please contact me at (202) 512-9627 or [maurerd@gao.gov](mailto:maurerd@gao.gov).

Sincerely yours,

A handwritten signature in black ink, appearing to read 'D. C. Maurer', with a long horizontal line extending to the right.

David C. Maurer, Director  
Homeland Security and Justice Issues