

Hearing Transcript

Senate Homeland Security and Governmental Affairs Committee Hearing on U.S. Visa Program Security

March 15, 2016

JOHNSON:

Good morning, this hearing will come to order. I want to first of all thank the witnesses for your time and your testimony, and appearing here before us today.

We do have representatives from the State Department, the U.S. Citizen Immigration Services, the U.S. Immigration Customs Enforcement. So you have US CIS and ICE, you'll be hearing that, those acronyms, a lot of acronyms in this business.

And then, you know, Mr. John Roth, the Inspector General for the U.S. Department of Homeland Security.

The hearing is about the security of our U.S. visa systems and programs. I think that the potential vulnerabilities came to light, certainly in the public's awareness with 9/11. And, you know, the fact that, you know, so many of the terrorists that killed so many Americans were here on student visas. And we also understood that -- we became aware of the fact of visa overstays.

And so, we started understanding the vulnerabilities there. But then we obviously the State Department involved in granting an application or the acceptance of and granting of visas. We also had immigration naturalization services, you know, we basically had one agency.

After 9/11 and we kind of took that apart and set up the Department of Homeland Security and now we have different agencies. And I think it's a legitimate question to ask are these agencies working together, do we have a shared purpose, shared goal, shared mission to literally keep this nation, you know, allow for travel, allow for commerce, but at the heart of it making sure we can do everything, in an imperfect world to keep our nation safe and secure.

So that's really, you know, my primary question. And the main purpose of this hearing is are we doing all that we can to screen these applicants before they enter the country. And second, how effectively are federal agencies managing their responsibilities and working together including sharing information to each separate visa and immigration to ensure security.

I would ask that my written opening remarks be entered in the record with the consent and it's been very kindly granted. And with that I will turn it over to Senator Carper.

CARPER:

Thanks Mr. Chairman.

I want to welcome everybody. Thanks for holding the hearing and thank you all for joining us.

Three of the folks sitting in front of us are folks who came before us a year or two ago to be confirmed for confirmation hearings and I appreciate very much your service. It's not taking anything away from Mr. Donahue (ph), but we don't have jurisdiction over the Department of State, we're working on it but we're not quite -- we're not quite there yet.

But this hearing is the third in a series we have held to explore whether we are doing enough to address concerns that terrorists might try to exploit international travel to infiltrate our country.

In the aftermath of the Paris terrorist attacks, this Committee first scrutinized the process in place to screen and vet Syrian refugees escaping from the carnage in the Middle East. And we learned that the U.S. refugee resettlement process involves extensive security screening. Syrian refugees, we were told, undergo multiple rounds of screening over an average of 18 to 24 months, including in-person interviews by immigration analysts and counterterrorism officials trained in spotting fraud and trained in spotting deception.

The Committee next looked at our Visa Waiver program, which allows citizens of certain nations to travel to the United States for a visit without a visa. And once it became clear that the Paris terrorists held passports from European countries whose citizens enjoy visa waiver privileges, fears arose that this program could pose a security threat, understandably.

We learned that Visa Waiver travelers seeking to come to the U.S. endure nearly the same level of scrutiny and vetting as all other travelers. We also learned that when it comes to security, nothing is being "waived", as the name of the program incorrectly suggests. And we learned that, in return for their entry into the Visa Waiver program, countries, and there's about 38 of them must share intelligence with the U.S., they must open up their counter terrorism and aviation security systems to our inspectors, and they must abide by our standards for aviation and passport security. As a result, the Visa Waiver program has now become a key counter terrorism tool.

And what started off as a travel facilitation program it's ended up being, having enormous advantages to us in terms of protecting our security.

Today we're going to continue to look at our screening systems for foreigners entering our country. And we will examine the depth of security for all forms of visas, whether they happen to be for students, whether for tourists, people here on business, or those seeking to make America their permanent home.

It is a daunting undertaking, given the volume of international travel to the United States. It also involves the coordination of multiple government entities, including the State Department and DHS, and others that are not represented here today.

Since the 9/11 attacks against our country, there have been notable changes to strengthen our visa security, including recent adjustments made following the attacks in Paris and more recently San Bernardino. For example, amid ISIS's growing online presence, the Department of Homeland Security is exploring ways to expand its use of social media to screen travelers seeking to enter the U.S.

I look forward to hearing more about these efforts, and also about the contribution of ICE's visa security program that may help identify threats posed by potential travelers early on. We need to know if this program is adding real security and, if so, how to expand its reach.

And with -- as with all of our recent hearings, I expect that we will find elements of our visa security that we can improve upon today, understanding that we can never eliminate all risks and should not turn our back on the many benefits of trade, travel and immigration. Yet as we continuously improve the security of our immigration system, we must also keep our eye on perhaps that even more pressing threat of homeland terrorism, homegrown terrorism.

And for all that we do to strengthen our borders and our immigration security, groups like ISIS know all too well that they may bypass our multiple layers of homeland security by using online propaganda to recruit people already inside our borders, or maybe born here, to carry out attacks against the U.S. And in this respect, preventing ISIS's twisted propaganda from mobilizing our young people to carry out terrorist violence may help combat the long-term terrorist threats to the homeland in ways that aviation screening and watch-list checks can never do.

We look forward to our continued work on this committee on both combating homegrown terrorism and strengthening the security of our immigration systems. And I hope we can use today's hearing to identify some common sense improvements to the security of visas.

Thank you all for being here and we forward to this conversation.

JOHNSON:

Thanks, Senator Carper.

And Senator Tester has -- can only be with us for a short period?

TESTER:

Yes. I will make this very short and thank you, Mr. Chairman. I very much appreciate the flexibility.

The Visa Waiver Program as the Chairman and Ranking Member pointed or they are important programs, and important for our economy but they're also of concern.

In your opening statements if you could address the security of the programs you have, number one. If you need additional tools that you don't have that would require this committee or another committee to take action. And the third thing is manpower. Do you have the manpower to carry out the job to make sure that our country is not a threat with the visa program we have now. If you can do that you will have answered all my questions.

Thank you.

JOHNSON:

And that was under a minute. It is the tradition of our Committee to swear in witnesses, so if you will all rise and raise your right hand.

Do you swear that the testimony you will give before this Committee will be the truth, the whole truth and nothing but the truth so help you God?

Please be seated.

Our first witness is Mr. David Donahue, he is the Principal Deputy Assistant Secretary for the Consular Affairs at the U.S. Department of State. Mr. Donahue has also served as Deputy Assistant Secretary of State for Visa Services in the Bureau of Consular Affairs and is coordinator for Inner-Agency Provincial Affairs at the U.S. Embassy in Kabul, Afghanistan.

Secretary Donahue?

DONAHUE:

Good morning Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee, thank you for this opportunity to testify today on the topic of U.S. Visa Program Security.

The Department of State and our partner agencies throughout the federal government take our commitment to protect American borders and citizens seriously. And we constantly analyze and update our clearance procedures.

My written statement which I request be put into the record described a rigorous screening regimen that applies to all visa categories.

Let me begin by saying that the visa program is layered -- is a layered inter-agency program focused on national security. Beginning with the petition to USCIS, my colleagues here, or a visa application submitted directly to a consular section abroad, during the interview, prior to travel, upon arrival in the United States and while the traveler is in the US our national law enforcement intelligence communities work together to protect our borders.

The vast majority of visa applicants and all immigrants and fiance visa applicants are interviewed by a consular officer. Each consular officer completes extensive training which has a strong emphasis on border security fraud prevention, inter-agency coordination and interviewing techniques.

One hundred and twenty-two diplomatic security, assistant regional security officer investigations at 107 posts worldwide bring additional law enforcement and anti-terrorism expertise to the visa process.

All visa applicant data are vetted against databases including terrorist identity databases that contain millions of records of individuals found ineligible for visas, or regarding whom potentially derogatory information exists.

We collect 10 fingerprint scans for nearly all visa applicants and screen them against DHS and FBI databases of known suspected terrorists, wanted persons, immigration violators and criminals.

All visa applicants are screen against photos of known and suspected terrorists or prior visa applicants.

When an interview raises concerns that an applicant may be a threat to national security or the inter-agency security process shows potentially disqualifying, derogatory information the consular officer suspends processing and submit a request for a Washington based inter- agency security advisory opinion review conducted by federal law enforcement, intelligence agencies and the Department of State.

The Department of Homeland Security's PATRIOT Program and Visa Security Program managed by our USCIS -- our ICE colleagues provide additional protections and certain overseas posts. DHS Immigration and Customs Enforcement Special Agents assigned to more than 20 embassies and consulates in high-threat locations provide on-site vetting of visa applications, as well as other law-enforcement support and training to our officers.

Security reviews do not stop when the visa is issued. The Department and partner agency continuously match new threat information with our record of existing visas. And we'll use our authority to revoke visas.

We refuse more than a million applications a year for visas. And since 2001 the Department more than 122,000 visas based on information that surfaced after issuance of the visas. This includes nearly 10,000 revoked or suspected links to terrorism, again, based on information that surfaced after issuance. Notice of these revocations is shared across the inter-agency in near real time.

I noticed that you also wanted to talk about our view about the security of the Visas Viper Program (ph). While that is managed by the Department of Homeland Security we believe that it does really enhance our national security and it allows us to focus on those places to have the staffing and the resources in places where we really do need to look deeply into the threat from travelers. It also provides, as was mentioned by Senator Carper, these cooperative agreements with the nations that are sending these travelers to the United States where we have better access, better understanding of the threats they're seeing, they're sharing with us and we're sharing with them.

An advance stage of that while it's not part of the Visas Viper Program that's in Canada where we have a very close relationship in sharing derogatory information back and forth across the border to make sure we have a strong out border for the United States.

Mr. Chairman and distinguished Members of the Committee the Department of State has no higher priority than the safety of our fellow citizens at home and overseas, and the security of the traveling public. Every visa decision is a national security decision.

We appreciate the support that Congress has given us as we constantly work to strengthen our defenses.

I encourage you, when you're travelling overseas to visit our consular sections to see firsthand the good work that our officers are doing around the world. And I look forward to your questions.

JOHNSON:

Thank you, Secretary Donahue.

Our next witness is Mr. Leon Rodriguez. Mr. Rodriguez is the Director of U.S. Citizenship and Immigration Services, or referred to as USCIS at the U.S. Department of Homeland Security.

Prior to this position Mr. Rodriguez served as the director of the Office for Civil Rights of the Department of Health and Human Services, and Deputy Assistant Attorney General for Civil Rights at the Department of Justice.

Director Rodriguez?

RODRIGUEZ:

Good morning, Chairman. Good morning, Ranking Member. Good morning, Members of the Committee.

This is my second time before this Committee to talk about this subject matter and the sixth time that I've testified before some Congressional Committee in this fiscal year on this subject matter.

I should hasten to say that this Committee has become one of my favorites, particularly because the level of discourse has always been a civil and intelligent one. Not that the questions are easy, I think the questions we are asked are hard ones that we need to be able to answer for the benefit of the American people, but that I really do appreciate the tone that you both have set here and thank you for that.

I believe as an article of faith that a healthy and robust immigration and travel system is critical to our economy, critical to the stability of our families and critical actually to the successful conduct of our foreign policy and national security.

I also believe that the most fundamental responsibility of government is to protect the public's safety. I've spent a fair part of my career working at the local level. And I've learned that every time that we issue a driver's license to make sure that we're not issuing that license to someone who may become a drunk driver.

Every time we issue a building permit we need to ensure that that's not building that will collapse. And every time we issue some sort of immigration benefit we need to do everything we can to ensure the security of our country and to ensure that those who mean us harm or who will become threats to our public safety do not exploit the immigration system.

In particular USCIS, my agency, bear responsibility for screening refugees who will -- who are seeking admission to the United States. Since September 11th we have admitted nearly 790,000 refugees and I would hasten to add that about 120,000 of those have come from Iraq.

In that time not a single admitted refugee has actually engage in an act of terrorist violence against the United States. There have been a number, relatively small number of terrorist plots or attempts

to affiliate with terrorist organizations that have been successfully disrupted by United States law enforcement.

The reasons why we have been successful is the robust screening process that already exists to screen those who are coming to the United States. It is a multi-layered process involved a multitude of both counter (ph) agencies, law-enforcement agencies, intelligence agencies, involves in tens of interviews conducted by several agencies and in particular by my officers who are intensively trained and briefed to do the work that they do.

Nonetheless recognizing involving threats, particularly those posed by lone wolfs, inspired by terrorist organizations we continue to look for opportunities to intensify and strengthen the quality of the work that we do.

One area of particular recent focus has been our review of social media, particularly those seeking admissions, refugees, in order to determine whether there is any derogatory information contained therein.

We have undertaken simultaneously several pilots to identify automated tools and processes which will further enable us to do this work, but we have not waited for the conclusion of those pilots to in fact begin actively using that as part of our work. And in those cases where individuals have been flagged as of concern, particularly among certain refugee streams we have already been analyzing social media to determine whether any such information exists.

We will continue to add capacity in this area. We will continue to strengthen our ability to do that, and we will add more volume based on our assessment and our intelligence community partners' assessment of where the highest levels of risks are.

Now to respond in particular to your questions, Senator Tester, we are -- we are -- we are working to get to the point where we actually can answer your question, where we can identify the resources and personnel that we need. Needless to say our agency is a fee- funded agency, so the majority of this work is actually funded by our fee paying customers, but a lot of that work is also done in concert with various tax-based partners in the law enforcement and intelligence communities. And we'll be looking forward to a further conversation should we identify needs as we develop these processes.

Finally I look forward to addressing the concerns raised in the IG's report. I would note a couple of particular findings. One was that 93 percent of our customers in the early going of our I-90 that is a replacement green card launch reported that they were quite satisfied with the service that we provided.

I would also note that the IG recognizes that after July, 2015 the conclusion of the audit window - - we undertook a number of improvements and what I would ask is both for the IG to come back, but also to be able to engage with this community -- with this Committee rather about those improvements so that we can give you the confidence that in fact our automation process is successful and is poised for even greater success in the future.

Thank you again for having me here today.

JOHNSON:

Thank you, Director Rodriguez.

Our next witness is Director Sarah Saldana. Director Saldana is Director of U.S. Immigration and Immigration Enforcement, ICE at the U.S. Department of Homeland Security. Director Saldana previously served as United States Attorney for the Northern District of Texas. Director Saldana.

SALDANA:

Thank you. Good morning, Chairman Johnson, Ranking Member Carper, other members of this committee, Senator Tester, I'm still having nightmares from seeing that. Was it a buffalo or a bison head in your office? But I'm sure I'll get over it.

I will say in all seriousness that I appreciate the opportunity to talk today about this very important subject. I absolutely agree with my colleagues here with respect to the importance of this issue and these issues. I appreciate what we hear from the Inspector General with respect to our programs and improvements that are recommended and obviously to your questions and suggestions with respect what -- how we can do our jobs better.

As you know, Congress authorized a role in this process back in 2002 where we were told to assign agents in diplomatic post to review visa security activities, and secondly, to provide training and other assistance to our State Department colleagues.

This a lot of effort is led by the investigative side of Immigration and Customs Enforcement, Homeland Security Investigations with the involvement of our Enforcement and Removal Operations folks or ERO, and it's accomplished to the program that's been referred to as VSP, visa security program.

Under this program, we have analysts and agents working at 26 issuing -- visa issuing post in 20 countries to identify terrorists, criminals, and other individuals who are ineligible for visas prior to their travel or application for admission to the United States. This fits right in with ICE's larger responsibility to detect, disrupt and dismantle transnational criminal organizations.

And -- but in the visa security context obviously, we were trying to stop threats, deter threats before they reach our nation's borders. As the result to the additional congressional funding in fiscal 2015 for which we are very thankful, ICE was able to expand VSP operations to six new issuing posts, the largest expansion in the program's history. We are looking forward to adding four more posts before the end of this fiscal year.

As my colleagues have said, the process begins and ends obviously with the Department of State with the significant involvement of citizenship and immigration service, but this process also presents the first opportunity to assess whether potential visitor, immigrant poses a threat to our country, and that's where ICE comes in, our law enforcement folks.

ICE's actions compliment the counselor office's screening applicant interviews and reviews of applications and supporting documentation. PATRIOT, which the principal or deputy assistant secretary just mentioned begins our visa screening mission by conducting an auto -- a first take on automatic -- automated screening of visa application information against our vast DHS holdings.

All the information we have from the -- not only DHS agencies but the intelligence community as well. These steps occur before the applicant is even interviewed for the first time. PATRIOT takes a risk-based approach and uses interagency resources from ICE, CBP and the State Department to identify potential national security and public threats.

Where VSP difference for most other government screening efforts is that it leverages the fact that we have agents posted at those visa screening sites, at the visa sites that the State Department has. And those agents are able to investigate this information that comes up in the applications actually supplement Department of State's interviews of those applicants and identify previously unknown threats.

So we are very pleased to have those people actually on site in those 20 different countries. In FY 2015, VSP, our agents reviewed over 2 million visa applications, over 2 million, and we determined they're identified 64,000 I think for further review. This is a flag that goes up that perhaps something there is indicating to the agent who is very well-trained and versed in intelligence and criminal activity and other derogatory information.

After in depth vetting, the next step, we determine existence of a little over 7,000 of 23,000 cases in which we saw derogatory information to have some nexus to terrorism resulting in our recommendation to Department of State to refuse visas to approximately 600 last year.

Approximately 80 -- 850 terrorist database records were created or enhanced, that is the other compliment to this mission and that is the intelligence gathering that we're able to do through our in-depth vetting and screening.

While I'm extremely proud of what our ICE personnel do to screen the visa applicants on the front side, we also actively work to identify and initiate action against overstay violators that Senator Johnson mentioned earlier.

This vetting helps to determine if an individual has overstayed or departed the U.S. In the last two year, ICE's dedicated approximately 650,000 special agent hours, (inaudible) to overstay enforcement.

ICE prioritizes immigrant overstayed cases through risk-basis analysis through our Counterterrorism and Criminal Exploitation Unit, the CTCEU, review many leads and further investigate them and refer them to others in -- on the ERO side if we are unable to do anything with them on the investigative side.

We are very proud to include both sides that are helping this effort. I believe we've actually, as a side note, have increased the risk -- investigative responsibilities of our ERO folks and I look forward to working with this committee and with our appropriations committee to discuss some

pay reform with respect to our entire ICE workforce. And I stand ready to answer any questions you may have.

JOHNSON:

Thank you Director Saldana. Final witness is Inspector General John Roth who is the Inspector General for the U.S. Department of Homeland Security. Mr. Roth most recently served as Director of the Office of Criminal Investigations at the Food and Drug Administration.

Prior to this, he had 25 -- he had a 25-year career as a federal prosecutor, senior leader in the Department of Justice. Inspector General Roth?

JOHN ROTH:

Thank you, Chairman Johnson, Ranking Member Carper and members of this committee. Thank you for inviting me here to discuss my office's oversight of DHS visa programs.

Our recent work has involved a number of audits and investigations and I will discuss some of our audit results this morning. Deciding and administering immigration benefits including visas as a massive enterprise. USCIS employs about 19,000 people to process millions of applications for immigration benefits.

They are required to enforce what are sometimes highly complex laws, regulations, and internal policies which can be subject to different interpretations. They are rightly expected to process decisions within a reasonable timeframe.

USCIS and the rest of DHS accomplished their mission while working in an antiquated system of paper-based files more suited to an office environment from 1950 than 2016. The system creates inefficiencies and risks to the program.

To give you an idea of the scope of the problem, USCIS spends more than \$300 million per year shipping, storing and handling over 20 million immigrant files. This week, we published our sixth report on USCIS efforts to transform its paper-based processes to an integrated and automated system.

We undertook this audit to answer a relatively simple question. After 11 years in considerable expense what has been the outcome of USCIS's efforts automate benefits processing. We focused on the progress that was made and the performance outcomes.

We interviewed dozens of individuals including traveling to local field locations and talking to over 60 end users who are using ELIS. I remember we stood next to them and watched as they struggle with the system. We found that USCIS has made little progress in transforming its paper-based processes into an automated one.

Previous efforts which cost approximately \$500 million to implement had to be abandoned recently in favor of the new system. CIS now estimates that it will take more than three years and additional billion dollars to automate benefit processing. This delay will prevent CIS from achieving its workload processing national security and customer service goals.

Currently, only two of about 90 different types of application forms were online filing. We found, for example, the time to process immigration benefits was twice that of the metrics that CIS had established.

Our earlier report on USCIS IT systems published in July of 2014 reported that using electronic files in use at the time actually took twice as long as using paper files. That report reflected user dissatisfaction with the system that often took between 100 and a 150 mouse clicks to move among sublevels to complete a specific process.

As Director Rodriguez said, we acknowledge the DHS has recently take insignificant steps to improve the process by which new information technology including moving from a traditional development methodology to a new incremental approach called Agile will assist.

Implementation of automation is very much a moving target and USCIS may have since made progress on the problem since the time of our field work ended in July of 2015. We'll obviously continue to monitor the station and report back to the committee if necessary.

Separately in a second earlier audit, we compared databases belonging to ICE and the USCIS and found that no human traffickers were using work, fiancee and other family reunification visas to bring their victims into the country.

One important find that we made is of the data systems that CIS uses to not electronically capture important information which would be valuable in investigating human trafficking. Again, this poses risk to the system.

We made three recommendations to improve these programs. ICE and USCIS are taking actions to resolve these recommendations and we are satisfied with their progress thus far.

Finally corrupt and criminal activity on the part of the DHS personnel can present a risk to the integrity of the visa process. My written testimony illustrates several examples in which employees or contractors who are in a position we trust were able to compromise the system to provide immigration benefits to those who are not entitled to them. This type of insider threat presents significant risks that can only be countered through continual vigilance.

In summary, the size and complexity of the mission coupled with an archaic method of processing applications bring significant risk. There is risk to operations and that makes it more difficult for you USCIS to accomplish its mission.

There's also risk to our national security that we may be admitting individuals who do not meet the requirements for visa. Basic information on visa applicants is not captured in electronic format then thus cannot be used to perform basic investigative steps.

Mr. Chairman, this concludes my prepared statement. I am happy to answer any questions you or other members of the committee may have.

JOHNSON:

Thank you, Mr. Roth. In my opening comments, I was talking a little bit about, you know, missions, goals of the different agencies. And in this committee, we have a pretty simple one, to enhance the economic and national security of America, pretty all-encompassing.

I mean, one of the problems we have in terms of visa programs, you literally have intention of conflicting goals. On the one hand, you know, we want to facilitate travel, commerce, customer service. You know, as a Director Rodriguez is talking about, on the other hand, we want to ensure the security of our homeland and to keep American safe. There's tension there.

And, so, I want to first go to Director Rodriguez. Does your organization, your agency have a pretty simple mission statement like this committee does? And can you tell us what it is?

RODRIGUEZ:

We have a number of different ways but certainly I've been very clear with our staff in communications to the entire staff that in fact articulate a set of simple principles and that is where an individual quality supplies for an immigration benefit.

They should get that benefit in an efficient and appropriate manner subject to first and foremost national security and fraud prevention. That is key element of our draft strategic plan, subject again to the legal requirements that I mentioned before and subject to operational feasibility of whatever initiatives we are taking.

JOHNSON:

Just the way you describe that, I mean the first thing you talked about was providing benefits to your customers, so it's -- I guess, the way I interpreted that is that is really the first part of your mission is, customer service providing benefits to immigrants to this country. And, again, subject to security.

RODRIGUEZ:

Right. Except for -- right, security -- security and subject to in no small weight to be given to that to a national security and public safety in other words. Our staff clearly understands this is evidence in the fact that, you know, roughly 800, 900 of our staff members are specifically dedicated to fraud -- the Fraud Detection and National Security Directorate that if an individual poses a threat, they are denied the benefit to be very clear about that.

JOHNSON:

Director Saldana, do you have a relatively simple mission statement for your agency. Mike.

SALDANA:

Comparable to these committees and that is ensure the national security and public safety of our country through the Enforcement and Immigration Customs laws. It's huge. Over 400 statutes implicated by that but we're game.

JOHNSON:

So it's a big mission. I mean it's a serious undertaking. With the results of the 9/11 in the commission and what you're talking about the stovepipes, that continues to be a concerned of mine, so you've got this cross purposes, you got two difference agencies now splitting (inaudible) some hair splitting under INS as well but I'm concerned about that.

Director Rodriguez, are you aware of what happened at the HIS -- no, the USCIS office in San Bernardino on December 3rd following the San Bernardino attack? Are you aware of the events that occurred there?

RODRIGUEZ:
At the USCIS office in San Bernardino?

JOHNSON:
In San Bernardino

RODRIGUEZ:
I'm not specifically -- honestly, no, I'm not aware that anything...

JOHNSON:
Director Saldana, are you aware of that?

SALDANA:
It was the -- I think you're referring to our HSI office, Senator Johnson.

JOHNSON:
Correct.

SALDANA:
The subject of a letter that you've sent, I believe to the secretary, which has been sent to me for a response, I am aware of it.

JOHNSON:
Can you describe what happened from stand -- because HIS is under your jurisdiction? Can you just describe, from you standpoint, what you're aware of that incident?

SALDANA:
Well, with respect to the whole San Bernardino is in...

JOHNSON:
No, I'm just talking about your HSI agent showing up at the office of USCIS because they're made aware of the fact that Enrique Marquez was potentially there for the interview the day after the San Bernardino attack, you're not aware of that?

SALDANA:
That I'm not aware of that he showed up at CIS?

RODRIGUEZ:

Senator, now, I'm remembering the incident. I believe if I understand correctly, there was a concern about the manner in which we were providing information about the individuals involved in the attack to HSI. In fact, the intent all along among our staff was to provide that information. It was just a matter of completing a very short process...

JOHNSON:

So let me just describe -- this is from a internal memo written by somebody who contacted our committee. "At approximately 12 p.m. on December 3rd, the FBI informed HSI and the JTTF that FBI field interview agents learned that Marquez and his wife, Mariya" -- I don't know this -- "Chernykh, were scheduled for a meeting at the U.S. Citizenship and Immigration Services office in San Bernardino for noon on December 3rd."

"HSI contacted the HSI special agent requesting a team of armed agents to respond to San Bernardino USCIS office in order to detain Marquez until an FBI interview team could be dispatched. The special agent informed the HSI team that the officer in charge of USCIS would not let HSI agents in the building."

So HSI special team showed up trying to potentially apprehend somebody who at that point in time thought might have been part of a terrorist plot and the officer in charge of the USCIS office would not allow those agents in the building.

"The special agent learned that Marquez and Chernykh did not show up for their meeting. The special agent requested copies of the A- File in which USCIS refused. The special agent was allowed to take a photo of Chernykh's photo contained within the A-file."

So what happened on December 3rd? And this is kind of getting me to the cross purposes. So we had a team armed up, you know, potentially dealing with a terrorist. They had a tip from the FBI that that -- that Mr. Marquez might be at the USCIS office and the agent -- the officer in charge of USCIS office wouldn't allow HSI into the building and wouldn't give them the A-file.

That's not indicating a great deal of cooperation between two different agencies under DHS whose, you know, supposedly have been the top concern is securing this nation. Director Rodriguez, can you explain that? Now, by the way, we were -- we've been told, you know, in the information that the decision not to let HSI in came from higher up.

RODRIGUEZ:

Yes. That much is not correct in the sense that once field leadership had consulted with higher up, the instruction was in fact to facilitate the actions that HSI wanted to take. You know, unfortunately, this was all -- as the situations too was all evolving very quickly. Ordinarily, we don't normally have situations where law enforcement comes into a USCIS office to effect an arrest...

JOHNSON:

How can you explain that the officer in charge of USCIS wouldn't allow HSI agents in there when they're saying, "Listen, you could have a potential, you know, terrorist here, somebody who's

involved in what just happened yesterday in the slaughter of 14 Americans. Don't even allow them in the office." How could that possibly happen?

RODRIGUEZ:

Again, Chairman, I think the point here is that we operate according to certain protocols. That individual is seeking guidance from higher up, the guidance was to facilitate what HSI was trying to accomplish. Unfortunately, it all happened so quickly that it was incorrectly proceed that our folks were trying to, in some way, obstruct what ICE was trying to do.

Do we need to look at our protocols to make sure that those misunderstandings don't occur? That is may well be something that we need to do but there was never an actual intent to prevent them from doing what they needed to do.

JOHNSON:

It sounds like they were prevented. Director Saldana, can you explain this? And what -- what do you now know about with or maybe a memory refresh?

SALDANA:

I will say in all honesty, Senator, that I had a similar reaction when I first heard of the incident. But we do forget the number of law enforcement and other people involved in this incident, the confusion, the chaos that was going on in San Bernardino.

We had immediate conversations when it came to my attention and I'm having a hard time right now remembering exactly. I believe it was the same day and it was taken care of and clarified immediately and we did get the information we needed.

But I am with the Director. I -- we can always do things better and if we don't, as I tell my son, learn from lessons from the mistakes we make then shame on us. But I believe we -- he and I meet often.

JOHNSON:

Coming from the private sector, I'm just putting myself in the position of individuals at USCIS. If I had a day after a terrorist attack and I had a team armed coming into my office and saying, "We believe somebody who's involved in that terrorism is in your building. We want to come in," and I will say, "Come on in." You know, there wouldn't been a question in my mind and yet that's not what happened. It's quite puzzling. Senator Carper?

CARPER:

My first question is for you, Miss Saldana. Over your right shoulder is a gentleman sitting in the crowd right behind you, a little right behind you, he looks very familiar. Why (inaudible) in the front row? And it looks like his name might be Jason. And I think he used to work -- he used to sit right behind us here on this podium (inaudible).

SALDANA:

We spend a lot of time together.

CARPER:

Yes, but it's nice to see, Jason. Welcome back. Thanks for your service. I wanted -- a couple of you alluded (ph) to one my favorite aphorisms and that if it isn't perfect, make it better. And one of those is how we move from a paper process to an electronic process? And I think the Inspector General and Mr. Rodriguez have both the touchdown this.

And the IG talked about a project that was abandoned maybe within last year, I think after an investment of, I think you said \$500 million and the fact that there've been (inaudible) July 2015 audit. And I heard the word Agile missions, an acronym just describing something. Just have this make some sense for me.

I think we know that to the extent that we can take particular process, paper process and make them electronic, oftentimes it provides better service, better security, how well you should done that? Where did we go wrong? And what -- how are we fixing it now? So, Mr. Rodriguez, please...

RODRIGUEZ:

Yup, yup. So, I think -- and the question refers to me, is that correct, Senator?

CARPER:

Please. Please.

RODRIGUEZ:

Yes. I think it's well-known to just about everybody here including this committee that in fact there were a number of quite serious and quite protracted false starts with respect to our mentioned process. We were using what was sort of an antiquated development process, the waterfall development process, which was directed by one outside entity we've seen migrated to this Agile process which essentially has multiple contractors competing against one another.

And, also, shrinks the development steps in such a way that we can develop a particular item, test it, try it out in the field, make corrections we need and then move on to the next item instead of trying to do everything all at once.

To understand the timelines here, the first generation was the waterfall generation. There was a second generation called ELIS. We begin really the third generation life in March of last year which, in other words, it was about a month before the inspector general's audit began.

We launched the I90, which is our replacement green card that already incorporates a number of critical functionalities, which were then going to be used for other applications in the future. We have now process approximately 300,000 I-90 applications through there and we've also added the immigrant visa payment since that time.

So we now have approximately 16 percent of our overall business on ELIS. What we've done so far certainly from a customer perspective is working quite well. A number of the concerns that our internal employees had either reflected the older generation of ELIS or things that reflected what that early time was when we first launched the I-90 application.

And many of those issues have since been not only resolved but resolved well. Again, that's why I would like to invite the idea to come back, to invite this committee to scrutinize further what we're doing. By the end of this year, we will have 30 percent of the business on ELIS including some of our most complex forms. And this is where...

JOHNSON:

Yes, can you just hold it right there.

RODRIGUEZ:

Yes.

JOHNSON:

Because I want to give -- I have some other questions. Thank you for that explanation. Inspector General Roth, quick reactions to what you're hearing from Leon Redbone -- I'm sorry, Leon Rodriguez. That was my favorite nickname for him.

ROTH:

I mean, certainly, you know, what we simply did was we went out to where the work is being done. And we talked to the USCIS employees who were actually confronted with the system that they had.

And the level of frustration, which is reflected as far as the sort of the glitches and the hiccups in the rollout of the ELIS report were significant and we were able to isolate that into a few root causes including that there was a lack of user engagement. That is the folks in the field do not particularly feel that they were being listened to and engaged in the development of this software, that the testing was not done in an end to end basis. In other words, the testing was done sporadically of certain elements of the software but it was not done in a complete way and third, that the technical support was lacking.

Now, the Agile development process means that you put out a minimum viable of product and then you improve that product as you go. You basically fixed the car while it's running, to use an analogy. Here we thought that the testing that was insufficient, that the rollout was too soon and that the user experience, the folks who actually using that were highly frustrated with the system.

Those issues, that is user-engagement testing and technical support with the same things that we have seen in the previous version of ELIS, the one -- the \$500 million-one that ultimately had to be scrapped.

CARPER:

Here's, Mr. Rodriguez has extended an invitation for you folks to come back and maybe do a revisit. I would like you to do that and do it soon.

ROTH:

That is part of our audit process. We will obviously continue to sort of monitor the situation. We've made specific recommendations, some of which they've agreed with, some of which they haven't and we'll continue to monitor and we'll report as appropriate.

CARPER:

Okay, good. We'll continue to monitor those things, so thanks for the update. For Director Saldana and Mr. Donahue (ph), how your agencies has used social media when you vet and screen these applicants and what challenges have you encountered in doing so?

SALDANA:

I'll be in with our portion of the responsibility here with respect to the vetting and screening. We are first and foremost a law enforcement agency and HSI, Homeland Security Investigation as an investigative agency. In all of our investigations and reviews, we use social media to the extent that the evidence leads us there.

So in the visa screening process in particular -- there is no bar to our use of it. There are occasions where we do. As I mentioned we go through PATRIOT first. There's a preliminary assessments to whether some indicators prefer the review where there is further review.

We might actually social media, review a person's social media in order to determine whether we should have further study or recommend a negative result to the Department of State. So we have that under our current authorities and we have no problem using it when the case indicates a need to.

CARPER:

All right, Mr. (inaudible), same question. How does -- how do you folks use social media when you vet, screen -- and screen your visa applicants? And hat challenges have you encountered as you do that?

RODRIGUEZ:

In counter affairs, we've used social media for a while. We have it in our regulation. In fact, we've just updated our social media regulations. We use it to when -- again, as Miss Saldana said, we do use it when we see that there is a reason to look further into the case.

We are now doing a pilot program with -- in countries of concerned to find out how effective that can be. It's a studied program where we are using social media on our IR1, our immigrant visa for spouses and our cases to see what kind of -- especially in terrorist related information we can find in that process. We don't have the results yet, but we are -- we've all -- we use it for a long time on the broad side of the house (ph).

CARPER:

Okay. Thanks for that one.

JOHNSON:

Senator Sasse.

SASSE:

Thank you, Mr. Chairman. Director Saldana, in January, 21-year old Sarah Root was killed in Omaha by an illegal alien named Eswin Mejia. He was street driving while drunk. This is not the first time that local police had arrested Mr. Mejia for driving drunk.

And after he was arrested for the incident, he posted bail. Prior to being released from jail, have our local police contacted ICE and requested that he'd be detained because of his immigration status. ICE, however, refused and said that would not be consistent with the President's immigration executive actions.

Mejia was released and disappeared. Do you think someone who street races while driving drunk and kills another person is a threat to public safety? If any illegal alien kills an American citizen, should I just let that person go free?

SALDANA:
Go free? Well, there will be...

SASSE:
Which is -- which is what happened here.

SALDANA:
There would be criminal consequences. There'll be criminal consequences.

SASSE:
We don't know where the man is.

SALDANA:
Right. And, sir, I don't know understand where you got the information with the respect to our refusing to deal with this individual. That's not my understanding to the fact.

SASSE:
This is -- this is ICE's public comment. ICE's said that in response to Omaha law enforcement who said they requested that ICE detained him.

SALDANA:
I am ICE and I don't -- I don't recall making that statement. I would not have said that. What we did do is we looked at every individual case like we do here with Mr. Mejia and determine whether a detainer to reprimand to local law enforcement is appropriate. As you know, there's been a -- that's been a subject of much conversation.

We are working very hard to get all local law enforcement to work with us on it and we've made some strides. But in this case, I just -- there is not a single injury or death that occurs at the hands of an illegal immigrant that doesn't weigh heavily on me, Senator, especially...

SASSE:

I believe that. I'm going to -- I'm going to interrupt because I'm quoting your agency here. This is my letter to you February 29th. I'm quoting your agency's public statement. This is footnote four in my letter. Do you have the letter of February 29th?

Your agency said in response, "At the time of his January 2016 arrest in Omaha on local criminal charges, Eswin Mejia, 19, of Honduras, did not meet ICE's enforcement priorities, as stated by the November 20th, 2014 civil enforcement memo issued by Secretary Johnson."

SALDANA:

Oh, I understood you just said that we told local law enforcement we were not going to do anything about him because he didn't meet our priorities. That is a statement of fact. In one's person's interpretation, quite frankly, Sir, it's very easy to look back and say that's person's judgment was incorrect, and I have some concerns about that.

As I said earlier, every situation we had that results in something as horrific as this, we always try to learn from it and I'll be following up to this -- to look at the specific individuals involved, how the judgment was formed and why that was done. But I misunderstood you question. I understood your question mean we told law enforcement that we're not going to do that.

SASSE:

Well, the rest of your statement says -- your agency statement, not you personally, that "Mejia was scheduled to go -- is scheduled to go before an immigration judge on March 23, 2017," but he was released by the police once he posted bail. They contacted your agency, asked them to detain him, ICE didn't act. How do you explain that to the family?

SALDANA:

We acted -- we tried to act, Sir, but I believe there was a matter of hours between the time that we were contacted and the actual release. It is very hard for us to get to every inquiry that is made by law enforcement. And unfortunately, it had a horrible consequence here. But we tried very hard to respond as quickly as possible. We just can't get to every site within a matter of hours. I think it was four hours here on that...

SASSE:

I don't know that.

SALDANA:

If I'm remembering it correctly. But that is the fact is that we try very hard to get and respond local law enforcement. It doesn't do us any good to tell him to cooperate with us if we're not going to respond.

SASSE:

My letter to you is 16 days ago. Can you tell me when I'll receive a reply because it has details on all of these questions?

SALDANA:

Yes. I think we will get your reply within a couple of weeks if that's satisfactory. And if you need it sooner, I'll certainly work to try to get that.

SASSE:

Can we have it by the end of next week?

SALDANA:

Yes, you can.

SASSE:

Thank you, ma'am. General Roth, in November of 2014, Secretary Johnson issued a number of memos changing DHS policies on immigration known collectively as the President's immigration executive actions. One of these memos addressed changes to ICE's detention policy for illegal aliens.

DHS said in that memo that it was designed to identify threats to public safety specifically it says that unless an illegal alien has been charged with a serious crime, ICE will not likely detain that person. Does this policy mean that ICE does not consider someone a threat to public safety unless they've already been convicted?

ROTH:

Frankly, I was not involved in writing that memo or developing that policy so it's difficult for me to respond to that.

SASSE:

To your knowledge though, ICE's officials required to strictly follow the new policy or is it use as guidance and then there's discretion on a case by case basis?

ROTH:

Again, we have not looked at that in any kind of audit or investigative aspects so I think that's best directed to members of the administration or to ICE.

SASSE:

Does the IG office have any plans or any current studies of the President's executive actions on immigration?

ROTH:

We do not.

SASSE:

Director Saldana, how should ICE officials implement the new detention policies that we were put in place in November of 2014 with regard to cases like this? You mentioned the timing point, can you give us a broad sense of how you exercise your discretion?

SALDANA:

Well, generally speaking, let me -- and let me just address the tail end of that question that you had and that is requirement of conviction. I'm happy to share with you this card that we have -- that we provide to all our ICE officers who are involved in this activity, but there are many categories here where conviction is not necessary.

If this is a person with a gained affiliation, no conviction is necessary. If this is a person with terrorist ties, no conviction is necessary. There are several that do in all of the conviction but let me point out to you, Sir, and I had -- I have met with all our field office directors to specify clearly to them that there is always this category which is kind of an umbrella category that says, if there are -- if this does not fit a specific case but you as an informed well-trained officer of Immigration and Customs Enforcement, the lead that that person presents a public safety threat, you are free to exercise your judgment in the manner consistent with that judgment.

SASSE:

But in this case, Sarah, everybody is dead. I mean, so what if someone kills a U.S. citizen, that doesn't meet the threshold?

SALDANA:

That was after the fact, Sir. Some -- what you're saying is I understand that that person was injured and have not -- within that four hour period of time, seriously injured but have not passed away until later, again, Sir, it's easy to look back and say that judgment was poorly exercised and I said earlier, I intend to learn from this particular incident.

I feel terrible for the Root family and -- but I can say I wish I had hundred percent foolproof method to ensure and to look in the future and ensure whether somebody is going to commit a crime or not, and it's very difficult to do that. I hope you don't -- I hope you take my word that we do the best we can.

SASSE:

I hear you, but it isn't the case that he was released and then went and have done another drunk driving street racing case, this was drunk-driving street racing that killed someone then he posted bond, then the Omaha police asked that he'd be detained, ICE didn't detain him and now he's fled.

SALDANA:

And I intend to use this again. I am going to look further into this and look -- and use it for lessons learned if there were serious errors of judgment here but many times, prosecutorial discretion is just that. It is a judgment that's being exercised by the person based on what they see at the time.

SASSE:

Thank you.

JOHNSON:

Senator Peters.

PETERS:

Thank you, Mr. Chairman. And I also want to join to thank our witnesses today for your work. There's no question to most important duties that we have as members of the federal government is to ensure the security of our borders and to ensure the security of the citizens of this country, so I appreciate all of your efforts in doing that each and every day.

Now, that is a -- it is a difficult job that you have. Now, I -- I'm very proud to represent as all of you know a very large and a vibrant Arab-American and Muslim community in the State of Michigan.

And I've heard from a number of my constituents some concerns about the impact of the dual national provisions could have their families as they're traveling to other Visa Waiver Program countries around the world. We know that Syria and Iran deemed individuals to be nationals of those countries regardless where they were born or if they've even ever set foot in that country simply because their fathers were citizens of those countries.

Because of the Visa Waiver Program is based on reciprocity, it's possible that a Visa Waiver Program country could impose the same requirements on dual national Syrian and Iranian-Americans, so I would like a response. So is the administration concern -- it could be from anyone in the panel, is the administration concerned that other Visa Waiver Program countries could impose restrictions on a American citizens limiting their ability to travel to a participating visa waiver countries without a visa?

RODRIGUEZ:

Thank you for your question, Senator. Certainly it's a concern, I think, for the State Department and the Department of Homeland Security. We've been working -- our secretary has been working together on the new legislation regarding dual nationals.

We are certainly concerned that citizens who have non-meaningful citizenship that they can't remove the effects of that has on their life, they've certainly can apply for a visa and travel to the United States. We're still reviewing that and certainly we are concerned that there could be reciprocity from other countries.

PETERS:

Anyone else would like to comment? No. And also for the panel, I would like to know, just get a better sense of how the United States makes dual national determinations. So, for example, with a German citizen who was born and raised in Germany and has never traveled outside the country whose father was Iranian, would he be considered a dual German-Iranian national by the United States?

RODRIGUEZ:

Again, I think we're looking at that. We have -- we have not made a final decision on how we are going to manage the dual citizenship.

PETERS:

Yes, okay. (inaudible) with you on that as we go forward. Obviously, we have a situation with a number of folks that are going to be on that category and are just concerned how the process will work and we need to know how the process will work.

Also, Mr. Donahue, are there waivers given some of your concerns? Are there waivers at the State Department would recommend four classes such as journalist, NGO employees, perhaps certain dual nationals that you can offer?

DONAHUE:

Yes, the secretary recommended and secretary of state recommended to Secretary Johnson that their -- and Secretary Johnson said -- agreed that that was a reasonable interpretation of law that they do waivers for those who are helping us in the work that we're doing.

I think particularly we think about aid workers who are providing food and assessments to the people -- the millions of people who are in the camps, in countries of concerns area, for example, going forward. Again, while these travelers can travel with a visa does not affect their travel.

It could deter people who want to help us in our work, people who's working with the IIEA going to Iran to ensure implementation, people who are in business in Northern Iraq and are helping to - - that country develop. So we're very concerned about that. We're working together. We are looking at those cases. DHS has been building some questions as part of the ESTA program that screens visa waiver travelers and no decisions have been made or no waivers have been granted in thus far that we do believe as law was written to allow waivers.

PETERS:

Great. Thank you. And the other area that I think we need to focus on as a country and we are but I we're just curious to get some response from the panel as to how your agencies work in an interagency basis with other parts of the federal government.

And our key area is trying to stem the financing of terror networks and we focused on stopping the flow of money back and forth. I'm just curious as to the interagency visa vetting process, how it incorporates information about financial crimes that they have been conducted by individuals so they may be part of a terror financing network?

The Department of Treasury is very active in this issue. I'm just curious as to how you work with the Department of Treasury to identify those individuals who may be engaging those activities that are seeking to move around the world to continue to further those activities?

SALDANA:

Well, I will say that our agency, Homeland Security Investigations, that is exactly up our wheelhouse. We are concerned about illicit trafficking, illicit finance -- financial transactions across transnational boundaries.

So what we do is we build databases that Department of State and the CIS has access to, that communicates information that we may have regarding a target in an investigation or someone who's actually been convicted of a crime, that's available too to them.

We communicate through -- obviously the PATRIOT system is that first line of defense with respect to the visa screening process, but what I'm talking about is not only the visa screening process but criminal investigations in general worldwide. That's exactly what Homeland Security Investigations does.

RODRIGUEZ:

Yes. The one thing that I would add is we have strong relationships running in both directions with our law enforcement and intelligence community partners, beginning with our law enforcement partners within DHS like ICE, like CDP.

It's critical that we receive information from them when we adjudicate immigration benefits. We get that information as we need it. At the same time, we occasionally in the course of our work identify information that is either of law enforcement and intelligence value.

And we have well developed pathways to make sure that that information is shared. One example is during the course of refugee screening. If we learn information that is potentially of intelligence value, that information is in fact shared with the intelligence community.

PETERS:

Thank you.

DONAHUE:

And we work very closely with Treasury when they make a designation as part of the announcement of that designation the -- anyone who's designated and quite often their family members or anyone who benefits from these actions, they pass those to us and we immediately enter them in our lookout system, review any visas and we can do prudential revocations of the visas of anyone who is found by Treasury to be in a class.

JOHNSON:

Great. Thank you. Senator Booker?

BOOKER:

Thank you, Mr. Chairman. I just want to say, first and foremost how grateful I am for the dedication, work and service that the four of you rendered to our nation. We have an incredible country that we're the oldest this constitutional democracy. We are founded in a way different than any other nation in history of the earth.

At that time, we were founded not because we all prayed the same not because we all look the same, not because we all heralded from the same genealogy, but because we were a nation of ideals.

And every generation of this country has aspired to make more real of those ideals. One of the things that is of the richness and the greatness of this country has been that we are a nation that has people from all over the planet earth that have brought some strength to our economy, growth.

Our diversity has yielded diversity of thought, the diversity of innovation, diversity of accomplishment. And I think it's one of the things that makes America great. And you all everyday grapple in an incredibly difficult space where you're balancing our values and our ideals with the urgencies of our time, first and foremost amongst them is to keep us safe.

So I know how difficult your work is. And I just want to say thank you. I know these hearings as I think, Mr. Honorable Rodriguez was hinting at it can also be difficult in these hearings, but please know I'm one of those senators that just appreciates your work.

I wanted to just dive in where Senator Peters, sort of, touched on. I have a lot of concerns about this -- the issues that face what was brought forth in the Omnibus last year when Congress passed the provision that would bar dual nationals from Iran, Iraq, and Syria and Sudan from using the Visa Waiver Program.

I'm very happy that in a bipartisan way, Senators Flake, Durbin and I introduced bipartisan legislation, the Equal Protection in Travel Act, repealing -- seeking to repeal the restrictions on dual nationals while obviously leaving the other changes to the Visa Waiver Program intact.

I just find it very disturbing to me that the prohibition on dual nationals applies to individuals who were born on Visa Waiver Program countries, but they have never even travelled to Iraq, Iran, Sudan, or Syria.

But they are nationals of those countries, solely because of their ancestry. It seems to violate in my opinion really the values of this country as we've seen throughout our history. And so my colleagues and I supports the tightening of the Visa Waiver Program, but singling out people based solely on their ancestry or national origin does not, I believe make us safer.

And it is inconsistent with what I love about our country. And the interests, it invites in my opinion retaliation or discrimination against American citizens who are also dual nationals, so my point, maybe I'll start with you, Mr. Donahue, is just very plain. Do you believe that the dual national restrictions that I just described enhance our national security.

DONAHUE:

We certainly are always reviewing where we need to put more emphasis in. We want to be sure that we are -- every visa interview is used effectively to protect our borders, but we also realize that the Visa Waiver Program by its very nature has allowed us to move resources to those places where we need to look more closely.

BOOKER:

So does it make a statement if somebody from Britain or France who has ancestry that's Iranian or Syrian or Sudanese, does barring them from the Visa Waiver Program make us safer in your opinion?

DONAHUE:

I think, you know, all things being equal, not knowing the individual. Not knowing the -- you always have to do these on a case by case basis, but I agree with you that that is not in and of itself an indicator that this person has higher -- is a higher threat.

BOOKER:

In the Senate, whenever I hear those words, I agree with you. I get very happy and I...and so, Mr. Rodriguez or Honorable Saldana, do you think we gain any additional security benefits by barring individuals based on their national origin or heritage?

SALDANA:

Well, as a general proposition, no.

BOOKER:

Good. Thank you.

Mr. Rodriguez?

RODRIGUEZ:

Yes. Let me be very clear. No, we don't and, no, we don't do that. We scrutinize people perhaps differently in situations where they come from conflict zones, particularly conflict zones where organizations that are actively -- promoting violence against United States.

BOOKER:

Clearly, clearly, clearly.

RODRIGUEZ:

But no, we don't and I would never operate an agency that operated that way.

BOOKER:

But the Omnibus that passed last year call for us to do those things. And I'm very happy that again a bipartisan group of senators is saying that we should not do those things, and you're saying to me that we don't do them now nor does it add to our national...

RODRIGUEZ:

Certainly not in the manner in which my agency does any of its work. I don't operate the Visa Waiver Program. My agency doesn't operate that. We do other things where we make decisions based on...

BOOKER:

Right. But you don't think it -- what I described and what was in Omnibus does not...

RODRIGUEZ:

Again, not my lane, so I wouldn't be opining (ph) on the Visa Waiver Program.

BOOKER:

(inaudible) to stay in your lane, a rule I think is very important, but Honorable Saldana, you don't think it makes...

SALDANA:

As I said as a general proposition, again, in our role as investigators, we're going to look at every aspect of an individual's facts and pertaining to their application. And there may be some reason to explore further, but as a general proposition, of course, not just solely based on a remote relationship with someone from -- a particular country.

BOOKER:

I'm grateful for that response. And let me shift into your lane, Sir. It was very clear to me after the horrific attacks in France that many of those people who participated in that could have used a Visa Waiver Program to come to our country and, by the way, walk into a gun show, buy a trunk full of weapons and commit those crimes here just as easily.

And so one of the aspects of the Visa Waiver Program which are important to me is our coordination and cooperation with our European allies specifically in sharing information and working against terrorism.

So my final question in my remaining few seconds is I worry that those -- that our European allies and others might not be doing enough to help strengthen our security to share information, to up their procedures and policies to the point where we could effectively rely on them.

And so, what are we doing to help Europe strengthen its border security entry procedure so that they are effectively documenting the refugees coming into their countries. And if that's a new signal for my time almost being up, it's very effective. Go ahead.

RODRIGUEZ:

Yes. What I do know -- we work those issues primarily through our U.S. intelligence community and law enforcement partners. I do know that they are actively engaged with their counter parts in Europe throughout the English speaking world.

I just two or three weeks ago spent a lot of time with our partners from Australia, England, Canada, exchanging information and talking about, sort of, common goals in this area. We're going to continue doing that on a multi-lateral basis to make sure that we are -- we are supporting one another in what's rely this very critical mission.

BOOKER:

Mr. Roth, are you satisfied that we're doing enough in partnership with our European allies to strengthen their policies and procedures to make our country safer?

ROTH:

Yes, we haven't looked at that specific issue of information sharing with our foreign partners. I would say though that anytime that you have a risk-based system, particularly in the current terrorist environment in which you have functionally pop-up terrorists, people who weren't on

anybody's list, who are unknown that the kind of individual scrutiny that is required for the Visa Waiver Program really is, sort of, the stop gap for that.

BOOKER:

Mr. Chairman, thank you. Thank you for holding such an important hearing.

JOHNSON:

Thank you, Senator Booker.

I want to talk a little bit about the problem of overstays. I don't quite understand it. I mean, I do but I don't. So, you know, we're often cited the statistic about 40 percent of the people in this country illegally are here on overstays. That of the, you know, best estimate 11, 12 million people in this country illegally that puts the number somewhere between 4.4 and 4.8 million people here that are overstaying a visa.

Let me start by asking, does anybody know which visas are primarily abused?

I'll start -- Director Saldana.

SALDANA:

I would defer to that to the State Department with respect to the overall picture.

JOHNSON:

Here you go, Secretary Donahue, you got the -- you got the football thrown to you.

DONAHUE:

I'm not sure I've seen the figure on any particular area. I really don't know.

JOHNSON:

Why we wouldn't we know that? The article I'm looking at, it still today about 500 and -- I was going to say 523,000 visa order stays per year, you know, why wouldn't we be tracking that?

DONAHUE:

Well, we do track at all of our posts and as -- we do this through a validation study. We will check to see, for instance, if people from a certain country are coming to the United States and staying on a certain type of visa.

The -- and different kind of visas have -- it's harder to track, for instance, a visitor is, you know, for a certain amount of time -- six months usually or three months if they're a visa waiver person.

A student, that's a long-term admission and it's hard to determine at what point they become...

JOHNSON:

But are we working with the schools and aren't there requirements to the schools to keep us up to date? If somebody drives (inaudible) not paying tuition, something like that that we can report that and then we're aware of it so that ICE can, you know, potentially enforce?

SALDANA:

Yes. And, of course, with respect to category, I -- this is an educated, I think, guess and that is the most visas we have are B1s and B2s, travelers for business or pleasure, so I would think there'll be some correlation between that and the number of overstays.

But absolutely, we have, you know, we're responsible for the SEVP program -- Student Exchange Visitor Program. And we have the database of information in the SEVIS database that relates to all 8,000 universities that have students placed there.

And we do have leads that are provided to the CTCEU, which I mentioned earlier with respect to overstays. We evaluate, once again, so much of what we do is risk-based. So we're looking at the large universe of overstays and trying to determine which one of these folks could potentially pose a danger or public safety threat.

And in our -- the information we've got, at least I can give this, Sir, we've got about a half a million -- half a million, 489,579 leads that were provided to CTCEU where there is a flag with respect to business and pleasure travelers, the B1, B2 visas.

That is the largest category of individuals that we're running down, so I think that correlation is supported by that number.

JOHNSON:

I realize there are millions -- tens of millions for people to come and go out of the United States, in today's information technology age, I don't understand what's so hard about keeping track of this. Everybody comes in here legally, has a passport, has a number attached, correct?

SALDANA:

Yes.

JOHNSON:

That goes into a database. What is so hard -- and then have that passport attached to a particular visa and shouldn't we just have the information on this thing, again, I'm an accountant, so I'm kind of in the numbers and I'm kind of in the information, but when we take a look at what we can do in other areas of our economy, where there's, you know, tracking numbers, with the shipments, that type of thing, what has been so hard about us developing that database where we know exactly who's come in, who hasn't gone, tie it to a visa and just know with great deal of certainty with pretty much a push of a button on a computer, why is that?

SALDANA:

Well, we do know with some degree of certainty what the principal deputy was mentioning...

JOHNSON:

But you weren't able to answer me how many, you know, under what visa program -- again, I understand vast majority of visas of certain categories, so you assume, but it's not like you have ready information in terms of -- no, this is exactly how many people had, you know, were granted

a visa, having checked out on time, you know, there is an overstay. That should be, you know, potentially subject to enforcement, you know, General Roth, can you speak to this?

ROTH:

What you're referring to, really, is a biometric system for exits, so you can understand who it is who's left the country, so you are able to compare those two pieces of data.

JOHNSON:

First of all, let me -- it's just numbers. I mean it's actually easier than that, again, unless I'm missing something in terms of people coming in with a passport and a visa, those are -- those are -- that's numerical information easily loaded into database with a set time that a visa expires, so we don't have a record of this person leaving. To me that's an incredibly simple database to manage. Why don't we do it?

ROTH:

You know, as my most recent report shows, I mean, the challenges in the federal government in building these kinds of information systems is very, very difficult and I think there has been some effort to try to get an exit system, that has not been successful.

So I think as a federal government, we are aware of the problem, but we have not been able to do a solution.

JOHNSON:

Would you agree with me in the private sector this would almost be like fallen off a log in terms of developing a database like this?

ROTH:

Yes. Yes.

JOHNSON:

Which begs the question, why can't we do this after 10 years in the federal government? Unbelievable.

I'll go to Senator Ernst.

ERNST:

Thank you, Mr. Chair. And for ICE director, please. A number of my colleagues have always spoken this, Senator Grassley in a floor speech last night and also Senator Sasse here in this forum this morning, asked a question and raised the case of the tragic death of Iowan, Sarah Root who was killed by a drunk driver. Who was reportedly in the country illegally have sent posted bail and absconded.

If it is the case that ICE refrained from lodging a detainer on Mehaia because his arrest for felony, motor vehicle homicide, quote, "did not mean ICE's enforcement priorities," end quote. Would you agree with me that ICE needs to take another look at it so-called enforcement policies?

SALDANA:

Well, we do that every day. We train and we respond to evolving situations on the basis of things we've experienced and seen, so that prosecutorial discretion, as I said a little earlier is just that.

It's a person's judgment in looking at all the information in front of them as to whether or not they lodge a detainer or not. We do it on a case by case basis. And as I said earlier, Senator, this is a terrible instance where we will look at it and learn from that situation.

The prosecutorial discretion could have been exercised a different way here. That's us looking back. I want to -- I want to look forward so that we don't have that situation arise again.

ERNST:

Well, but the way we look forward though, Director, is also by learning from mistakes of the past and this is not an isolated incident by any means and its priority should be to ensure that people who enter our country illegally and kill American citizens are deported and never allowed to return.

And unfortunately, in this situation, we have a gentleman who has done exactly that. And I am guessing is still here in the United States somewhere, so...

SALDANA:

And we'll be looking for him, Senator. That doesn't end there.

ERNST:

I certainly hope so; there is a family that demands answers as we do. And to be clear, just to be clear, if he is apprehended today, would Mehaia fit the president's enforcement priorities?

SALDANA:

Absolutely.

ERNST:

OK. And I look forward to continuing discussion on this. This is important, but again it's not an isolated incident and we have to make sure that all of our agencies, local and federal, are working together on these issues.

And I think we all can learn from this incident, so...

SALDANA:

I agree.

ERNST:

So thank you for your time.

Thank you, Mr. Chair.

JOHNSON:

Senator Carper?

CARPER:

Thanks -- thanks Mr. Chairman.

I want to go back to visa overstays and we have -- every state has his own Medicaid program. We are told that one of the cost drivers of Medicaid is if people have an appointment but don't show up, oftentimes moms, dads, young children. And so they do a lot of things to try to make sure people show up. One of the things that we do in Delaware and some other states as well and I think we got this idea from Johnson and Johnson - the other (ph) Johnson.

Yes. And it's called text4baby -- text4baby. And what we do is we sent -- we should say -- I should say text messages are sent to parents who need to make sure that their child has an appointment and actually show up.

And they do this, maybe a week before. They do it like a day before, even do it the day of I think. And it seems to me that that's an idea that -- and it actually helped. Makes more certain that people actually show up for their appointments, save some money for Medicaid, make sure people get the health care they need.

I'm just wondering if a similar approach might be helpful for folks that come to this country, most of the people that come to this country come here legally overwhelmingly, so -- but a bunch of them overstay their visas as you know.

And I think it might be helpful if they were just getting pinged as like the countdown to the dates that their visa expires. And so you've got two weeks to, we've got one week to go. We've got two days to go, we've got 12 hours to go.

And that's the kind of thing that this is easily automated. And most people come to this country have cell phones. And I think I just like to look to the -- in this case a private sector for solution that might work for public purpose and actually for other sort of public purpose as well, just react to that please.

SALDANA:

It's a very interesting idea, Senator. Obviously, everything that we hear here, we take back and talk to our folks about. We have a massive number of students in the system and as the principal deputy said earlier, they're on different programs that -- and I understand what you're saying is do the ping at the end of the term of the visa, whether or not they're finished with their program.

So we -- right now, as I said earlier, we are on a risk-based analysis with respect to these overstays who presents a risk in these overstays and it's a matter of resources and trying to direct them to the area where the greatest risk is, but that's certainly an interesting idea.

I think that it would require a tremendous number of additional resources than we have now to ping millions of people, but that's certainly something I can study further.

CARPER:

I was sitting here listening to Senator Johnson. He's shaking his head and said, "No, it wouldn't."

SALDANA:

No, it wouldn't require additional resources, is that what you're saying, Sir?

JOHNSON:

Not a tremendous amount.

CARPER:

Just think about it. OK? And I'm asking you guys you do more than just think about it.

SALDANA:

Absolutely.

CARPER:

We'll put you in touch with the text4baby people. And you can -- your folks can noodle and figure out how they do it.

SALDANA:

Are you saying baby?

CARPER:

B-A-B-Y.

SALDANA:

B-A-B-Y. OK.

CARPER:

Bring back my baby to me (inaudible). All right. Let's see, a question for Director Saldana and Mr. Donahue. You're a good couple here. And I -- as I understand it, ICE use an automated system we talked about a little bit earlier today called PATRIOT to conduct the screening of visa applicants for all visas that are processed at overseas posts where ICE is -- visa security teams are present.

What is holding ICE and the State Department back for requiring this automated system to be used for all incoming visas? Is it simply a matter of resources?

SALDANA:

I wouldn't say simply, but that's certainly a factor. And actually, Senator, we are undergoing a pilot right now under PATRIOT -- a PATRIOT expansion pilot that's looking at three additional countries to try to do all that are not necessarily among these 20 or 26 posts that we have visa screening, but looking at expanding that and what it would take and how much time is being consumed.

So we're actually undertaking an evaluation and study of that because if it's possible, it's certainly something we'd like to do, but right now I'm not in a position to tell you absolutely that can happen.

I think our study wraps up in May, so I'll be able to report back to you on my thoughts and ideas on what we've learned from that expanded PATRIOT project.

CARPER:
Would you do that?

SALDANA:
Absolutely.

CARPER:
Thank you.

Mr. Donahue, any thoughts on this one?

DONAHUE:
I think we're also working with ICE on -- for countries at where we -- the physical presence would be good, but is not possible because of resources or other reasons of having some of the PATRIOT functions -- the computerized functions done domestically and then advising posts as a response to the patriot checks, so that will also expand their ability to expand it to more countries.

CARPER:
OK. This question for everybody and I'm done. A question -- since 9/11, one of the key themes of our Homeland Security efforts have been information sharing. The testimony today references a lot of different programs and different databases used to screen applicants before they come to the U.S.

Can -- each of you, just take a moment to reflect on how well integrate these resources are and what barriers remain? And how much of this sharing is automated and how much requires time and initiative by an individual officer?

DONAHUE (?):
Let me just -- I can begin from our side.

CARPER:
Please.

DONAHUE (?):
We -- I've seen a revolution in the information sharing since 9/11 and, you know, especially in my 32 years in doing this kind of work. I think one of the most remarkable things is that today, someone can be interviewing an applicant for a visa in Mali.

That person's visa will be checked by my colleagues and the interagency, the law enforcement intelligence community response will come back to that officer, whether there is anything to be concerned about in addition to whatever he or she has been able to find out in the interview.

Then that person issued a visa can get on a plane today, arrived in Atlanta and at the port of entry the officer there will have all the information that was used in making that decision back in Mali, you know, just in the time -- less time than the flight, so that kind of information sharing where we can look into and, for instance, our database, our major database, there are more DHS users than there are State Department users, so that people know why we issued a passport, why we issued a visa. And I think that's -- made us all much effective.

CARPER:

OK. Anyone else just briefly from Mr. Rodriguez.

RODRIGUEZ:

Sure. I think as this committee knows, I spent most of my career at law enforcement and very early on was an organized crime prosecutor. I remember back in the late '80s and early '90s where what was considered our organized crime database was actually rows and rows of filing cabinets that would fill this room.

We've certainly come a long way from that time. We now have USCIS, a very well automated process to ping law enforcement intelligence community databases to determine whether an individual seeking an immigration benefit presents a threat to the United States, that will never in my view be a substitute for the human judgment that is required on both ends to make an intelligence community judgment and for us to make an immigration judgment with that information, so that will always continue to be part of it, but in terms of the information moving, we really have reached a pretty good point these days.

CARPER:

So thank you. Ms. Saldana, the same issue, the same questions, just briefly.

SALDANA:

And I agree. We can always improve. We can always do better like we've heard one or two instances where the information -- the sharing broke down a little bit. But it is -- the visa security program itself is an extraordinary example of that information sharing.

We've got in our DSH hold that we bounce the patriot inquiry against -- it has so many different contributors -- FBI, obviously Sate, other law enforcement. And that is an example of the progress that we've made.

We're always working on this to make it better and internationally with our allies and our countries out there that we are in.

CARPER:

OK. Thank you.

General Roth, the last word.

ROTH:

Well, thank you and with apologies for being the contrarian or the skeptic in the room. I will have to say that...

CARPER:

No, no, be yourself, be yourself.

ROTH:

Several of our -- it's an occupational hazard, Senator. Several of our audits note sort of the difficulty with the paper-based systems, so for example, when we compare ICE data with CIS data with regard to human trafficking victims where what we found is the perpetrators of human trafficking people at ICE had investigated were, in fact, using the visa system to bring their victims into the country. And one of the reasons that occurs is because CIS still has a paper-based system and I'm sympathetic to Director Rodriguez's challenges in this area, but for example, an individual who applies for a T visa, which is the individual who is a victim of human trafficking submits a statement as to what occurred to that person that allows them to be -- receive a T visa.

That is not digitized in any way. There can be names and identifiers of perpetrators of human trafficking that simply get lost in the system, so while I agree with in many ways, there are systems in place that allow for this kind of information sharing, there is much that can be done to improve that.

CARPER:

All right. Thank you. Thank you for being the contrarian in the room and for each of you for your testimony and your efforts, your leadership. Thank you.

JOHNSON:

And Senator Carper, I think we should work together on, you know, some piece of legislation to facilitate, you know, using really private sector skills that are out there in technologies.

You can go to any -- business logistics, where there's FedEx or UPS or any tracking company, these programs exist for tracking and it's a similar type of a process, almost off the shelf, I would have suggest maybe, you know, getting some of their IT experts in your agencies and let's get this program done.

It should not take years and years or billions of billions of dollars. We've done it in the private sector. It's unbelievable what they can really track. And that the information just from a desktop a customer can obtain in terms of a package being transferred from this truck to another truck.

We ought to be able to do the same thing in terms of tracking visa overstays. I do want to ask a couple of more questions about resource capabilities. This is kind of going into what Senator Tester was talking about.

(inaudible) Mr. Donahue, again I'm an accountant, so I like numbers. As best I can determine somewhere between 20 million and 32 and 33 million people go to consulates, go to embassies and have to do an interview to get a visa to come to the United States on annual basis, is that kind of roughly about the right numbers? Does that sound about right to you?

DONAHUE:

It's closer to about 13 million that come in -- 13.5 million that come in to the -- as a -- per visa -- the Visa Waiver Program is (inaudible) to that.

JOHNSON:

OK. OK. You've got about 1,800 foreign service officers that do those interviews, so the, you know, based on, you know, 13 million, numbers can be less, but if you -- if you talk about, you know, 13 million people divided by 1,800, I mean we're talking about just a few minutes, you know, probably less than 50 minutes per interview. It's not a whole lot of time, is it?

DONAHUE:

Well, I think if you take into account the entire package, that the person has already gone through data biometric and biographic database checks. They've completed a very long visa application form that asks a lot of information that we check against.

We do have fraud units. We do have our ICE visa security units. And like any other business, you're a businessman, you expedite the easy and you spend time on what needs to have time spent on it.

So a person walks in and everything is clear. You do a quick interview with the person you believe because of your training knowledge of this person just as you see at the port of entry that this person is doing what they say they are doing.

The next person comes in and you've got concerns and you can stop the interview and send it to your fraud unit. You can or go to one of our colleagues in DHS. You can continue to the interview as long as you need to, so, you know, while one may take one minute another may not be cleared for weeks.

JOHNSON:

Your sense from around the world, really, the foreign service sponsors who are in charge of this don't feel pressure, do you feel the -- they feel they're adequately resourced for the task at hand?

DONAHUE:

They feel, certainly people would always like to have a few more officers, but I think we've used business practices to make this organized as possible, to make sure that the time they spend at the window is the most effective.

We would certainly like to keep all of our fees because we're a fee-based organization, so that we could plow all that into making our business work more efficiently for our customers and make sure that we have all the security checks in there, but I think most officers using good business practices and with -- and their training and putting their work in those few people who come to the United States to do us harm, really focusing on those, you know, has proven effective.

JOHNSON:

By the way, you talked about fee-based service, it's one of the -- again, that tension between security and customer service. I come from business background.

DONAHUE:
Right.

JOHNSON:
You're generating revenue for your organization. You have an incentive for generating more revenue which is somewhat at cross purpose, trying to run more people through, generate revenue versus the security, so it does concern me.

Director Rodriguez, I know President Obama announced the granting of -- or allowing about 10,000 additional Syrians into the -- in the country, that's about a 20 percent increase in the number of refugees and again, I'm concerned a little bit about taking any short cuts in the process, so normally it takes 18 to 24 months to review those files.

Do you believe you're adequately resource to have a 20 percent increase in the number of refugees, you believe that?

RODRIGUEZ:
Yes. I would point out that that's still, even that increases is a relatively small part of our overall business. We have eight million cases that we handle on any given year across our 19,000 employees.

Let me also be very clear that we will do our job with respect to the refugees that we screen. No corners will be cut. We'll do what we need to do.

JOHNSON:
And that's really what I kind of view, our responsibility as a committee to make sure that we don't take any short cuts, so I appreciate your comments there. Let me just wrap up. There are number of points we did want to make and I want to be respectful of people's time, you know, I mentioned the December 30 incident at the of office of USCIS in San Bernardino, Inspector General Roth, I'd appreciate if you'd investigate exactly what happened there.

I mean that does show that, you know, potential breakdown of agencies cooperating, again, I find it pretty dis-concerning to say the least, you know, K-1 visa, ICE is really responsible for verifying those marriages.

It's, you know, you come in -- K-1. You're supposed to be married within 90 days, again, I don't think we have a system. I don't think we're really verifying those things, which is a potential vulnerability.

Inspector General Roth, you talked about the port (inaudible) collection information sharing that resulted in little (ph) human trafficking coming across our borders. I appreciate you, you know, keeping an eye on that and, you know, everybody being aware of that.

I have not yet received an answer for a letter I've written. We had ICE agent Taylor Johnson in one of our hearings, involved in government whistleblowers and the retaliation against them, which is -- it is prevalent in the federal government.

It's really jaw-dropping. So Director Saldana, I'd really appreciate if you would respond to that and -- because now apparently agent Johnson (ph) has been terminated and the process hasn't really gone through - office of special counsel, inspector general, I'm really concerned about that particular case.

SALDANA:

And we have that letter and we're preparing to respond, Sir.

JOHNSON:

OK. Again, the oversight of student visas, the overstays, it's a significant issue. I really will work with Ranking Member Carper here and trying -- if we've got to produce some legislation to facilitate, you know, computer system -- the IT systems to do this, again I just -- just coming from the private sector, knowing what's available out there. This shouldn't be that hard and it's -- I mean, it's critical step we have to take.

So again, I do want to thank all of you for your service to this nation, you know, I realize this is - - this is tough. There is no perfect system. You have a serious responsibility. I know you take those responsibilities seriously, so thanks for you service to this nation for taking the time for your thoughtful testimony and answers to our questions.

With that, the hearing record will remain open for 15 days until March 30th until 5 PM for the submission of statements and questions for the record. This hearing is adjourned.