

STRONG VISA INTEGRITY SECURES AMERICA ACT

DECEMBER 8, 2016.—Ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security,
 submitted the following

R E P O R T

[To accompany H.R. 5253]

The Committee on Homeland Security, to whom was referred the bill (H.R. 5253) to amend the Homeland Security Act of 2002 and the Immigration and Nationality Act to improve visa security, visa applicant vetting, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Strong Visa Integrity Secures America Act”.

SEC. 2. VISA SECURITY.

(a) **VISA SECURITY UNITS AT HIGH RISK POSTS.**—Paragraph (1) of section 428(e) of the Homeland Security Act of 2002 (6 U.S.C. 236(e)) is amended—

(1) by striking “The Secretary” and inserting the following:

“(A) **AUTHORIZATION.**—Subject to the minimum number specified in subparagraph (B), the Secretary”;

(2) by adding at the end the following new subparagraph:

“(B) **RISK-BASED ASSIGNMENTS.**—

“(i) **IN GENERAL.**—In carrying out subparagraph (A), the Secretary shall assign, in a risk-based manner, and considering the criteria described in clause (ii), employees of the Department to not fewer than 50 diplomatic and consular posts at which visas are issued.

“(ii) **CRITERIA DESCRIBED.**—The criteria referred to in clause (i) are the following:

“(I) The number of nationals of a country in which any of the diplomatic and consular posts referred to in clause (i) are located who were identified in United States Government databases related to the identities of known or suspected terrorists during the previous year.

“(II) Information on cooperation of such country with the counterterrorism efforts of the United States.

“(III) Information analyzing the presence, activity, or movement of terrorist organizations (as such term is defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi))) within or through such country.

“(IV) The number of formal objections based on derogatory information issued by the Visa Security Advisory Opinion Unit pursuant to paragraph (10) regarding nationals of a country in which any of the diplomatic and consular posts referred to in clause (i) are located.

“(V) The adequacy of the border and immigration control of such country.

“(VI) Any other criteria the Secretary determines appropriate.

“(iii) **RULE OF CONSTRUCTION.**—The assignment of employees of the Department pursuant to this subparagraph is solely the authority of the Secretary and may not be altered or rejected by the Secretary of State.”.

(b) **COUNTERTERROR VETTING AND SCREENING.**—Paragraph (2) of section 428(e) of the Homeland Security Act of 2002 is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following new subparagraph:

“(C) Screen any such applications against the appropriate criminal, national security, and terrorism databases maintained by the Federal Government.”.

(c) **TRAINING AND HIRING.**—Subparagraph (A) of section 428(e)(6) of the Homeland Security Act of 2002 is amended by—

(1) striking “The Secretary shall ensure, to the extent possible, that any employees” and inserting “The Secretary, acting through the Commissioner of U.S. Customs and Border Protection and the Director of U.S. Immigration and Customs Enforcement, shall provide training to any employees”; and

(2) striking “shall be provided the necessary training”.

(d) **PRE-ADJUDICATED VISA SECURITY ASSISTANCE AND VISA SECURITY ADVISORY OPINION UNIT.**—Subsection (e) of section 428 of the Homeland Security Act of 2002 is amended by adding at the end the following new paragraphs:

“(9) **REMOTE PRE-ADJUDICATED VISA SECURITY ASSISTANCE.**—At the visa-issuing posts at which employees of the Department are not assigned pursuant to paragraph (1), the Secretary shall, in a risk-based manner, assign employees of the Department to remotely perform the functions required under paragraph (2) at not fewer than 50 of such posts.

“(10) **VISA SECURITY ADVISORY OPINION UNIT.**—The Secretary shall establish within U.S. Immigration and Customs Enforcement a Visa Security Advisory Opinion Unit to respond to requests from the Secretary of State to conduct a visa security review using information maintained by the Department on visa applicants, including terrorism association, criminal history, counter-proliferation, and other relevant factors, as determined by the Secretary.”.

(e) **DEADLINES.**—The requirements established under paragraphs (1) and (9) of section 428(e) of the Homeland Security Act of 2002 (6 U.S.C. 236(e)), as amended by this Act, shall be implemented not later than three years after the date of the enactment of this Act.

SEC. 3. ELECTRONIC PASSPORT SCREENING AND BIOMETRIC MATCHING.

(a) IN GENERAL.—Subtitle C of title IV of the Homeland Security Act of 2002 (6 U.S.C. 231 et seq.) is amended by adding at the end the following new sections:

“SEC. 434. ELECTRONIC PASSPORT SCREENING AND BIOMETRIC MATCHING.

“(a) IN GENERAL.—Not later than one year after the date of the enactment of this section, the Commissioner of U.S. Customs and Border Protection shall—

“(1) screen electronic passports at airports of entry by reading each such passport’s embedded chip; and

“(2) to the greatest extent practicable, utilize facial recognition technology or other biometric technology, as determined by the Commissioner, to screen travelers at United States airports of entry.

“(b) APPLICABILITY.—

“(1) ELECTRONIC PASSPORT SCREENING.—Paragraph (1) of subsection (a) shall apply to passports belonging to individuals who are United States citizens, individuals who are nationals of a program country pursuant to section 217 of the Immigration and Nationality Act (8 U.S.C. 1187), and individuals who are nationals of any other foreign country that issues electronic passports.

“(2) FACIAL RECOGNITION MATCHING.—Paragraph (2) of subsection (a) shall apply to individuals who are nationals of a program country pursuant to section 217 of the Immigration and Nationality Act.

“SEC. 435. CONTINUOUS SCREENING BY U.S. CUSTOMS AND BORDER PROTECTION.

“The Commissioner of U.S. Customs and Border Protection shall, in a risk based manner, continuously screen individuals issued any visa, and individuals who are nationals of a program country pursuant to section 217 of the Immigration and Nationality Act, who are present, or will soon be arriving, in the United States, against the appropriate criminal, national security, and terrorism databases maintained by the Federal Government.”

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 is amended by inserting after the item relating to section 433 the following new items:

“Sec. 434. Electronic passport screening and biometric matching.

“Sec. 435. Continuous screening by U.S. Customs and Border Protection.”

SEC. 4. REPORTING OF VISA OVERSTAYS.

Section 2 of Public Law 105–173 (8 U.S.C. 1376) is amended—

(1) in subsection (a)—

(A) by striking “Attorney General” and inserting “Secretary of Homeland Security”; and

(B) by inserting before the period at the end the following: “, and any additional information that the Secretary determines necessary for purposes of the report under subsection (b)”; and

(2) by amending subsection (b) to read as follows:

“(b) ANNUAL REPORT.—Not later than June 30, 2017, and not later than June 30 of each year thereafter, the Secretary of Homeland Security shall submit a report to the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives and to the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate providing, for the preceding fiscal year, numerical estimates of—

“(1) for each country, the number of aliens from the country who are described in subsection (a), including—

“(A) the total number of such aliens within all classes of nonimmigrant aliens described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)); and

“(B) the number of such aliens within each of the classes of nonimmigrant aliens, as well as the number of such aliens within each of the subclasses of such classes of nonimmigrant aliens, as applicable;

“(2) for each country, the percentage of the total number of aliens from the country who were present in the United States and were admitted to the United States as nonimmigrants who are described in subsection (a);

“(3) the number of aliens described in subsection (a) who arrived by land at a port of entry into the United States;

“(4) the number of aliens described in subsection (a) who entered the United States using a border crossing identification card (as such term is defined in section 101(a)(6) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(6))); and

“(5) the number of Canadian nationals who entered the United States without a visa whose authorized period of stay in the United States terminated during the previous fiscal year, but who remained in the United States.”

SEC. 5. STUDENT AND EXCHANGE VISITOR INFORMATION SYSTEM VERIFICATION.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall ensure that the information collected under the program established under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372) is available to officers of U.S. Customs and Border Protection conducting primary inspections of aliens seeking admission to the United States at each port of entry of the United States.

SEC. 6. SOCIAL MEDIA REVIEW OF VISA APPLICANTS.

(a) **IN GENERAL.**—Subtitle C of title IV of the Homeland Security Act of 2002 (6 U.S.C. 231 et seq.), as amended by section 3 of this Act, is further amended by adding at the end the following new sections:

“SEC. 436. SOCIAL MEDIA SCREENING.

“(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this section, the Secretary shall, to the greatest extent practicable, and in a risk based manner, review the social media accounts of visa applicants who are citizens of, or who reside in, high-risk countries, as determined by the Secretary based on the criteria described in subsection (b).

“(b) **HIGH-RISK CRITERIA DESCRIBED.**—In determining whether or not a country is high-risk pursuant to subsection (a), the Secretary shall consider the following criteria:

“(1) The number of nationals of the country who were identified in United States Government databases related to the identities of known or suspected terrorists during the previous year.

“(2) The level of cooperation of the country with the counter-terrorism efforts of the United States.

“(3) Any other criteria the Secretary determines appropriate.

“(c) **COLLABORATION.**—To develop the technology required to carry out the requirements of subsection (a), the Secretary shall collaborate with—

“(1) the head of a national laboratory within the Department’s laboratory network with relevant expertise; and

“(2) the head of a relevant university-based center within the Department’s centers of excellence network.

“SEC. 437. OPEN SOURCE SCREENING.

“The Secretary shall, to the greatest extent practicable, and in a risk based manner, review open source information of visa applicants.”

(b) **CLERICAL AMENDMENT.**—The table of contents in section 1(b) of the Homeland Security Act of 2002, as amended by section 3 of this Act, is further amended by inserting after the item relating to section 435 the following new items:

“Sec. 436. Social media screening.

“Sec. 437. Open source screening.”.

PURPOSE AND SUMMARY

H.R. 5253, the “Strong Visa Integrity Secures America Act,” takes necessary steps to address potential security gaps to strengthen counterterror vetting and screening of individuals applying for entry into the United States.

As a result, this bill increases the number of Immigration and Custom Enforcement (ICE) Visa Security Units (VSU) from 26 to no fewer than 50. This will allow specially trained investigators to conduct in-depth reviews of high-risk visa applicants.

While there are more than 220 visa issuing posts around the world, the Committee understands that each VSU costs an estimated \$2.7 million dollars per post. Therefore, the bill also expands the Pre-Adjudicated Threat Recognition Intelligence Operations Team (PATRIOT) program, which conducts security checks remotely, to an additional 50 locations. This will allow visa issuing posts with limited space or insufficient workload the benefits of certain visa security vetting activities in the absence of a VSU.

The bill also requires the Commissioner of U.S. Customs and Border Protection (CBP) establish a system to read embedded chips contained within electronic passports, utilize facial recognition, and

collect biometric data from certain individuals at airports of entry. Finally, the Commissioner of CBP must continuously screen individuals issued a U.S. visa against appropriate criminal, national security, and terrorism databases maintained by the Federal Government as well as social media profiles.

BACKGROUND AND NEED FOR LEGISLATION

Despite improvements in the visa security screening process since 2001, terrorists and other malicious actors have continued to exploit the visa process to enter the United States. No fewer than 37 terror attacks and plots may have been stopped by increased visa security. As a result, H.R. 5253 makes a series of security enhancements to increase the likelihood that terrorists attempting to obtain a visa are stopped well before they depart for the United States.

The Homeland Security Act of 2002 authorized the creation of U.S. Immigration and Customs Enforcement's Visa Security Program (VSP) for the purpose of interdicting individuals who seek to exploit the visa process to enter the United States.

ICE agents assigned to the VSP provide an additional layer of security beyond the existing background security checks against the intelligence community holdings. VSP Agents help adjudicate discrepancies, resolve false name matches, conduct additional investigations, liaise with host government security officials and, in the process, keep suspected terrorists from arriving on American soil.

Supporting these efforts is the ICE's PATRIOT program. The PATRIOT system remotely vets visa applications against law enforcement, intelligence and immigration databases to confirm identity, reduce false positives, and quickly identify applicants of concern. This early vetting gives ICE critical lead time to develop new investigations, advance ongoing operations and coordinate with State Department officers to fill any information gaps through interviews of the applicants.

Imposters, or those who present valid travel documents belonging to another person, have long been a detection challenge for CBP officers at ports of entry. To confirm identity and reduce the amount of fraudulent documents accepted at the nation's ports of entry, CBP has conducted a series of pilots to test facial recognition matching technology at several international airports. Electronic passports contain a photograph that can be read and then matched to ensure that the person attempting entry is in fact the true bearer of the travel documents. Preventing imposters from using another's legitimate travel document increases security.

Other gaps addressed in H.R. 5253 include the student visa process, which requires matching of a paper-based I-20 form issued by colleges and universities, along with the computer-based Student and Exchange Visitor Information System (SEVIS), to identify whether a student is allowed to be admitted in to the United States. This two-part system of paper I-20 and the computer-based SEVIS matching revealed a gap in the course of the Boston Marathon bombing investigation.

Specifically, Azamat Tazhayakov, a national of Kazakhstan and friend of the Tsarnayov brothers, departed the United States in December 2012, after he was academically dismissed from the University of Massachusetts Dartmouth. Tazhayakov's I-20 document was

terminated as a result of his dismissal, but he nonetheless retained it. Tazhayakov was able to reenter the United States through a port of entry on January 20, 2013, presenting the no-longer valid I-20. As a result, H.R. 5253 requires DHS to make SEVIS information available to CBP Officers conducting primary inspections at each port of entry to close this gap.

HEARINGS

No hearings were held on H.R. 5253 in the 114th Congress.

COMMITTEE CONSIDERATION

The Committee met on June 8, 2016, to consider H.R. 5253, and ordered the measure to be reported to the House with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by MR. HURD (#1); was AGREED TO, as amended, by voice vote.

An amendment by MR. DONOVAN to the Amendment in the Nature of a Substitute (#1A); was AGREED TO by voice vote.

Add at the end a new section entitled "Sec. 6 Social Media Review of Visa Applicants".

An en bloc amendment to the Amendment in the Nature of a Substitute offered by MR. THOMPSON OF MISSISSIPPI (#1B); was AGREED TO by voice vote.

Consisting of the following amendments:

An amendment:

Page 1, line 18, strike "based on" and inset "considering".

Page 2, line 16, strike "The level of" and insert "Information on".

An amendment:

Page 5, beginning line 1, strike "to the greatest extent practicable,".

Page 5, beginning line 3, strike "and in consultation, where appropriate, with the Secretary of State,".

An amendment:

Page 9, line 10, strike "and" at the end.

Page 9, line 15, insert after "(8 U.S.C. 1101(a)(6))" the following: "; and".

Page 9, line 15, strike the first period and insert the following: "(5) the number of Canadian nationals who entered the United States without a visa whose authorized period of stay in the United States terminated during the previous fiscal year, but who remained in the United States."; was AGREED TO by voice vote.

COMMITTEE VOTES

Clause 3(b) of Rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 5253.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

In compliance with clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 5253, the Strong Visa Integrity Secures America Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R. 5253 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The general performance goal or objective of this bill is to enhance visa security, port of entry security and consular officer training to strengthens counterterror vetting and screening of individuals applying for entry into the United States.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of Rule XIII, the Committee finds that H.R. 5253 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED
TARIFF BENEFITS

In compliance with Rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the Rule XXI.

FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or

joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 5253 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 5253 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title.

This section provides that this bill may be cited as the “Strong Visa Integrity Secures America Act”.

Sec. 2. Visa Security.

(a) In General.

Subsection (a) amends section 428(e) of the Homeland Security Act of 2002 to assign DHS employees at not fewer than 50 consular and diplomatic posts that issue visas. The assignment of these employees, referred to as Visa Security Units (VSU), and the decision as to what consular or diplomatic posts to assign them to must be done in a risk based manner based on certain criteria provided for in the legislation. This subsection further provides that the assignment of these employees is at the sole discretion of the Secretary of Homeland Security, and not the Secretary of State.

The Committee strongly supports the Visa Security program, and believes that having trained ICE agents at Visa Security Units abroad is the most effective way to ensure the validity of visa applicants at high-risk posts. While remote screening is also conducted on visa applications where Visa Security Units are located under the PATRIOT program, forward deployed agents improve cooperation with consular officers, increase technical assistance, and enable access to a number of government databases for more thorough vetting of a visa applicant prior to and during the course of a consular interview. ICE currently has 26 operational VSU’s.

(b) Counterterrorism Vetting and Screening.

This subsection requires visa applicants be screened against the appropriate criminal, national security, and terrorism databases maintained by the Federal Government.

(c) Training and Hiring.

This subsection requires the Secretary of Homeland Security to work through the Commissioner of U.S. Customs and Border Protection and the Director of Immigration and Customs Enforcement to train any employees posted at consular and diplomatic posts.

The Committee believes training of State Department personnel by ICE or CBP is underutilized under the Visa Security Program, and such training would provide security benefits to employees in consular and diplomatic posts.

(d) Pre-Adjudicated Visa Security Assistance and Visa Security Advisory Opinion Unit.

This subsection amends the Homeland Security Act of 2002 to mandate that at an additional 50 diplomatic consular posts at which DHS employees are not permanently stationed have visa applications vetted remotely. The selection of those 50 posts is also done in a risk-based manner.

While expansion of VSP to 50 posts does not cover the nearly 224 total visa-issuing consular posts, it is a cost effective and responsibly incremented approach to improving visa security abroad and reduces the opportunity for visas to be used for terrorists to reach our shores. As a result, the Committee supports expansion of remote vetting to screen visas issued at additional posts where Visa Security Units do not currently exist, but where coverage of such posts could occur via partnerships with other law enforcement agencies or Department of State.

Finally, this subsection mandates that the Secretary establish a Visa Security Advisory Opinion Unit that can respond to requests from the Secretary of State to conduct visa security reviews on visa applications using information maintained by the department, including terrorism association and criminal history.

Originally recognized through Appropriations legislation, the ICE Security Advisory Opinion Unit lacks a formal legislative authorization. The Committee supports ICE's Security Advisory Opinion efforts and recognizes it as a vital part of the Visa Security process.

Sec. 3. Electronic Passport Screening and Biometric Matching.

Section 3 amends the Homeland Security Act of 2002 to add the following sections.

Proposed section 434 requires the Commissioner of U.S. Customs and Border Protection to screen electronic passports by reading each passport's embedded chip and utilize facial recognition to screen travelers at U.S. airports of entry.

The proposed section requires the passport screening to be conducted on U.S. citizens, nationals of countries participating in the Visa Waiver Program, and nationals of any other foreign country that issue passports with readable chips. The facial recognition requirements will only apply to nationals from countries participating in the Visa Waiver Program.

The Committee believes electronic passports that contain embedded chips that include biometric information greatly improve passport and travel security. While these passports have recently been required, screening against the biometrics contained on the chips does not typically occur upon entry into the United States. The Committee believes the security value of the electronic passports is

maximized when the embedded information contained in the e-passport is read, and matched to positively identify an individual seeking admission into the United States.

Proposed section 435 mandates the Commissioner of U.S. Customs and Border Protection to continuously screen individuals issued a visa, and those in the United States or arriving soon as part of the Visa Waiver Program, against the appropriate criminal, national security, and terrorism databases maintained by the Federal Government.

The Committee is concerned that screening of individuals with visas does not occur on a recurring or continuous basis. This gap may provide opportunities for exploitation where a previously vetted individual may be issued a visa to enter the United States, then subsequently listed on a database of concern, and be able to enter the country without derogatory information flagged by subsequent reviews. The continuous vetting provided for in H.R. 5253 would provide greater security and ensure individuals issued a visa, but not currently in the United States, have their visa or ESTA revoked, if warranted.

Sec. 4. Reporting of Visa Overstays.

Section 4 amends current law to mandate that the Department of Homeland Security issue a report to Congress regarding visa overstays. The report must include, among other data: numerical estimates of the number of aliens who overstayed their visa from each county; the number of aliens within all classes of non-immigrant visa categories and appropriate sub-categories that overstayed their visa; and the percentage of aliens who arrived at a land point of entry.

The Committee believes that the fiscal year 2015 Visa Overstay report issued by the Department is a step in the right direction but is not a complete picture of the visa overstay problem. For example, this first visa overstay report to Congress since the Department of Justice last reported them in 1996 only includes data on foreign nationals traveling on a B1 and B2 travel visa for business or pleasure, as well as those admitted under the Visa Waiver Program through an air or sea port of entry. The report does not capture the entire universe of visa overstays including land and pedestrian port of entry overstays, including Mexican citizens traveling on a Border Crossing Card, or other types of visa categories, such as student visas.

In the absence of a biometric, or even complete biographic exit system, CBP must expand their overstay report to all visa categories and entry modes to present Congress with a complete picture of the state of visa overstays.

Sec. 5. Student and Exchange Visitor Information System Verification.

This section mandates the Secretary of Homeland Security ensure that information collected in SEVIS is available to CBP officers conducting primary inspections of aliens seeking admission into the U.S. at all ports of entry.

The Committee believes that student visas may be one of the preferred routes for terrorist exploitation. The current system requires matching of a paper-based I-20 form issued by colleges and

universities, with the computer-based Student and Exchange Visitor Information System (SEVIS), to identify whether a student is allowed to be admitted in to the United States. This two-part system of paper I-20 and the computer-based SEVIS matching adds an additional level of complexity, and was revealed as a security vulnerability in the course of the Boston Marathon bombing investigation. Specifically, Azamat Tazhayakov, a national of Kazakhstan and friend of the Tsarnayov brothers, departed the United States in December 2012, after he was academically dismissed from the University of Massachusetts Dartmouth.

According to reports, this lapse occurred in part because Customs and Border Protection officers at primary inspection did not have access to the Immigration and Customs Enforcement's SEVIS database, to verify whether a student's I-20 was valid.

While the Committee understands that interim measures have been made since 2013, and that SEVIS is available in secondary screening, requiring CBP to screen against SEVIS during the course of primary inspection will close existing gaps in the entry system, and is in line with previous plans for upgrades to the SEVIS system.

Sec. 6. Social Media Review of Visa Applicants.

Section 6 amends the Homeland Security Act of 2002 to add the following sections.

Proposed section 436 mandates the DHS Secretary to review the social media accounts of visa applicants who are citizens of, or reside, in high risk countries as determined by the Secretary, based on certain criteria provided for in the legislation. This shall be implemented to the greatest extent possible and in a risk-based manner. In order to develop the technology necessary to implement this section the Secretary is required to collaborate with the head of the national laboratory within the Department's laboratory network with relevant expertise and the head of the relevant university based center within the Department's centers of excellence network.

The Committee believes that screening visa applicant social media accounts will enhance the visa vetting capabilities of the U.S. government both in the early stages of a visa application and at the issuance phase. It will allow for continued monitoring of non-immigrant visa holders during the time of visa application, issuance, and entry into the United States. This screening has the potential to identify additional derogatory information during the visa pre-issuance vetting phase which may otherwise be unknown.

The Committee is pleased that DHS sees value in social media vetting. United States Citizenship and Immigration Services is currently piloting the use of social media for review of applications for certain immigration benefits. According to testimony the Committee received in February, USCIS is conducting several of these pilots using social media in connection with refugee applications and is exploring using social media for other adjudications. The Committee acknowledges the technical challenges related to the vetting of social media for all categories of visas, which is why we limited the mandate for this vetting to a smaller subset of the riskiest countries.

Proposed section 437 requires the Secretary, to the greatest extent possible, review open source information on visa applicants in a risk-based manner.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Homeland Security Act of 2002”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

*	*	*	*	*	*	*
TITLE IV—BORDER, MARITIME, AND TRANSPORTATION SECURITY						
*	*	*	*	*	*	*
Subtitle C—Miscellaneous Provisions						
*	*	*	*	*	*	*
<i>Sec. 434. Electronic passport screening and biometric matching.</i> <i>Sec. 435. Continuous screening by U.S. Customs and Border Protection.</i> <i>Sec. 436. Social media screening.</i> <i>Sec. 437 Open source screening.</i>						
*	*	*	*	*	*	*

TITLE IV—BORDER, MARITIME, AND TRANSPORTATION SECURITY

*	*	*	*	*	*	*
Subtitle C—Miscellaneous Provisions						
*	*	*	*	*	*	*

SEC. 428. VISA ISSUANCE.

(a) **DEFINITION.**—In this subsection, the term “consular office” has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(b) **IN GENERAL.**—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) of this section, the Secretary—

- (1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and

shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training provided by the Secretary of State), which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(2) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

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

(1) **IN GENERAL.—**Notwithstanding subsection (b), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) **CONSTRUCTION REGARDING AUTHORITY.—**Nothing in this section, consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law, shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country adoption).

(C) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(D) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(E) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

(F) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(G) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(H) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(I) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(J) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(K) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

(L) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999); 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553.

(M) Section 103(f) of the Chemical Weapon Convention Implementation Act of 1998 (112 Stat. 2681–865).

(N) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(O) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(P) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(d) CONSULAR OFFICERS AND CHIEFS OF MISSIONS.—

(1) IN GENERAL.—Nothing in this section may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State; or

(B) the authority of a chief of mission under section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(2) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)), consistent with the Secretary of Homeland Security’s authority to refuse visas in accordance with law.

(e) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—**【The Secretary】**

(A) *AUTHORIZATION.*—*Subject to the minimum number specified in subparagraph (B), the Secretary is authorized to assign employees of the Department to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security.*

(B) *RISK-BASED ASSIGNMENTS.*—

(i) *IN GENERAL.*—*In carrying out subparagraph (A), the Secretary shall assign, in a risk-based manner, and considering the criteria described in clause (ii), employees of the Department to not fewer than 50 diplomatic and consular posts at which visas are issued.*

(ii) *CRITERIA DESCRIBED.*—*The criteria referred to in clause (i) are the following:*

(I) *The number of nationals of a country in which any of the diplomatic and consular posts referred to in clause (i) are located who were identified in United States Government databases related to the identities of known or suspected terrorists during the previous year.*

(II) *Information on cooperation of such country with the counterterrorism efforts of the United States.*

(III) *Information analyzing the presence, activity, or movement of terrorist organizations (as such term is defined in section 212(a)(3)(B)(vi) of the*

Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)) within or through such country.

(IV) The number of formal objections based on derogatory information issued by the Visa Security Advisory Opinion Unit pursuant to paragraph (10) regarding nationals of a country in which any of the diplomatic and consular posts referred to in clause (i) are located.

(V) The adequacy of the border and immigration control of such country.

(VI) Any other criteria the Secretary determines appropriate.

(iii) RULE OF CONSTRUCTION.—The assignment of employees of the Department pursuant to this subparagraph is solely the authority of the Secretary and may not be altered or rejected by the Secretary of State.

(2) FUNCTIONS.—Employees assigned under paragraph (1) shall perform the following functions:

(A) Provide expert advice and training to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(B) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

(C) Screen any such applications against the appropriate criminal, national security, and terrorism databases maintained by the Federal Government.

[(C)] (D) Conduct investigations with respect to consular matters under the jurisdiction of the Secretary.

(3) EVALUATION OF CONSULAR OFFICERS.—The Secretary of State shall evaluate, in consultation with the Secretary, as deemed appropriate by the Secretary, the performance of consular officers with respect to the processing and adjudication of applications for visas in accordance with performance standards developed by the Secretary for these procedures.

(4) REPORT.—The Secretary shall, on an annual basis, submit a report to Congress that describes the basis for each determination under paragraph (1) that the assignment of an employee of the Department at a particular diplomatic post would not promote homeland security.

(5) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department assigned to perform functions described in paragraph (2) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(6) TRAINING AND HIRING.—

(A) IN GENERAL.—**[(The Secretary shall ensure, to the extent possible, that any employees] The Secretary, acting**

through the Commissioner of U.S. Customs and Border Protection and the Director of U.S. Immigration and Customs Enforcement, shall provide training to any employees of the Department assigned to perform functions under paragraph (2) and, as appropriate, consular officers, [shall be provided the necessary training] to enable them to carry out such functions, including training in foreign languages, interview techniques, and fraud detection techniques, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) USE OF CENTER.—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(7) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(8) EFFECTIVE DATE.—This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after the date of enactment of this Act.

(9) REMOTE PRE-ADJUDICATED VISA SECURITY ASSISTANCE.—*At the visa-issuing posts at which employees of the Department are not assigned pursuant to paragraph (1), the Secretary shall, in a risk-based manner, assign employees of the Department to remotely perform the functions required under paragraph (2) at not fewer than 50 of such posts.*

(10) VISA SECURITY ADVISORY OPINION UNIT.—*The Secretary shall establish within U.S. Immigration and Customs Enforcement a Visa Security Advisory Opinion Unit to respond to requests from the Secretary of State to conduct a visa security review using information maintained by the Department on visa applicants, including terrorism association, criminal history, counter-proliferation, and other relevant factors, as determined by the Secretary.*

(f) NO CREATION OF PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

(g) STUDY REGARDING USE OF FOREIGN NATIONALS.—

(1) IN GENERAL.—The Secretary of Homeland Security shall conduct a study of the role of foreign nationals in the granting or refusal of visas and other documents authorizing entry of aliens into the United States. The study shall address the following:

(A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

(B) Any security concerns involving the employment of foreign nationals.

(C) Whether there are cost-effective alternatives to the use of foreign nationals.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Government Affairs of the Senate.

(h) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to Congress a report on how the provisions of this section will affect procedures for the issuance of student visas.

(i) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—Notwithstanding any other provision of law, after the date of the enactment of this Act all third party screening programs in Saudi Arabia shall be terminated. On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication.

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SEC. 434. ELECTRONIC PASSPORT SCREENING AND BIOMETRIC MATCHING.

(a) *IN GENERAL.*—Not later than one year after the date of the enactment of this section, the Commissioner of U.S. Customs and Border Protection shall—

(1) screen electronic passports at airports of entry by reading each such passport's embedded chip; and

(2) to the greatest extent practicable, utilize facial recognition technology or other biometric technology, as determined by the Commissioner, to screen travelers at United States airports of entry.

(b) *APPLICABILITY.*—

(1) *ELECTRONIC PASSPORT SCREENING.*—Paragraph (1) of subsection (a) shall apply to passports belonging to individuals who are United States citizens, individuals who are nationals of a program country pursuant to section 217 of the Immigration and Nationality Act (8 U.S.C. 1187), and individuals who are nationals of any other foreign country that issues electronic passports.

(2) *FACIAL RECOGNITION MATCHING.*—Paragraph (2) of subsection (a) shall apply to individuals who are nationals of a program country pursuant to section 217 of the Immigration and Nationality Act.

SEC. 435. CONTINUOUS SCREENING BY U.S. CUSTOMS AND BORDER PROTECTION.

The Commissioner of U.S. Customs and Border Protection shall, in a risk based manner, continuously screen individuals issued any visa, and individuals who are nationals of a program country pur-

suant to section 217 of the Immigration and Nationality Act, who are present, or will soon be arriving, in the United States, against the appropriate criminal, national security, and terrorism databases maintained by the Federal Government.

SEC. 436. SOCIAL MEDIA SCREENING.

(a) *IN GENERAL.*—Not later than 180 days after the date of the enactment of this section, the Secretary shall, to the greatest extent practicable, and in a risk based manner, review the social media accounts of visa applicants who are citizens of, or who reside in, high-risk countries, as determined by the Secretary based on the criteria described in subsection (b).

(b) *HIGH-RISK CRITERIA DESCRIBED.*—In determining whether or not a country is high-risk pursuant to subsection (a), the Secretary shall consider the following criteria:

(1) *The number of nationals of the country who were identified in United States Government databases related to the identities of known or suspected terrorists during the previous year.*

(2) *The level of cooperation of the country with the counter-terrorism efforts of the United States.*

(3) *Any other criteria the Secretary determines appropriate.*

(c) *COLLABORATION.*—To develop the technology required to carry out the requirements of subsection (a), the Secretary shall collaborate with—

(1) *the head of a national laboratory within the Department's laboratory network with relevant expertise; and*

(2) *the head of a relevant university-based center within the Department's centers of excellence network.*

SEC. 437. OPEN SOURCE SCREENING.

The Secretary shall, to the greatest extent practicable, and in a risk based manner, review open source information of visa applicants.

* * * * *

PUBLIC LAW 105-173

AN ACT To amend the Immigration and Nationality Act to modify and extend the visa waiver pilot program, and to provide for the collection of data with respect to the number of nonimmigrants who remain in the United States after the expiration of the period of stay authorized by the Attorney General.

* * * * *

SEC. 2. DATA ON NONIMMIGRANT OVERSTAY RATES.

(a) *COLLECTION OF DATA.*—Not later than the date that is 180 days after the date of the enactment of this Act, the [Attorney General] *Secretary of Homeland Security* shall implement a program to collect data, for each fiscal year, regarding the total number of aliens within each of the classes of nonimmigrant aliens described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) whose authorized period of stay in the United States terminated during the previous fiscal year, but who remained in the United States notwithstanding such termination, and any additional information that the Secretary determines necessary for purposes of the report under subsection (b).

[(b) ANNUAL REPORT.—Not later than June 30, 1999, and not later than June 30 of each year thereafter, the Attorney General shall submit an annual report to the Congress providing numerical estimates, for each country for the preceding fiscal year, of the number of aliens from the country who are described in subsection (a).]

(b) ANNUAL REPORT.—Not later than June 30, 2017, and not later than June 30 of each year thereafter, the Secretary of Homeland Security shall submit a report to the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives and to the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate providing, for the preceding fiscal year, numerical estimates of—

(1) for each country, the number of aliens from the country who are described in subsection (a), including—

(A) the total number of such aliens within all classes of nonimmigrant aliens described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)); and

(B) the number of such aliens within each of the classes of nonimmigrant aliens, as well as the number of such aliens within each of the subclasses of such classes of nonimmigrant aliens, as applicable;

(2) for each country, the percentage of the total number of aliens from the country who were present in the United States and were admitted to the United States as nonimmigrants who are described in subsection (a);

(3) the number of aliens described in subsection (a) who arrived by land at a port of entry into the United States;

(4) the number of aliens described in subsection (a) who entered the United States using a border crossing identification card (as such term is defined in section 101(a)(6) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(6))); and

(5) the number of Canadian nationals who entered the United States without a visa whose authorized period of stay in the United States terminated during the previous fiscal year, but who remained in the United States.

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