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BEFORE THE

COMMITTEE ON HOMELAND SECURITY

U.S. HOUSE OF REPRESENTATIVES

March 25, 2010



Chairman Thompson, Ranking Member King, and Members of the Committee:

Thank you for inviting me to testify on visa overstays. While most visitors leave by the time their visas expire, many thousands remain in the United States illegally. Overstays perpetuate the illegal immigration problem by using the visa process to break the law to remain in the United States. Moreover, some overstays represent a very real national security risk to the nation. At least six of the 9/11 hijackers were visa overstays.

The Department of Homeland Security estimates that approximately 10.8 million unauthorized immigrants live in the United States. In an effort to reduce the number of aliens residing in the United States who have violated the terms of certain types of visas, U.S. Immigration and Customs Enforcement established the Compliance Enforcement Unit (CEU) in June 2003. The CEU tracks and pursues overstays including, foreign students, exchange visitors and other non-immigrant visitors who violate their immigration status. The CEU draws upon various government databases to gather and analyze leads on visitors to the United States, identify potential security or criminal threats, and ensure full compliance with immigration laws. Additionally, the CEU supports enforcement actions as a result of visa revocation actions taken by the Department of State (DOS).

The CEU develops leads on immigration violators by collecting and examining data from three key national databases:

- The **U.S. Visitor and Immigrant Status Indicator Technology** program, administered by DHS, verifies the identities of incoming visitors and ensures compliance with visa and immigration policies. US-VISIT collects travel information and biometric identifiers such as fingerprints to verify the identity of visitors to the United States upon their arrival and departure.
- The **Student and Exchange Visitor Information System** is an Internet-based program, administered by ICE, which maintains data on roughly one million non-immigrant foreign students and exchange visitors during their stay in the United States. SEVIS was developed in 2002 to improve nationwide coordination and communication in monitoring student visa activity.
- The **National Security Entry Exit Registration System** is a DHS administered registry of selected foreign visitors who, based upon country of origin or other intelligence-based criteria, may present an elevated national security concern.

Since its creation in June 2003, the CEU has reviewed more than 500,000 leads compiled from these databases. Of these leads, nearly 16,000 revealed potential violations of U.S. visa or immigration law, which were referred to ICE field offices for investigation. To date, these investigations have resulted in more than 3,000 arrests.

In September 2005, we conducted a review to evaluate the efficacy and effectiveness of ICE CEU in identifying, locating, and apprehending aliens who have violated the purpose and terms of their admission into the United States.

Based on our review of the number of cases referred to the CEU and the procedures and systems used to collect, analyze, and process these referrals, we identified several deficiencies in the CEU process. We made four recommendations:

1. Ensure that data quality issues are addressed, in conjunction with officials from the various lead referral systems, and that validity checks are performed to increase the number of “actionable” leads referred to CEU.
2. Assess the CEU workflow process, establish and closely monitor processing performance measures to ensure that CEU staff is working efficiently, and determine when staffing adjustments are needed to ensure timely processing of all violator leads.
3. Ensure that adequate justification exists for lead closure and that this justification is documented.
4. Redistribute policy and guidance documents to ICE field offices and consolidate current policy memoranda into a set of Standard Operating Procedures (SOPs) for distribution to all ICE field offices; and, establish an ICE-wide resource for access to the CEU SOPs, as well as other current information regarding CEU activities.

We closed recommendations 2 and 3 based on ICE’s response to our draft report. For recommendation 2, ICE stated that the CEU has refined how it prioritizes leads that pose the greatest potential threat to national security and public safety. The CEU will make staffing adjustments to address increased workloads by adding additional research analysts and, when necessary, detailing ICE investigators to the regions with the highest workloads. This will facilitate research of additional leads. The CEU has a Student and Exchange Visitor Program liaison assigned to review Student Exchange Visitor Program leads before they are transmitted to the field for investigation.

Regarding recommendation 3, in its response to our draft report, ICE stated that CEU policy and guidance memoranda are either currently available through ICE’s proprietary website or are in the process of being added. Additionally, the CEU will make field managers responsible for CEU operations aware that CEU related policy memoranda are available online. ICE also provided two agents from each Special Agent-in-Charge office with training on CEU operations and how to access SEVIS and US-VISIT information. Insofar as many CEU leads are sent directly to Resident Agent-in-Charge (RAC) offices, we believe that agents assigned to ICE RAC offices would also benefit from this training.

On February 6, 2006, we closed recommendations 1 and 4. For recommendation 1, ICE reported that the CEU had refined or established new business processes with the DOS, the Student Exchange Visitor Program, and US-VISIT Program that will enable CEU to focus investigative resources on a smaller set of high quality records, thereby reducing the number of non-actionable leads. These processes include access to the DOS data systems, which will allow for rapid referrals of visa revocations to ICE field offices for investigation, and the correction of data errors in SEVIS to identify individuals who are no longer residing in this country. The Student Exchange Visitor Program office is also exploring the use of the unique personal identifier,

which will allow for the consolidation of foreign student records in SEVIS and facilities interoperability with US-VISIT and U. S. Citizenship and Immigration Services systems. The US-VISIT Program office is retrieving additional departure records not found in the Arrival and Departure Information System (the entry - exit component of US-VISIT) to ensure that all US-VISIT overstay records forwarded to CEU are thoroughly researched through all available entry-exit databases.

In addition, for recommendation 4, ICE verified that CEU policy and guidance memoranda are currently available on the ICE Office of Investigations proprietary website. The CEU has conducted eight training classes for its field agents.

We also reported that the sum of deficiencies in the systems, in the CEU's output, and other factors in the apprehension and removal process resulted in minimal impact in reducing the number of overstays in the United States. Adding to the complexity of the overstay issue is the large number of travelers who are exempt from enrollment in US-VISIT. This includes Mexican Border Crossing Card (BCC) holders. BCC holders, who accounted for nearly half of foreign nationals land border crossings, are exempt from enrollment when they enter under BCC provisions.

Implementing US-VISIT at land ports of entry (POE) is more complex and challenging than air and sea POEs; both of which offer an array of logistical and control features, such as scheduled arrival and departure times, accommodations for delayed travel, and advanced passenger information. Land POEs must be able to accommodate larger and constant volumes of foreign nationals. At land POEs, small increases in processing times translate more quickly into travel delays that impede border crossing, which can have deleterious economic effects for both border nations. For example, we examined the impact of a 20-second increase in inspections time for 3.5 million vehicles. We calculated that it would take the approximate equivalent of 2.22 additional calendar years to inspect these additional vehicles. Although other variables could affect the equation, the increase of 2.22 calendar years in inspections time could translate into significant resource implications for U.S. Customs and Border Protection, as well as significant increases in waiting time for travelers.

In February 2008, the General Accountability Office (GAO) reported that DHS has partially defined a strategic solution for meeting US-VISIT's goals. In particular, the US-VISIT program office has defined and begun to develop a key capability known as "Unique Identity," which is to establish a single identity for all individuals who interact with any immigration or border management organization by capturing the individual's biometrics, including 10 fingerprints and a digital image, at the earliest possible interaction. However, in that same report, GAO criticized DHS for not having a comprehensive strategy for controlling and monitoring the exit of foreign visitors.

In our report, we stated "A US-VISIT exit component is not in place at land POEs. Without the exit component, US-VISIT cannot match entry and departure records and cannot identify those non-immigrants who may have overstayed the terms of their visas." However, in a GAO report released this year, the GAO credits DHS for having established a comprehensive exit project within the US-VISIT program that consists of six components that are at varying stages of completion. Again, however, GAO criticizes DHS for not adopting an integrated approach to scheduling,

executing, and tracking the work that needs to be accomplished to deliver an exit solution. GAO contends that without a master schedule, DHS cannot reliably commit to when and how work will be accomplished to deliver a comprehensive exit solution to its 300 POEs, and cannot adequately monitor and manage its progress toward that end.

On December 9, 2009, Secretary Napolitano stated in her testimony before the Senate Committee on the Judiciary that “DHS has continued to enhance US-VISIT's capabilities by implementing 10-fingerprint processing. Ten-fingerprint scanners have now been deployed to all major ports of entry, providing the capability to capture 10 fingerprints from travelers. This has improved accuracy of identification, enhanced interoperability with the FBI and the Department of State, as well as with state, local, and tribal governments, and increased our ability to conduct full searches against latent fingerprint databases.”

“We [DHS] also have continued to test US-VISIT biometric exit procedures for travelers departing U.S. airports and seaports. From May to June 2009, US-VISIT conducted two air exit pilots at the Detroit Wayne County Metropolitan Airport and Hartsfield-Jackson Atlanta International Airport. In October, we provided an evaluation of these pilot tests to Congress and the Government Accountability Office.”

“Currently, we [DHS] are reviewing public comments from the Notice of Proposed Rule Making the Department published in the Federal Register in April, 2009 proposing an exit system for airports. We will continue to work with Congress and industry partners to weigh our options and develop an effective system that meets our security objectives while facilitating lawful travel.”

The US-VISIT program office reviews and analyzes information in the Arrival and Departure Information System (ADIS), a US-VISIT module used to store biographic, biometric indicator, and encounter data on aliens who have applied for entry, entered, or departed the United States. ADIS consolidates information from various systems in order to provide a repository of data held by DHS for pre-entry, entry, status management, and exit tracking of immigrants and non-immigrants. Its primary use is to facilitate the investigation of subjects of interest who may have violated their authorized stay.

Other OIG Work that Spotlights Apprehension, Detention and Removal Actions

In March 2007, we issued a report on ICE's Fugitive Operations Teams. Fugitive Operations teams perform under the auspices of the Office of Detention and Removal Operations' National Fugitive Operations Program. The purpose of the National Fugitive Operations Program is to identify, apprehend, and remove fugitive aliens from the United States. The ultimate goal of the program is to eliminate the backlog of fugitive aliens. Fugitive aliens are non-United States citizens not currently in the custody or control of ICE who have failed to depart the United States pursuant to a final order of removal from the Executive Office for Immigration Review. The orders require the aliens to be removed from this country.

Our review's objectives were to determine the adequacy of performance measures used to assess the effectiveness of the teams and their progress in reducing the backlog of fugitive alien cases. We assessed the sufficiency of the teams' staffing levels, factors affecting the teams' operations,

such as coordination activities with internal and external entities, and training policies and practices for the teams.

We determined that despite the teams' efforts, the following factors limited their effectiveness:

- Insufficient detention capacity;
- Limitations of its immigration database, the Deportable Alien Control System, which is the Office of Detention and Removal Operations' system of records;
- Inadequate working space;
- Team members performing non-fugitive operations duties contrary to the Office of Detention and Removal Operations policy and
- Insufficient staffing.

Additionally, ICE could not calculate the removal rate of fugitive aliens apprehended by the teams because the Office of Detention and Removal Operations' reports did not specify whether removed aliens were fugitive or non-fugitive aliens or whether a Fugitive Operations Team or non-team member made the apprehensions. Moreover, since the office does not distinguish between fugitives and non-fugitives in its removal figures, we could not determine the percentage of fugitive aliens removed from the country. More specifically, it is unknown how many of the fugitive aliens apprehended by the teams were removed. When fugitive aliens have not been removed, they are likely released into the United States on their own recognizance or under an order of supervision, which is similar to a parole.

Finally, we determined that the teams have basic law enforcement training and most have completed the requisite training to conduct fugitive operations. In addition, while teams are encouraged to seek refresher training, there is no national requirement for it.

We made seven recommendations to address these issues. ICE concurred with each of the seven recommendations. For example, we recommended that ICE develop a detailed plan to ensure adequate employee workspace. To address this recommendation, ICE is coordinating a Space Allocation Survey with several entities, including the General Services Administration and U.S. Customs and Border Protection, to identify the need for additional workspace and then assessing available resources to accommodate such request. In addition, in October 2006, in order to facilitate the deployment of FY 2007 Fugitive Operations Teams, ICE specifically asked affected field offices whether new and pre-existing sites needed additional storage and parking space, gyms, and holding facilities.

We also recommended that ICE provide appropriate resources to detain, process, and remove fugitive aliens. ICE explained that it created the Detention Operations Coordination Center to coordinate the movement and placement of detained aliens to allocate detention space effectively. In addition, ICE's Office of Detention and Removal Operations units are engaged in

activities to develop a comprehensive infrastructure that would improve coordinated removal efforts and management of detention space.

Although ICE has taken positive steps to improve its capability to detain, process, and remove aliens, ICE identified several external factors that impede the Office of Detention and Removal Operations' ability to execute removal operations, such as:

- Foreign embassies and consulates refusal or delay of issuing travel documents;
- Grants of relief, motions to reopen, issuances of stays, and other legal decisions from the Executive Office for Immigration Review and the federal courts; or
- The United States Supreme Court order barring prolonged detention after 180 days, if removal of an alien in ICE custody is not reasonably foreseeable.

The teams are successfully liaising and coordinating with other entities to locate, apprehend and obtaining information on fugitive aliens and enlisting other entities' participation in Fugitive Operations Team-led apprehensions through information-sharing agreements and partnerships with federal, state, and local law enforcement agencies. The teams' reliance on formal information-sharing agreements and other agencies for information gathering provides added resources that might not have been available to the teams otherwise.

In June 2001, the Supreme Court ruled that an alien with a final order of removal generally should not be detained longer than six months. To justify an alien's continued detention, current laws, regulations, policies, and practices require the federal government to either establish that it can obtain a passport or other travel document for the alien in the "reasonably foreseeable future," or certify that the alien meets stringent criteria as a danger to society or to the national interest. ICE is responsible for ensuring compliance with the Court's ruling and final order case management.

In February 2007, we issued a report on ICE's compliance with two U.S. Supreme Court decisions governing the detention period for aliens with a final order of removal. We reviewed ICE's compliance with detention limits for aliens who were under a final order of removal from the United States, including the reasons for exceptions or noncompliance. ICE has introduced quality assurance and tracking measures for case review; however, outdated databases and current staffing resources limit the effectiveness of its oversight capabilities. Based on our review, approximately 80% of aliens with a final order are removed or released within 90 days of an order. Custody decisions were not made in over 6% of cases, and were not timely in over 19% of cases.

Moreover, some aliens have been suspended from the review process without adequately documented evidence that the alien is failing to comply with efforts to secure removal. In addition, cases are not prioritized to ensure that aliens who are dangerous or whose departure is in the national interest are removed, or that their release within the United States is adequately supervised. Finally, ICE has not provided sufficient guidance on applying the Supreme Court's "reasonably foreseeable future" standard, and does not systematically track removal rates—

information that is necessary for negotiating returns and for determining whether detention space is used effectively.

The weaknesses and potential vulnerabilities in the post order custody review process cannot be easily addressed with ICE's current oversight efforts, and ICE is not well positioned to oversee the growing detention caseload that will be generated by DHS' planned enhancements to secure the border.

We recognize that ICE has already made considerable progress in managing national security cases. The Headquarters Custody Determination Unit (HQCDU) should have at least one officer working full time on each of the national security, terrorism, war criminal, and human rights abuser caseloads. However, at the time of our report, only one officer was working on national security, terrorism, war criminal and the human rights abuser caseloads in addition to other duties. With adequate staffing, the unit could take a more proactive approach to monitoring and prioritizing the whole caseload, which might secure faster returns and fewer or better-supervised releases.

ICE's Office of Detention and Removal Operations makes thousands of decisions on Post Order Custody Review cases each year, and many should be analyzed to identify the effect on removals for a number of factors. During the period under review, available statistics indicated that 40% of *habeas corpus* challenges were followed by a release, indicating that government entities are finding the decisions made under the existing system could not be supported when challenged. Making the process more objective and transparent will enable HQCDU to support its decisions when they are challenged. While the HQCDU makes all 180-day and post 180-day Post Order Custody Review decisions, once the 180-day decision has been made, responsibility for monitoring cases and initiating subsequent reviews shifts to deportation officers in the field. Without a written decision from the unit, deportation officers would not have necessary information to determine when to initiate a review of post –180-day detention. Reviewing a decision at the request of a field deportation officer does not automatically compel the HQ Custody Determination Unit to release the alien. Tracking statistics on removal rates will provide additional information on which to base their decision, but will not constrain them from taking into account changes in country conditions, ongoing negotiations, the circumstances of the individual alien, or their expertise and experience.

ICE regulations and procedures provide less oversight and review after an alien has been held 180 days, despite the increasing burden on the government to establish that an alien's removal will occur in the reasonably near future. These cases would benefit from a broader range of strategies to ensure regulatory compliance and the most effective use of existing resources, such as detention space. Oversight should include periodic field office meetings with local *pro bono* organizations. *Pro bono* organizations are a source of information on potential compliance issues, can assist in resolving post 180-day cases, and can—and do—raise compliance issues in court if they are not resolved at the local field office level.

To address these challenges, we made five recommendations. ICE concurred and subsequently complied with all except one recommendation. First, we recommended that ICE require each Field Office Director to report case-specific compliance with Post Order Custody Review

regulations and guidance to the HQ Custody Determination Unit on a quarterly basis, which would provide this information to the Assistant Secretary semi-annually until such information can be obtained through ENFORCE data system.

Second, we recommended that ICE ensure that existing vacancies in the Travel Documents Unit are filled and, as staff or funding becomes available, ensure this office upgrades its intranet.

Third, ICE needs to develop and staff a program to identify and prioritize cases involving aliens who represent a violent threat to the public or are national security or national interest cases, so that efforts to secure travel documents are expedited, and placement procedures are initiated early for those who might require eventual release within the United States. This recommendation is an issue of resources rather than of commitment.

Our fourth recommendation concerns ICE's need to develop an objective and transparent methodology for determining whether there is a significant likelihood of removal for all cases, which considers: (1) the Supreme Court's requirement for increasing scrutiny over time; (2) the factors outlined in ICE regulations; and, (3) comprehensive statistics on actual removal rates for all Post Order Custody Review cases forwarded to the Travel Documents Unit.

We also recommended that ICE develop and staff a program to improve oversight of all aliens who have been in detention longer than 180 days after a final order of removal.

In November 2006, we issued a report, entitled *Review of the U.S. Immigration and Customs Enforcement Detainee Tracking Process*. Our audit objectives were to determine whether ICE had an effective system to track the location of detainees and respond to public inquiries. Detainees are often transferred from one facility to another for various reasons including medical, security issues, or other ICE needs. ICE field offices use the Deportable Alien Control System to track detainees. This system automates many of the clerical control functions associated with the arrest, detention, and deportation of illegal aliens. The system provides management information concerning the status and disposition of individual cases, as well as statistical and summary data of cases by type, status, and detainee-specific information including the detainee assigned number, name, country of origin, book-in date, and detention facility.

Our audit determined that the detainee tracking system, for five of the eight ICE detention facilities tested, did not always contain timely information. At the five facilities, data for 10% of the detainees examined were not recorded in the ICE tracking system within the first 5 days of detainment. ICE procedures stipulated that detainee data should be recorded in Deportable Alien Control System as soon as possible, usually within two business days from the date of detainment.

At six of eight ICE detention facilities tested, Deportable Alien Control System and detention facility records did not always agree on the location of detainees, or contained information showing the detainee had been deported. Inaccurate detainee information reduces ICE's ability to correctly identify the actual location of detainees and to verify that individuals have been detained. There is also the potential for ICE to under- or over pay detention facilities because of incorrect data.

ICE had no formal policy regarding what information it would provide to anyone inquiring about detainees in their custody. However, the four field offices we visited and the eight detention facilities contacted said that they would confirm whether the detainee was held in their facility. Requests for more detailed information would be referred to ICE headquarters.

To address these challenges, we made three recommendations. We recommended that ICE:

- Issue formal instructions to field offices requiring timely Deportable Alien Control System entries and proper supervisory review;
- Perform daily/periodic reconciliations of system data; and
- Obtain a reimbursement of the \$7,955 in ICE net overpayments.

ICE concurred with all three recommendations.

In summary, I believe we all can agree that significant number of foreign visitors, who enter the United States legally, overstay their authorized period for admission, and enforcing the law and ensuring that foreign visitors leave the country as scheduled while continuing to make the United States a welcome place for foreign travelers is an important but challenging balance to maintain. Biometrically enabled entry capabilities are operating at the vast majority of air, sea, and land ports of entry, and is identifying previous visa violators and others whose admissibility is questionable. However, the use of a comparable exit capability remains unclear.

Mr. Chairman, members of the Committee, you can be sure that my office is committed to continuing our oversight efforts for this challenging and complex issue in the months and years ahead.

This concludes my prepared statement. I would be happy to answer any questions you or the Members of the Committee may have.

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