

**VISA OVERSTAYS:
CAN WE BAR THE TERRORIST DOOR?**

HEARING
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS
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VISA OVERSTAYS: CAN WE BAR THE TERRORIST DOOR?

THURSDAY, MAY 11, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:13 p.m., in room 2200, Rayburn House Office Building, Hon. Dana Rohrabacher (Chairman of the Subcommittee) presiding.

Mr. ROHRABACHER. This hearing of the Subcommittee on Oversight and Investigations is called to order.

Today's hearing is entitled, "Visa Overstays: Can We Bar the Terrorist Door?"

Since 9/11, it has become obvious that immigration generally and visa overstays specifically are things we no longer have the luxury to ignore. In fact, the 9/11 Commission made the following recommendation almost 2 years ago, and I quote:

"The Department of Homeland Security, properly supported by the Congress, should complete as quickly as possible a biometrics entry/exit screening system, including a single system for speeding qualified travelers. It should be integrated with a system that provides benefits to foreigners seeking to stay in the United States.

"Linking biometrics passports to good data systems and decisionmaking is a fundamental goal. No one can hide his or her debt by acquiring a credit card with a slightly different name, yet today a terrorist can defeat the link to electronic records by tossing away an old passport and slightly altering the name in the new one."

Sometime later, the 9/11 Commission reported that, and I quote, "modest progress" has been made on this goal. Find out about that modest progress.

My concern is that once people enter the country through legitimate visas, they are often never heard from again, and we have no procedure for tracking them. The biometrics procedure described above is barely in place and far from uniformly applied, and even this important issue doesn't touch on the question of illegal immigration, a crisis that has not been tackled for years. But today's hearing will help us determine whether, or to what extent, visa visitors are tracked and the routine overstays of visas and how widespread it is.

This is no theatrical matter. As our witnesses know, at least one al-Qaeda-linked operative convicted in the 1993 World Trade Center bombing plot obtained amnesty through a program intended for farm workers. In my home State of California, the crime problem and the pressure on public services, I might add, presented by non-citizens who are here illegally is astronomical, burdening local government and law enforcement in a way that might be just unimaginable to someone who is not from a border State, but this will soon become the reality of other States as well.

However, as one of our witnesses, Mike Cutler, States, in every State that has a port of entry, it is in effect a border State. This problem affects us all, which is why today's hearing is of such significance.

We have a distinguished panel of witnesses:

Mark Krikorian is one of the Nation's leading experts on immigration. He is from the Center on Immigration Studies, which bills itself as "the Nation's only think tank devoted exclusively to the research and policy analysis of the economic, social, demographic, fiscal and other impacts of immigration on the United States." Their research and work is indispensable to understand some of these issues.

Michael Cutler, a former Senior Special Agent of the formerly named Immigration and Naturalization Service, writes widely on these matters for the respected counterterrorism—I guess it is the respected counterterrorism blog which is called Counterterrorism Blog. Is that it? And that is easy to remember.

And, finally, Professor Margaret Stock, Department of Law at West Point, will tell us why she believes the visa overstay issue is the last resort of the security process.

I welcome them all three of you and look forward to your testimony.

I apologize for being late. Henry Hyde had me take over there at the other hearing. So that is the excuse.

But now, Mr. Delahunt, would you like to open with a statement?

Mr. DELAHUNT. I am going to be very brief.

First of all, let me join with Chairman Rohrabacher in welcoming a very distinguished panel. I have had an opportunity to review your resumes, and they are impressive. Clearly, this is an issue that is receiving considerable attention these days and I think appropriately so.

My friend, the Chairman, referred to the biometrics process. I would just point out that I serve on the Judiciary Committee as well as the International Relations Committee, and that effort has received bipartisan support. While there appears to be some moderate progress, I would suggest, Mr. Chairman, that it reflects a failure on the part of the Administration to reach an end conclusion in terms of the biometrics standards that would be of assistance.

But I would be remiss, Mr. Chairman, if I didn't make my usual request and observation that here we are having a hearing on immigration policy and, as I indicated, I think it is one that is very worthy. It is certainly within the jurisdiction of the Judiciary Com-

mittee, and there have been numerous hearings there on this and related issues.

Now I know that the State Department does issue visas, but this hearing is about individuals who have overstayed their visa term, and it is the responsibility of the Department of Homeland Security, presumably, to compel compliance and conduct enforcement. Yet we are having a discussion on immigration. This is despite, of course, my continuing request to you, to the Chairman of the Full Committee, to conduct a hearing on United States policy in Iraq, which I think is foremost on the minds of the American people.

I am still going to continue to press that we here in the United States Congress fulfill our constitutional responsibility to conduct oversight of the Executive Branch in this, one of the most important matters I think facing our Nation.

Recently you, Mr. Chairman, my dear friend from California, said that we had conducted nine hearings on Iraq. I must have missed them. The notice couldn't have come.

We have had a lot of hearings on the Oil-for-Food Program, but those hearings were about a United Nations program in Iraq. They had nothing to do with United States policy. In fact, when I raised the issue of U.S. policy as it related to the Oil-for-Food Program and why the Administration looked the other way when it came to trade protocols, again, the response from the Administration was silence.

In fact, my memory is that the only hearing that we have had on this Subcommittee had to do with an historical review of the deluded and brutal despot that reigned in Iraq, Saddam Hussein. But I would suggest that, while it was interesting, we didn't need to have the time of this Subcommittee devoted to that particular issue because I think we all reached the conclusion that he was deluded, brutal, and a despot without going through that.

I would still like to have a full hearing on what happened to that 8.8 billion American dollars in Iraq that the United States-led Coalition Provisional Authority managed to lose track of in less than a year, but I suspect that that won't happen anytime soon because that might possibly be an embarrassment to the Administration.

I have got a long statement here that I won't continue to refer to, but I do look forward to the testimony of these three individuals whom I know will inform us well.

Mr. ROHRABACHER. Thank you very much, Mr. Delahunt.

I know that the Full Committee hearing we had on Iraq was where you heard me make the statement that we had had nine hearings. So I guess that Full Committee hearing now enters into the process of we still don't have any hearings.

Mr. DELAHUNT. No. I am happy—in fact, when I heard you, Mr. Chairman, I had to go and refresh my memory. You stated that we had had nine hearings—different hearings in front of this particular Subcommittee over the last year on Iraqi issues—

Mr. ROHRABACHER. Right.

Mr. DELAHUNT [continuing]. And I would have to again respectfully, because you are my friend, disagree with that statement. We have not had a single hearing on Iraq, with the exception of the one that I referred to.

Mr. ROHRABACHER. But we have had Oil-for-Food hearings which you have now said don't concern Iraq. But we have also had—let me note that we had hearings on the documents that we have captured in recent months as well as in the past.

Mr. DELAHUNT. I am granting you that single hearing, Mr. Chairman.

You know, the Oil-for-Food Program was nothing about United States policy in Iraq. It was all about the United Nations and the need to reform. But now that we have got the record straight—

Mr. ROHRABACHER. All right. We have the deluded despot that we agreed on. And now he is a disposed deluded despot, which I think we think is a good thing. And soon he will be a deposited deluded despot because, after justice, hopefully he will be deposited where he belongs, which is back in that hole, never to get out of again.

Mr. Wilson, do you have an opening statement on today's hearing?

Mr. WILSON. Thank you, Mr. Chairman.

I want to thank you for your leadership in having a hearing on visa overstays. This is an important issue.

I, in my private law practice, practiced some level of immigration law. I was actually impressed by the laws. I was not necessarily impressed by the technology of the filings. In fact, files would be lost. And it was startling to me that documents so important to people's lives could be misplaced in a file cabinet and not even know which State that file cabinet may be in. So I am really looking forward to hearing how this system can be improved. But, particularly with new technology, this really should be by smart card in particular. I want to give you a clue of where I am coming from. This should be addressed. We should be able to figure out who is here, how long they are here, and who is overstaying their visa. So I look forward to your suggestions today.

Thank you, Mr. Chairman.

Mr. ROHRABACHER. Thank you very much, Mr. Wilson.

Just to underscore the importance of this hearing, what we hear over and over again about the issue of illegal immigration is that we have got to control the border with Mexico. Over and over and over again, it is Mexico, Mexico, Mexico.

Coming from California, I understand why Mexico has received its share of attention, because a large portion of illegal immigrants do come from Mexico. However, very little attention has been given to visa overstays. Today, I hope that this panel will shed light on the importance of this issue and of coming to grips with this challenge is to the security of the United States.

Mr. Krikorian, you may proceed.

**STATEMENT OF MR. MARK KRIKORIAN, EXECUTIVE
DIRECTOR, CENTER FOR IMMIGRATION STUDIES**

Mr. KRIKORIAN. Thank you, Mr. Chairman.

I appreciate the opportunity to address this body, and I second your comments that much of the discussion about immigration and terrorism has focused on the border. And that is not unimportant. At least three important terrorists have come across the Canadian border, Ahmed Ressam from the Millennium Plot, and two others.

And even the Mexican border has in fact been used at least once that we know of. Mahmoud Korani, a Hezbollah operative now in prison in Michigan, was smuggled across the Mexican border.

But as important as border security is, it is not sufficient. It has to be supplemented by a tightly run immigration system inside the country, and there are a lot of different aspects to that. But this issue of visa overstays is one of the most important ones.

I don't mean to be pedantic about it, but, strictly speaking, it is not the visa that is being overstayed, because the State Department issues the visas. It is the length of stay that the immigration inspector gives the person that is overstayed.

Estimates are that something like as much as 40 percent—maybe 30 to 40 percent—of the illegal alien population is made up of overstays. So we are talking about maybe 4 million or more people among the illegal aliens are visa overstays. So this really is an extraordinarily large part of the general illegal immigration problem.

Mr. ROHRABACHER. Could you say that again, please?

Mr. KRIKORIAN. Between 30 and 40 percent. The estimates vary. It is something like 4 million people or more.

Mr. ROHRABACHER. You say 30 to 40 percent—excuse me.

Mr. KRIKORIAN. 30 to 40 percent of the total illegal population are visa overstayers. Estimates vary; and, of course, it is guesswork anyway—but educated guesswork.

So that is important to the immigration issue in general.

But specifically to the issue of terrorism, we found that a majority of the terrorists who were illegal aliens when they committed their crimes were, in fact, visa overstayers, that out of the 48 al-Qaeda operatives who committed crimes here between 1993 and 2001, 12 of them were illegal aliens when they committed their crimes, 7 of them were visa overstayers, including 2 of the conspirators in the first World Trade Center attack, one of the figures from the New York subway bomb plot, and 4 of the 9/11 terrorists. In fact, even a couple other terrorists who were not illegal when they committed their crimes had been visa overstayers earlier and had either applied for asylum or finagled a fake marriage to launder their status.

So, given the prevalence of overstays among terrorists in the United States, it is clearly an important security goal to limit this phenomenon. And there are two parts to that. One is keeping likely overstays from getting in in the first place. That is a State Department function. The second is detecting overstays once they overstay, if they get through the screen.

So, as to the first part, immigration law prohibits the issuance of visas to what they call intending immigrants—in other words, people likely to become overstays. They have to demonstrate a visa applicant—a person coming for a tourist or business trip has to demonstrate he has roots in his home country, job, family, what have you. That is relevant to terrorism, because the very characteristics that would mark a likely ordinary overstay are the very characteristics that a terrorist would likely have. In other words, somebody who is young, unmarried, no children, no consistent career, no property or other deep attachments in the home country. Those de-

scribe both a likely terrorist as well as a likely ordinary visa overstayer.

And I am not making this up. This isn't just supposition. A journalist was able to get 15 of the 19 visa applications of the 19 hijackers. The State Department destroyed the other four before he got to them, but 15 of them they got. And this reporter took the applications, just the actual paper applications, to half a dozen current and former consular officers and said—not knowing anything, just looking at the application, “Is this something that should have been approved?” And every person he asked said that every one of the applications of the 15 hijackers should have been turned down on ordinary visa overstay grounds. In other words, what is called 214(b) grounds. In other words, these applications would suggest that the person would become an illegal alien, completely apart from any intelligence or lack of intelligence about what terrorist indications they had.

Mr. DELAHUNT. What was that number again?

Mr. KRIKORIAN. 15 of the 19 of the hijackers. I have a reference and a link at the end of my written testimony to the coverage of that.

So the screening part, screening visa applicants is important for security function because—

Mr. DELAHUNT. Let me go back, Mr. Krikorian, because we can make this, I think, less cumbersome. You know, 15 out of 19—who were the former consular officers that—

Mr. KRIKORIAN. That okayed those?

Mr. DELAHUNT. In other words, your testimony is, if I am correct, that you took or someone in your behalf—

Mr. KRIKORIAN. No, this was a reporter for National Review did this, and they were the ones that published.

Mr. DELAHUNT. So a reporter for National Review goes to former consular offices—

Mr. KRIKORIAN. And current.

Mr. DELAHUNT [continuing]. And current—

Mr. KRIKORIAN. Yes.

Mr. DELAHUNT [continuing]. And, absent any other information, they indicate to that reporter that these 15 ought to have been rejected.

Mr. KRIKORIAN. Um-hmm.

Mr. DELAHUNT. Yet, at the same time, at the time they were approved, people similarly situated, if they were current consular officials, approved them.

Mr. KRIKORIAN. Right.

Mr. DELAHUNT. Boy, that is a real inconsistency.

Mr. KRIKORIAN. It clearly is.

Mr. DELAHUNT. You get the softies and the hardliners.

Mr. ROHRABACHER. But what does it point to?

Mr. KRIKORIAN. What it points to is a management culture clearly not only within the consular post in Saudi Arabia specifically, but really, I would submit, within the consular service in general that is oriented more toward customer service rather than toward security. In other words, the consular officers—and one of those that was consulted by this reporter is a senior policy analyst for me who was a consular officer in the Caribbean. And there is clearly

a culture of customer service. In other words, “people have got to get their visas” was sort of the motto of one of the managers of visa operations in Saudi Arabia.

So the point is that asking too many questions, if the standards are too high, too many people will be rejected for visas, and then the State Department is concerned about the diplomatic consequences of that. So that, as far as I understand it, is really what the source of the problem is there.

Mr. ROHRABACHER. Has that changed?

Mr. KRIKORIAN. It has changed to some degree. Certainly it has changed in posts in some specific countries. Although this program called Visa Express, which there was a lot of coverage of at the time in Saudi Arabia, a way of using travel agents, Saudi travel agents, to speed up the processing of visa applications, was continued for almost a year after the 9/11 attacks.

Mr. ROHRABACHER. Go ahead and continue with your testimony. Pardon me.

Mr. KRIKORIAN. So my point was that the characteristics of likely terrorists and likely visa overstays are the same.

But what happens if they do get in, if the terrorist gets in anyway? Well, it is likely he is going to become an actual visa overstayer because of the time involved in organizing and preparing for terrorist attacks. In other words, if a terrorist is admitted for a short period to go to Disney World, despite the fact that he is likely to be young and unmarried and what have you, the odds are pretty good that, in that short period, he is not going to be able to complete the preparation of the terrorist conspiracy and will end up inevitably becoming a visa overstay. That is why it is important to track and, to the extent possible, remove overstays as a way of disrupting terrorist conspiracies.

The first task is to know whether foreign visitors actually have left when their time has expired. Because, right now, we have no good way of knowing whether a person has left when his length of stay has expired because of the complete breakdown of the comically inadequate paper-based system that we have relied on for a long time to determine whether a person has left when they are supposed to have left. It is call the I-94 form. I can tell you a little more about it afterwards, but it is really hard to believe that a modern nation still relies on that kind of exit tracking. The point is, if we don't know whether somebody has left, we have no idea which ones have not left.

And the potential for real exit tracking does exist. You referred to it. It is called the US-VISIT program, which is supposed to be a biometrics screening program to check people when they come in. It is a check-in/check-out system for foreign visitors. It is implemented, to the extent it was going to be implemented, at air and seaports, but only in a limited way at land ports, and Mexicans and Canadians are exempt all together.

And the checkout part is almost non—they haven't really gotten to it yet. There are only a couple of pilot programs, a couple of pilot kiosks at airports where they are checking people out.

So that is clearly a work in progress and that is one place where there is an enormous amount of progress that needs to be made so that we know who leaves and, therefore, who hasn't left.

Now, as a final point, if and when we ever get the exit recording part of US-VISIT going so we know who checks out and, therefore, who hasn't checked out, it would seem to me very important at that point for visa overstayers to be entered into the FBI's (Federal Bureau of Investigation) NCIC (National Crime Information Center) database. Because the point here is not to chase after each illegal immigrant—in other words, when there is a visa overstayer, a pager for an ICE (Immigration and Customs Enforcement) agent goes off, and he gets up and spends the rest of his career looking for this person. That is not the way. That is not the point.

If overstayers are in the NCIC database and they are arrested for a crime, pulled over for a traffic stop, then that is registered. And that is not just a hypothetical thing. With 4 million overstayers, thousands of them every year—thousands of them are either arrested for crimes or pulled over for traffic stops. It is an important tool that would facilitate cooperation between the State and local authorities and immigration authorities.

There are several specific examples. Just to touch on one, Mohammed Atta, when he was an overstayer earlier in 2001, received a traffic ticket for driving without a license. One of the other 9/11 terrorists, Ziad al-Jarrah, had not overstayed his visa yet, but he actually got a ticket. He was on Flight 93 shortly before—2 days before 9/11 for going 95 in a 60-mile-an-hour zone. So even the most sophisticated terrorists who have gotten in here are clearly doing things that are going to bring themselves to the attention of even ordinary law enforcement authorities, completely apart from terrorism issues.

Just as a last point, what is important I think to make this trafficking of visa overstays work better is something the House passed last year, is making illegal presence a criminal offense. Because however long the sentence is, for me is of no consequence, whether it is a felony or misdemeanor. But making sure it is a Federal crime takes away any ambiguity as to whether State and local authorities have any authority over these offenses.

So just to finish up, the only responsible course of action, it seems to me, for us is to do what we can—and there is a lot we can do—to bar the door to terrorist visa overstays; and the sooner we do it, the better off we are going to be.

Mr. ROHRABACHER. Thank you very much for your testimony, and we will go back for questions at the end of the panel.

[The prepared statement of Mr. Krikorian follows:]

PREPARED STATEMENT OF MR. MARK KRİKORIAN, EXECUTIVE DIRECTOR, CENTER FOR IMMIGRATION STUDIES

Much of the discussion on the intersection of immigration and terrorism has focused on securing our porous land borders. And border enforcement is indeed an important tool in protecting our homeland. Gazi Ibrahim Abu Mezer, part of the Brooklyn subway bomb plot, for instance, was caught trying to sneak across the Canadian border, and because of a lack of detention space, he was paroled into the U.S. Abdel Hakim Tizegha, who took part in the Millennium Plot, had been a stow-away on a ship from Algeria, was denied asylum, moved to Canada, and later returned to the United States by sneaking across the Washington state border. Ahmed Ressam, also part of the Millennium Plot, was caught at the Canadian border trying to enter using a false Canadian passport.

Nor has the Canadian border been the only weak point. Mahmoud Kourani, described by the Justice Department as “a member, fighter, recruiter and fundraiser” for Hezbollah and brother of the terrorist group's chief of military security in south-

ern Lebanon, snuck across the Mexican border in February 2001, after bribing a Mexican official in Beirut for a visa.

And given the pervasive corruption in Mexico, our southern border is likely to become an increasingly attractive means of entering the United States as other avenues are made more difficult.

But as important as border control is for security, it is not sufficient. It must be supplemented with a tightly run immigration system inside the country as well. This includes addressing problems like the lack of worksite enforcement, the staggering prevalence of fraud in the processing of immigration benefits, and the absurd visa lottery.

But perhaps most important is the issue of visa overstays. (Strictly speaking, it is not the visa itself, issued by the State Department, which expires and turns the foreign visitor into an illegal alien, but rather the length of stay granted the alien by the immigration inspector at the airport or land crossing.) Estimates are that as many as 40 percent of illegal aliens are overstayers, who entered the country legally but did not leave when their time ran out, representing perhaps 4 million or more people.

And, in fact, the majority of those terrorists who were illegal aliens when they committed their crimes were overstayers. Of the 12 al Qaeda operatives who were illegal aliens in the United States when they took part in terrorism between 1993 and 2001 (out of the 48 examined in the Center for Immigration Studies report, *The Open Door*), seven were visa overstayers. These include two conspirators in the first World Trade Center attack, Mohammed Salameh and Eyad Ismoil. Other terrorist overstayers were Lafi Khalil, who was involved in the New York subway bomb plot, and four of the 9/11 terrorists: Zacarias Moussaoui, Satam al Suqami, Nawaf al Hamzi, and Hani Hanjour.

In addition, Fadil Abdelghani, who took part in the plot to bomb New York landmarks, had overstayed a tourist visa in 1987. He obtained permanent residence in 1991 through a sham marriage to an American. The murderer of two CIA employees in 1993, Mir Aimal Kansi, overstayed a business visa and later applied for asylum.

Given the prevalence of overstays among terrorists in the United States, it's an important security goal to limit this phenomenon as much as possible. This can be done in two ways: keeping likely overstays from being issued visas in the first place, and detecting overstays once they do happen.

Section 214(b) of the Immigration and Nationality Act states that "every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer . . . that he is entitled to nonimmigrant status." Individuals who appear likely to overstay their temporary visa are called "intending immigrants"—that is, they will try to settle permanently in the United States. Consular officers are not to issue "nonimmigrant" (i.e., temporary) visas unless the applicant can demonstrate that he has a residence abroad to which he is likely to return (with some exceptions), that the visit to the United States will be temporary, and that the applicant has enough money to finance the visit and return trip. Officers are trained to look for evidence of strong ties to the applicant's home country, such as family, a good job, property, and other things that would increase the likelihood that an applicant will return, and to be skeptical of applicants who fit the profile of a probable overstayer. The criteria vary from country to country, but these individuals are generally young, unemployed or earning a low income, and unmarried. Section 214(b) is by far the most common reason for applications to be refused.

This is specifically relevant to terrorism because ordinary intending immigrants and terrorists often have similar characteristics—youth, no families of their own, no consistent career, no property or other deep attachments in their home countries. In other words, stricter standards for the issuance of visas to prevent ordinary overstays could be a powerful tool to reduce the terrorist threat as well.

Nor is this merely supposition. The visa applications of 15 of the 19 hijackers were examined by current and former consular officers and every one of the experts told Joel Mowbray of *National Review* magazine in 2002 that every one of the applications should have been denied for conventional reasons. Of the applications of two of the hijackers, Mowbray wrote:

Brothers Wail and Waleed al-Shehri applied together for travel visas on October 24, 2000. Wail claimed his occupation was "teater," while his brother wrote "student." Both listed the name and address of his respective employer or school as simply "South City." Each also declared a U.S. destination of "Wasantwn." But what should have further raised a consular officer's eyebrows is the fact that a student and his nominally employed brother were going to go on a four-to-six-month vacation, paid for by Wail's "teater" salary, which he presumably would be foregoing while in the United States. Even assuming very frugal accommoda-

tions, such a trip for two people would run north of \$15,000, yet there is no indication that the consular officer even attempted to determine that Wail in fact had the financial means to fund the planned excursion. They appear to have received their visas the same day they applied.

Therefore, stricter adherence to the expectations of the statute, a stronger prevailing attitude of skepticism among consular officers, and greater understanding of the need to invoke Section 214(b), the keystone of non-immigrant visa law, could be a highly effective tool against terrorism. With some four million overstayer illegal aliens, strict adherence to 214(b) could also have a significant impact on efforts to reduce illegal immigration.

Screening visa applicants for intending immigrants has security benefits because “intending terrorists” have similar characteristics. But if the terrorist gets in anyway, there’s also a significant likelihood that he’ll actually overstay, because of the time involved in organizing and preparing for any significant terrorist attack. And this is why detecting and removing overstays is important not merely for ordinary immigration control but also for security reasons.

The first task is to know whether a foreign visitor actually left before his length of stay expired. We have no real way of knowing this now, given the complete breakdown of the comically inadequate, paper-based system of tracking the departure of foreign visitors via the I-94 form. And without knowing which foreign visitors have left, we have no way of knowing who has remained illegally.

The potential for true departure tracking exists in US-VISIT, the new biometric screening system for foreign visitors, which the Department of Homeland Security began implementing in 2004. The system records the entry of foreign visitors, authenticates their identity, and screens them against security databases. It has been fully implemented at air and sea ports, but in only a very limited way at land ports. If the program is allowed to proceed as planned, the exit recording system will eventually require visitors to “check out” as they leave. By matching the recorded entries against the exits, DHS would be able to determine which visitors have overstayed their visas and become illegal aliens. In addition to providing ICE with enforcement leads as soon as an alien overstays, it is expected that the act of recording entries and exits, together with increased enforcement activity and the imposition of penalties for visa violations, will help dampen the temptation to overstay.

US-VISIT is still a work in progress, with fewer than one-fourth of foreign visitors now screened and enrolled upon entry, and only a handful on exit (DHS is currently relying on a passenger manifest-based system and pilot exit programs in a few airports to record exits). Mexicans and Canadians are exempt from enrollment, leaving a significant gap in the screening activity. This policy is partly due to infrastructure limitations and partly due to the Bush administration’s deference to constituencies who benefit from minimal screening policies, such as the travel industry, the immigration bar, and businesses dependent on cross-border trade. Funding for more port inspectors and infrastructure improvements, such as port re-design, would make it much easier to expand the number of visitors who are covered under US-VISIT, enhancing security, deterring illegal immigration, and facilitating legitimate travel and commerce.

If and when the exit-recording function of US-VISIT is ever fully implemented, then aliens identified as overstayers should be added to the FBI’s National Crime Information Center (NCIC) database. In that way, if they are ever arrested for a crime or pulled over for a traffic stop, they could be held by local police and then turned over to DHS’s Bureau of Immigration and Customs Enforcement (ICE). This could become a key component of interior enforcement. Although no hard figures exist, with perhaps 4 million visa overstayers living in the United States, there is no question that tens of thousands of them are arrested or pulled over in traffic stops each year. Traffic stops and arrests are a significant opportunity to apprehend those in the country illegally and we should take full advantage of it.

While adding visa overstays to the criminal database would help reduce illegal immigration, one may still wonder if it would ever be useful against terrorists. In fact, two of the 9/11 hijackers were pulled over in traffic stops in months preceding the attacks. In the spring of 2001, the plot’s ringleader, Mohammed Atta, received a traffic ticket in Broward County, Fla., for driving without a license. He had, by this time, overstayed his visa on his previous visit to the United States between June 2000 and January 2001, though the INS at Miami International Airport allowed him back into the country. Had a system of carefully tracking overstays and placement of names into the criminal database been in place, then we potentially could have averted the 9/11 attacks. Although he had not overstayed his visa, Ziad Samir Jarrah, who was on board United Airlines Flight 93 that crashed in Pennsylvania on 9/11, was issued a speeding ticket on September 9 in Maryland for driving

95 miles an hour in a 60-mile-per-hour zone. Thus, even the most sophisticated terrorists in American history seem to have run afoul of the law prior to carrying out their plans. Of course, for immigration authorities to quickly take custody of overstayers detained by police, they would need more detention space and more agents assigned to interior enforcement. By adding the names of visa overstays to the criminal database, ICE would in effect enlist the help of thousands of local law enforcement officers.

Of course, under current law, overstayers are committing only a civil violation of federal law, not a criminal offense. At the same time, those who enter without inspection by sneaking across the border are committing a federal crime (though since virtually all illegal aliens use fraudulent documents, they are committing a criminal offense regardless of their mode of entry, but that is another matter). Making illegal presence a criminal offense would facilitate cooperation with state and local authorities because, though there are a few who claim that local law enforcement doesn't have the authority to enforce federal civil violations, no one disputes local authority to enforce federal criminal law.

Any serious effort to foil terrorist attacks on the United States must have as a centerpiece the prevention and removal of overstays as part of a broader effort to restore credibility to our immigration-control system. The means to do this are available to us, but much work remains, both in policy changes and implementation of earlier policies. The only responsible course of action is to do all we can, quickly, to bar the door to future terrorist overstayers.

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Mark Krikorian is Executive Director of the Center for Immigration Studies (www.cis.org), a non-profit, non-partisan research organization in Washington, D.C. which examines the impact of immigration on the United States. The Center is animated by a pro-immigrant, low-immigration vision which seeks fewer immigrants but a warmer welcome for those admitted.

Mr. Krikorian frequently testifies before Congress and has published articles in *The Washington Post*, *The New York Times*, *Commentary*, *National Review*, and elsewhere, and has appeared on *60 Minutes*, *Nightline*, the *NewsHour* with Jim Lehrer, *CNN*, *National Public Radio* and on many other television and radio programs.

Mr. Krikorian holds a master's degree from the Fletcher School of Law and Diplomacy and a bachelor's degree from Georgetown University, and spent two years at Yerevan State University in then-Soviet Armenia. Before joining the Center in February 1995, he held a variety of editorial and writing positions.

Mr. ROHRBACHER. Mr. Cutler.

**STATEMENT OF MR. MICHAEL W. CUTLER, FORMER SENIOR
SPECIAL AGENT, IMMIGRATION AND NATURALIZATION
SERVICE**

Mr. CUTLER. Thank you, sir.

Chairman Rohrabacher, Ranking Member Delahunt, Members of Congress, ladies and gentlemen, I greatly appreciate the opportunity to testify before this Subcommittee on an issue that I believe is of great significance to the security of our Nation, especially as we attempt to secure our country against criminals and terrorists.

Much attention has been paid to the porous borders of the United States, through which large numbers of aliens succeed in entering our country illegally. However, the issue of aliens who enter our country through ports of entry, having been inspected and who subsequently overstay or otherwise violate the terms of their admission is an issue that is often neglected, if not totally overlooked. That is why this hearing is of special significance.

In order for terrorists to attack our Nation from within our borders, they must first, obviously, manage to enter the United States. Whether it is by running our borders, stowing away on a vessel, or entering the United States through a port of entry, terrorists have many ways of gaining entry into the United States; and the issue of visa violators is a critical concern and represents a major vulnerability.

It is worth noting that the terrorists who attacked our Nation on September 11, 2001 all entered our country through ports of entry.

I have often made the point, and you repeated it today, sir, that any State that possesses an international airport or a seaport is in fact a border State.

It is currently estimated that more than 40 percent of the illegal alien population currently present in the United States did not run our Nation's borders but entered our country through a port of entry, and then in one way or another violated the terms of their admission in the United States, either by overstaying the authorized period for which they were admitted, accepting unauthorized employment, or becoming involved in criminal activities and subsequently were found guilty of committing crimes within the United States.

While the hearing is focused on visa overstays, we also need to consider the visa waiver program that enables aliens from 26 countries plus Canada to apply for admission to the United States without first obtaining a visa for the United States.

At present, most American citizens are required to remove their shoes so that these items can be searched before passengers are permitted to board an airliner. This procedure is followed because Richard Reid, the infamous shoe bomber, concealed a bomb in his shoes. Mr. Reid, however, was a citizen of Great Britain and therefore was eligible to seek entry into the United States without first applying for and receiving a visa.

So while citizens of our Nation fall under greater scrutiny to enhance security on airplanes, aliens may still seek admission into the United States without first securing a visa.

The visa requirement for aliens seeking to enter the United States provides three potential benefits to our law enforcement authorities:

First of all, the process of securing a visa requiring an interview helps to screen out those aliens who should not be permitted to enter the United States for a variety of reasons.

Mr. DELAHUNT. Mr. Cutler, if I could interrupt just you for a minute.

Mr. CUTLER. Sure.

Mr. DELAHUNT. Are you recommending that visitors from every nation secure a visa before being allowed into the United States?

Mr. CUTLER. If I had my druthers, yes, sir.

Mr. DELAHUNT. Okay.

Mr. CUTLER. Second, the application that an alien files in pursuing a visa can provide useful information, should that alien ultimately become the target or potential target of an investigation for a wide variety of crimes and, of course, terrorism.

And, finally, if an alien lies on the application for a visa and commits visa fraud, it can often be easier to prosecute an alien for visa fraud than for his involvement in terrorism or other criminal activities.

Significantly, it is also worth noting that the penalties for visa fraud, when committed in furtherance of drug trafficking, increases the penalties for such fraud, when that nexus can be established, to a maximum of 20 years of incarceration and 25 years when it is done in conjunction with terrorism. However, when an alien enters the United States under the auspices of the visa waiver program, none of those provisions of laws and none of those potential investigative or law enforcement tools can be applied.

The President of the United States and other political leaders have often said that we should focus law enforcement's resources and attention on those who would do us harm and not waste the extremely limited resources of ICE to enforce the immigration laws from within the interior of the United States on those aliens who simply come to the United States to seek employment. It would indeed make sense to do this if it was such a simple proposition. However, someone once said that an effective spy is someone who would not attract the attention of a waitress at a greasy spoon diner. The same could be said of an effective terrorist, and in fact it may well be that waitress or waiter of such an establishment who might indeed be the spy or terrorist.

To cite an example, in the mid-1980s, as a special agent of the former INS (Immigration and Naturalization Service), I was assigned to conduct an investigation of a diner at Staten Island in New York. We had received information that a number of illegal aliens were working at that restaurant who had come from a variety of countries. We ultimately arrested a number of the employees. Most of whom worked in the kitchen of that diner. One of those employees, a dishwasher, was a citizen of Egypt who, when he realized what we were doing, ran out the back door of the restaurant. It took quite a bit of a chase to bring him in for a landing, but we did ultimately arrest him.

We brought him back to his apartment; and, with his cooperation, we searched the apartment to retrieve his passport, which was standard procedure because we needed the passport in order to remove an illegal alien. When we were in the apartment, my partner and I were at a loss to understand why we found many

shopping bags from various department stores filled to the brim with various coupons for laundry detergent, diapers, dog food, cereal, and so forth. He had no valid explanation. He claimed the kids in the neighborhood played with it.

We locked him up in the immigration detention facility. He was ultimately deported. And a couple of months later, to my consternation, I found out while watching a television news report that Yassar Arafat had been sending his minions to the United States to commit coupon fraud and other mail fraud schemes in order to fund terrorism back in the Middle East. The guy that we arrested who was a dishwasher was obviously a terrorist.

There have been published accounts in newspapers of terrorist suspects who have worked at a wide variety of seemingly menial jobs in the United States, including one guy who drove an ice cream truck and others who had driven taxicabs, while others have worked in used car lots or even taught school.

I can tell you from personal experience, having spent several years—or many years, actually—conducting surveillance in conjunction with drug and criminal investigations, that when a bad guy gets into his car and drives to another location and meets with someone else, that a meeting is taking place, and we can then follow the other guy to see who he is and where he is going. But imagine a terror suspect who drives an ice cream truck. Think how many people approach that truck on a warm day. How would you know if one of those people or perhaps even a child approaching that truck might not slip a dollar bill or a \$5 bill to the driver of the truck and put a memory chip from a computer that we could all buy easily enough into that money and thereby exchange information, instructions, and so forth, and then receive a similar chip when they get their change?

Imagine the clandestine meetings that could be held by a cab driver who is involved with terrorism when he picks up what would appear to be a fare to any surveillance team. They could be exchanging all sorts of stuff in the back of that cab, and surveillance wouldn't be able to determine it.

The problem also is that taxicabs and ice cream trucks are ubiquitous. They are a part of the urban landscape. They would be very easy to use to either conceal a weapon or used to conduct surveillance of a sensitive location.

The Administration talks about targeting sensitive locations such as airports, nuclear power plants, and military bases to look for illegal aliens. Certainly these locations should come under intense scrutiny because of their obvious potential as targets for terrorists. But by focusing on these locations we are in effect providing a play-book to our adversaries.

The message is clear: If you want to imbed yourself in our country and not arouse the attention of law enforcement, especially ICE, do not get a job in a nuclear power plant but sell hot dogs outside that power plant and nobody will bother you or even pay attention to you.

It is critical that the enforcement of the immigration laws possesses at least a modicum of unpredictability to create a situation where terrorists and other criminals never know if they may be arrested for violating our immigration laws.

Additionally, the arrest of aliens for immigration law violations often helps in the cultivation of informants. However, in order for this to work, we need many more special agents assigned to ICE to conduct these field investigations; and we need adequate detention space to make certain that, once arrested, illegal aliens are actually removed from the United States. It will be necessary for ICE to hire many more special agents to make this work, and they need to be provided with resources and training. But especially as we wage a war against terrorism and drugs and violent gangs, to not do this represents a false economy.

Consider that New York is the safest big city in the United States, that has more than 8 million residents who are confined to the relatively small space that makes up the city of New York, but it is policed by roughly 37,000 police officers.

It has been estimated that there are about twice as many illegal aliens present in the United States as residents living in the City of New York, and these illegal aliens are scattered throughout our nation. Yet there are fewer than 3,000 special agents of ICE who are dedicated to enforcing the immigration laws for the entire country, and none of these agents today, by the way, is even getting Spanish language training. You simply cannot investigate people you are unable to communicate with, even though, before ICE was disbanded, the Spanish language was a requirement of the curriculum for the new agents.

Mr. DELAHUNT. What would your estimate be—in a perfect world, how many additional ICE agents would you estimate are necessary?

Mr. CUTLER. I would say 30,000. But I am not alone in that, because I have seen where analysts would say the same thing, and that would still put the odds at half of what they are for a criminal getting arrested in New York. But that would only work if you had the jail space and the training and a coherent policy.

You know, since the merger of ICE with Customs—or, rather, Immigration with Customs to create ICE, most of the managers came from legacy Customs who have no background or inclination to enforce the immigration laws.

Mr. DELAHUNT. So your recommendation would be a factor of 15 over the existing—or a factor of 10, rather, over the existing number?

Mr. CUTLER. Or more. Yeah. And I think it is critical because, as I have said, you can't simply—look, we are playing a game of hide and seek, as I say at the end of this. And the problem with this game of hide and seek is that the bad guys are hiding and we are not seeking.

And, by the way, I just want to make one point before we move on while I am still doing my opening statement. You were talking about Mr. Atta. Well, interestingly, in March 2002, I was requested to testify as to how Atta and al-Shehhi, two of the terrorists of 9/11, could have been given letters of approval to change schools exactly 6 months after 9/11. By then, the whole world knew two things about them: one, they were terrorists; two, they were dead. But that didn't stop Immigration.

The problem is that if we have an agency that is incompetent—and, believe me, the old INS was and the current ICE remains, I believe—I am sorry to tell you—we have got a problem.

I had recommended the implementation of a biometrics system when I did my first congressional hearing back in 1997. A lady by the name of Mary Ryan, who was in charge of consular affairs, the issuance of visas, was there with me testifying, and if looks could kill, I wouldn't be here now, sir. She was furious that I said we need to hold on to those nonimmigrant visa applications so we can use them for investigative leads and as a prosecutorial tool.

It is amazing that 15 of those applications were recovered; three were destroyed. But this goes back to my point. Those applications are critical. And she was the one who implemented Visa Express. So we need consular officers who have language training and have the other tools that they need to get the job done.

I look forward to your questions, sir.

[The prepared statement of Mr. Cutler follows:]

PREPARED STATEMENT OF MR. MICHAEL W. CUTLER, FORMER SENIOR SPECIAL AGENT, IMMIGRATION AND NATURALIZATION SERVICE

Chairman Rohrbacher, ranking member Delahunt, members of Congress, ladies and gentlemen, I greatly appreciate the opportunity to testify before this subcommittee on an issue that I believe is of great significance to the security of our nation, especially as we attempt to secure our country against criminals and terrorists.

Much attention has been paid to the porous borders of the United States through which large numbers of aliens succeed in entering our country illegally. However the issue of aliens who enter our country through ports of entry having been inspected by CBP, who subsequently overstay or otherwise violate the terms of admission, is an issue that is often neglected if not totally overlooked. That is why this hearing is of special significance. In order for a terrorist to attack our nation from within our borders he must first, obviously, manage to enter the United States. Whether it is by running our borders, stowing away on a vessel or entering the United States through a port of entry, terrorists have many ways of gaining entry into the United States and the issue of visa violators is of critical concern and represents a major vulnerability.

It is worth noting that the terrorists who attacked our nation on September 11, 2001 all entered our country through ports of entry. I have often made the point that any state that possesses an international airport or a seaport is, in fact, a border state. It is currently estimated that more than 40% of the illegal alien population currently present in the United States did not run our nation's borders, but entered our country through a port of entry and then, in one way or another, violated the terms of their admission into the United States, whether by overstaying the authorized period for which they were admitted, accepting unauthorized employment or became involved in criminal activities and were found guilty of committing crimes within the United States.

While this hearing is focused on visa overstays, we need to also consider the Visa Waiver Program that enables aliens from 26 countries plus Canada to apply for admission to the United States without first obtaining a visa for the United States. At present, most American citizens are required to remove their shoes so that these items can be searched, before passengers are permitted to board an airliner. This procedure is followed because Richard, Reid, the infamous "Shoe Bomber" concealed a bomb in his shoes. Mr. Reid, however, was a citizen of Great Britain and was eligible to seek entry into the United States without first applying for and receiving a visa. So, while citizens of our nation fall under greater scrutiny to enhance security on airplanes, aliens may still seek admission into the United States without first securing a visa. The visa requirement for aliens seeking to enter the United States provides three potential benefits to our law enforcement authorities. First of all, the process of securing a visa requires an interview that helps to screen out those aliens who should not be permitted to enter the United States for a variety of reasons. Second, the application that an alien files in pursuing a visa can provide useful information should that alien ultimately become the target or potential target of an investigation for a wide variety of crimes including of course, terrorism. Fi-

nally, if an alien lies on that application and commits visa fraud, it can often be easier to prosecute an alien for committing visa fraud than for his involvement in terrorism or other such criminal activities. Significantly, the penalties for visa fraud, committed in furtherance of drug trafficking increases the penalties for such fraud when that nexus can be established, to a maximum of 20 years of incarceration and the maximum penalty increases to 25 years of incarceration when such fraud is committed in conjunction with terrorism. An alien who seeks to enter the United States under the auspices of the Visa Waiver Program faces none of these provisions of laws and none of these potential investigative or law enforcement tools can be applied in such cases.

The President of the United States and other political leaders have often said that we should focus law enforcement's resources and attention on those who would do us harm and not waste the extremely limited resources of ICE to enforce the immigration laws from within the interior of the United States on those who simply come to the United States to seek employment. It would indeed make sense to do this if it were such a simple proposition. Someone once said that an effective spy is someone who would not attract the attention of a waitress at a "Greasy spoon diner." The same can be said of an effective terrorist. In fact, it might well be that the waitress or waiter of such an establishment is, in fact, a spy or a terrorist.

In the mid 1980s, as a special agent of the former INS, I was assigned to conduct an investigation of a diner in Staten Island, New York. We had received information that a number of illegal aliens were working at that restaurant who had come from a variety of countries. We ultimately arrested a number of employees, most of whom worked in the kitchen of the diner. One of the employees, a dishwasher, was a citizen of Egypt who realized what was going on fled out the back door of the restaurant and it took a bit of a chase to finally arrest him. Once in custody, we took him back to his apartment to attempt to obtain his passport, a standard procedure, since that travel document would be essential if we were to have him deported. He was cooperative and in we entered his apartment. My partner and I were at a loss to understand why we found many shopping bags from department stores filled to the brim with coupons for various grocery items ranging from laundry detergent to diapers and dog food. When questioned about it, he fumbled for an answer and then said that the kids in the neighborhood played with the coupons. We knew it made no sense, but having nothing else to go on, we simply retrieved his passport and lodged him in the immigration detention facility. He was ultimately deported.

Several months later, I watched a televised news program and to my consternation and frustration, learned that the PLO had been sending their minions to the United States to raise money for terrorist activities by committing a variety of crimes including coupon fraud. Apparently the dishwasher was one of those who had come here to raise money to fund terrorism.

There have been published accounts in newspapers of terror suspects who have worked at a wide variety of seemingly menial jobs in the United including one guy who drove an ice-cream truck and others who have driven taxi cabs while still others have worked in used car lots or even taught school. I can tell you from personal experience having spent years conducting surveillance in conjunction with conducting various criminal investigations into a wide variety of criminal activities that when a bad guy gets in his or her car and drives to a location where he gets out of his vehicle and meets with another individual, that it is easy presume a meeting has taken place and we could follow the other participant in that meeting to further the investigation. In the case of the terror suspect who drove an ice-cream truck, think about how many people may approach that truck on a warm afternoon seeking to buy ice-cream. How could you tell if any of them were actually associates of the driver of that truck who were there to meet with him in a very effective clandestine manner? How many meetings could a terrorist have with his "passengers" in his taxi cab that would evade detection by a surveillance team? Furthermore, ice-cream trucks and taxi cabs are truly ubiquitous. They can be used for surveillance by terrorists because they blend in so well with the urban landscape. These menial jobs can help terrorists to hide in plain sight.

Yet, the administration talks about targeting sensitive locations such as airports and nuclear power plants and military bases to look for illegal aliens. Certainly these locations should come under intense scrutiny because of their obvious potential as targets for terrorists, but by focusing on these locations we are, in effect, providing a play book to our adversaries. The message is clear, if you want to embed yourself in our country and not arouse the attention of law enforcement, especially ICE, do not get a job in a nuclear power plant but sell hot dogs outside that power plant and no one will bother you or even pay attention to you.

It is critical that the enforcement of the immigration laws possess at least a modicum of unpredictability to create a situation wherein terrorists or other criminals

never know if they may be arrested for violating our immigration laws. Additionally, the arrest of aliens for immigration law violations often helps in the cultivation of informants. However, in order for this to work, we need many more special agents assigned to ICE to conduct these field investigations and we need adequate detention space to make certain that once arrested, illegal aliens are actually removed from the United States.

In order to accomplish these goals, it will be necessary for ICE to have many more special agents who are provided with more resources, but especially as we wage a war against terrorism, drugs and violent gangs, to not do this represents a false economy. Consider that New York is the safest big city in the United States. It has more than 8 million residents who are confined to the relatively small area that makes up the five boroughs of the city of New York, but it is policed by roughly 37,000 police officers. It has been estimated that there are about twice as many illegal aliens present in the United States as there are residents living in the city of New York and these aliens are scattered throughout our nation. Yet there are fewer than 3,000 special agents of ICE who are dedicated to enforcing the immigration laws for the entire country. What this means is that if an alien succeeds in running our nation's borders or succeeds in entering the United States through the inspection process and then overstays his/her authorized period of admission, the odds of that alien being arrested by ICE are between slim and none.

US VISIT is being implemented at ports of entry throughout the country although that process is not completed, it is designed to keep track of nonimmigrant alien visitors who fail to depart the United States before their authorized stay in the our country expires. This is certainly a worthwhile capability, the only question is, who will be able to search for aliens who fail to depart when they are supposed to? I am concerned that in this version of "Hide and Seek" the aliens, including terrorists may well hide with little concern that anyone from ICE will seek.

I look forward to your questions.

Mr. ROHRABACHER. Professor Stock.

STATEMENT OF MARGARET D. STOCK, ESQ., ASSOCIATE PROFESSOR, DEPARTMENT OF LAW, UNITED STATES MILITARY ACADEMY

Ms. STOCK. Thank you, Mr. Chairman. Thank you for inviting me to this meeting.

Mr. Chairman and distinguished Members of the Subcommittee, my name is Margaret Stock. I am honored to be here in my capacity as an expert in the fields of immigration, constitutional, military, and national security law.

I am an associate professor at the United States Military Academy at West Point, New York. The statements, opinions, and views expressed today are my own and do not represent the views of the United States Military Academy, the Department of the Army, the Department of Defense, or any other government agency.

As I mentioned previously, I am a professor at West Point, where I teach national security law, constitutional law, and military law to future military officers. I am also a lieutenant colonel in the Military Police in the United States Army Reserve. I have been an attorney in private practice, and as an attorney and a graduate of the Harvard Law School I have practiced in the area of immigration and citizenship law for more than 10 years and have written and spoken extensively on the issue of immigration and national security. Over the years, I have represented hundreds of businesses, immigrants, and citizens seeking to navigate the difficult maze of U.S. immigration law.

I am honored to be appearing before you this afternoon to discuss the issue of visa overstayers. This hearing could not be more important or timely, because it comes as our Nation is engaged in a debate over reforming our immigration laws. This hearing can help

us focus on the central issues that our Nation must address if we are going to be successful in enhancing our security and thriving as a Nation. Hopefully, we can clarify the major issues at stake, judge where we have succeeded and failed, and question any false assumptions that we may hold.

For example, we must take a hard look at the measures we have taken to enhance our security and evaluate honestly whether or not they actually make us safer and whether they are worth the cost.

In addition, we must acknowledge that we can't enhance our security unilaterally. We must work with other nations. And this is an area where this Subcommittee can make important contributions.

Most of all, we must realize that these are times of unprecedented challenges, and we must work together.

You have asked me to address the threat that visa irregularities and overstays pose to the United States, especially in light of the global war on terrorism and the weaknesses in the overstay tracking system and what might be done to resolve the overstay problem. I want to make three key points, and then I want to discuss a little bit of some of the prior testimony, because I have some disagreement with some of the statements that were previously made.

First point: We must secure our borders best by enhancing our intelligence capacities. We certainly need effective monitoring of status compliance within the United States, combined with effective exit controls when it makes sense from a cost-benefit perspective; and I support the Department of Homeland Security efforts in this regard.

Yet visa overstayers are a very, very tiny piece of the security picture. Very few visa overstayers are terrorists, and focusing too many resources on visa overstayers means that we neglect more effective measures such as improving our intelligence capacity. Going after all visa overstayers is not a cost-effective way to stop terrorists. In fact, such an effort would likely divert resources better used on more focused efforts, such as the use of immigration information to enhance our intelligence on terrorists and their networks.

Mr. Cutler earlier made a statement about and told an anecdote about a situation where he let a potential terrorist go. He deported him to freedom in a foreign country. And I think this is an example of why we need better intelligence. If Mr. Cutler had at the time had the correct intelligence, he would have known that this individual was a terrorist and would have been able to take better actions, rather than simply deporting him to freedom in a foreign country.

Mr. ROHRBACHER. Before you move on, you think it is more cost effective to beef up an intelligence system that would provide that information. I don't know how much that would cost to the beef it up to the point that we would know that information, as compared to establishing a police operation for visa overstayers here.

Ms. STOCK. Yes, Mr. Chairman; and I strongly support an effort to use the Department of Homeland Security as a way to disseminate intelligence to front-line officers, who can then make the decisions about whether they should let somebody in the country or not.

Mr. ROHRABACHER. Go right ahead.

Ms. STOCK. In addition, US-VISIT mentioned earlier, the system that is supposed to let us track overstays, has been plagued with problems and delays. In my written testimony, I provide a list of Government Accountability Office (GAO) reports that explain many of the problems with US-VISIT and how it is years away from letting us effectively track people who have not left the country.

In addition, the REAL ID Act has handicapped our ability to identify and find people within our borders. National security is most effectively enhanced by improving the mechanisms for identifying actual terrorists, not by implementing harsher laws or blindly treating all foreigners as potential terrorists. Comprehensively reforming our immigration laws will help us to identify those who are here and reduce significantly the number of visa overstayers.

My second point: We need to make our borders our last line of defense. If we are chasing after visa overstayers in order to stop terrorists, we have lost the fight.

Mr. DELAHUNT. They are already here.

Ms. STOCK. They are already here. This approach assumes that we have already allowed the terrorists into the country. Once the terrorists are in the country, it is very hard to find them, particularly now that we have decided to restrict the issuance of drivers' licenses and State ID documents severely. And I will just mention that I attached to my testimony a copy of my paper on national security and drivers licenses.

As the American Association of Motor Vehicle Administrators pointed out, the fact that the terrorists applied for drivers licenses was actually an extremely helpful intelligence tool, because it allowed us to track their movements inside the United States, figure out where they had been located, figure out who their co-conspirators were. Now that we have got REAL ID, we are going to lose that ability to do that.

Thus, we are forced to look now to our physical borders as the next best option, and yet the physical borders should be our last line of defense, because terrorism doesn't spring up at our borders. Rather than trying to chase visa overstayers, we should be focusing our efforts on getting resources to the consulates, providing the consulates with adequate trained staff and giving consulates access to accurate information when they make the crucial decision to give somebody a visa in the first place.

My third point: Comprehensive immigration reform is an essential component of enhanced security. Our current immigration system is an obstacle to enhancing our security because it is dysfunctional. Visa overstayers are a function of the dysfunctional system that we have right now.

The vast majority of people who overstay their visas are not terrorists. Many are waiting approval of an adjustment application; hoping that an immigrant visa number will become current; are afraid to leave the United States for fear of triggering a 3-year, 10-year, or permanent bar. Those bars were set into the law in 1996, and they are trapping people here within the United States who would like to leave and consular process overseas—

Mr. DELAHUNT. Professor, let me interrupt for a moment. You talk about diverting or augmenting resources to our consular of-

fices. I asked Mr. Cutler earlier what his estimate was in terms of the need for additional ICE officers. If we take Mr. Cutler's scenario that we are going to eliminate the visa waiver program, those 26 nations are going to have to secure a visa, and if we are going to require Canadians and Mexican citizens—which I presume would be your position, Mr. Cutler?

Mr. CUTLER. Certainly Mexico. Canada, if we worked well enough—I will be honest. I don't trust Mexico because of the problems with corruption there. If we worked with the RCMP (Royal Canadian Mounted Police), perhaps we could do something along those lines. Perhaps we could still deal with the Canadians. But Mexico, absolutely.

Mr. DELAHUNT. Okay. Then with the one exception being Canada.

Mr. CUTLER. Possibly.

Mr. DELAHUNT. Possibly. Well, let us throw Canada in the mix. So every nation would have to—every visitor for whatever purpose from another nation would be required to go to a consular office in the sending nation, if you will. What kind of resources in your research would be required if we had that as our benchmark, would be necessary to do it and do it in a way, I would hope, that would be expeditious? And I think Mr. Cutler would go along.

Mr. CUTLER. We used to have indefinite visas, so you don't have to get a visa every time you come here. You could travel frequently, just like a driver's license. Every 10 years or so you would have to apply for a new visa so we would keep up the speed on who you were, but that should be a relatively easy process.

Mr. ROHRABACHER. I will tell you what we will do is make sure that Professor Stock finishes her testimony, and we will be very happy to have you continue.

Ms. STOCK. Mr. Delahunt, would you like me to address the question that you asked briefly?

Mr. DELAHUNT. Sure.

Ms. STOCK. If we do decide to get rid of the visa waiver program, we are looking at an increase in thousands and thousands of consular officers to process the traffic coming from Europe; or we are looking at shutting down our global economy to a significant extent.

Also, I would just like to point out—and this is backed up by a recent study out of the Nixon Center—that terrorists have rarely, if at all, come in through Mexico. I think Mr. Krikorian can cite one very old case. But it is documented that many of them have come through Canada. So there is a significant factual dispute, I believe, about some of the information.

Mr. ROHRABACHER. You may proceed with your testimony.

Ms. STOCK. As far as the increase in 30,000 border agents, I know where Mr. Cutler is coming from, because that is his background, a special agent. But we have to look at the big picture. You have to look at cost-benefit analysis. When you take people and you put them into that function, rather than, say, putting them into consular officer functions, you know, what is the benefit that you are getting?

You also have to look at demographics. Are there enough people so that if you authorize 30,000 additional positions you are going

to find 30,000 qualified applicants? Or are you going to have to drop the standards so that you hire people who have criminal records, no high school diploma, et cetera, et cetera?

The Border Patrol and other Federal law enforcement agencies are currently having a very difficult time hiring qualified applicants, and I would foresee a significant demographic problem if you decided to increase the numbers up to 30,000.

Mr. ROHRABACHER. You may proceed with your testimony.

Ms. STOCK. Thank you very much.

I was discussing the dysfunction of the immigration program and the fact that many of the people who are overstayers here have become overstayers through some bureaucratic glitch or failure of their sponsor to file the correct paperwork. A typical example that I deal with frequently are U.S. citizens who have brought in fiancés or wives from other countries and then, as a matter of control over these individuals, later on have decided that they are not going to bother to file any of the follow-up paper work because they want to control the family member, and they like to use the threat, "You will be deported," in order to control the family member.

Are these family members terrorists that we should be hunting down? No. In fact, they usually can ultimately benefit from some relief under the immigration laws. But if we have too drastic an approach in going after overstayers, we are going to be rounding up a lot of battered wives as well.

Thus, allocating massive resources to find and deport these people makes little sense in a time when we have a far greater problem with poor intelligence on terrorists, an inability to disseminate that intelligence to the agents who need it, and a lack of consular resources to screen visa applicants properly.

Once people are in the country, it is far easier and more cost effective to tackle the visa overstay problem with a program to get overstayers to come forward voluntarily through comprehensive immigration reform than to try to find them without their cooperation.

At this point in my testimony—I submitted a lengthier statement in writing for the record—I would just like to tackle a couple of things that were said by my fellow panelists earlier, and then I will take your questions.

Mr. Krikorian talked about the problem prior to 9/11. Now it is correct that, prior to 9/11, the consular officers were looking for intending immigrants and they let the terrorists slip through because the terrorists did not appear to be intending immigrants; they appeared to be people who were looking for short stays in the United States, had sufficient resources so that they would not work illegally, and other such indicia. In fact, none of the terrorists would probably have been barred or were barred at the time on 214(b) grounds with the exception of one, the potential 20th hijacker who was turned away.

The 9/11 problem had nothing to do with overstays. Mr. Krikorian said that four of the 9/11 terrorists were overstayers. In fact, the 9/11 Commission staff reported that only two of them were overstays. And it is highly unlikely, under today's current system, that either one of them would have been picked up at all, especially now that we have decided not to give them drivers' licenses. If they

had drivers' licenses today and they were overstays, there is some potential that ICE might be able to find them. But with the new system in place, they wouldn't be able to find them.

So the 9/11 problem had nothing to do with overstays. What it proves is that we had a need for intelligence information on potential terrorists to be disseminated to the consular officers so they would know what kind of people are planning to commit terrorist acts so they could deny them visas over there in Saudi Arabia; and, at the time of 9/11, the consular officers simply were not focused on that. They were more focused on barring people who might work illegally in the United States.

Mention was also made of the NCIC database. It is a very bad idea to try to put visa overstays into the NCIC database.

Why is this a bad idea? First of all, NCIC has a lot of problems with bad data. But putting visa overstay information, which is the government's information on overstays, is already bad. Putting that in is a recipe for making law enforcement officers in this country completely distrust immigration data that is in the database.

And I believe that DHS (Department of Homeland Security) concurs with me on this. I have seen some information from DHS saying that they are opposed to putting this kind of information into the NCIC database.

It was mentioned that illegal presence in the United States should be made a Federal crime. Now this is an interesting concept. Currently, if you overstay your visa, you are deportable. If this becomes a Federal crime to overstay your visa, we are looking at hiring massive numbers of new assistant U.S. attorneys, Federal defenders, and judges to provide these new criminals with due process. Currently, they are subjected to an administrative deportation proceeding, which requires much less resources and deprives them of significantly less due process.

On the same point, hiring 30,000 ICE agents, if you are not looking at the big picture, would also require you to hire massive new numbers of judges, lawyers, and other support personnel.

This is a system; and in order to make the system work, you have to look at the big picture.

Mr. ROHRABACHER. All right.

Ms. STOCK. I will stop there and answer your questions.

Mr. ROHRABACHER. Thank you very much, Professor Stock.

[The prepared statement of Ms. Stock follows:]

PREPARED STATEMENT OF MARGARET D. STOCK, ESQ., ASSOCIATE PROFESSOR,
DEPARTMENT OF LAW, UNITED STATES MILITARY ACADEMY

Mr. Chairman and distinguished Members of the Subcommittee, my name is Margaret Stock. I am honored to be here in my capacity as an expert in the fields of immigration, constitutional, military, and national security law. I am an Associate Professor at the United States Military Academy at West Point, New York. The statements, opinions, and views expressed herein are my own, and do not represent the views of the United States Military Academy, the Department of the Army, the Department of Defense, or any other government agency.

As I mentioned previously, I am an Associate Professor at the United States Military Academy at West Point, New York, where I teach National Security Law, Constitutional Law, and Military Law to future military officers. I am also a lieutenant colonel in the Military Police Corps, United States Army Reserve. As an attorney and a graduate of the Harvard Law School, I have practiced in the area of immigration and citizenship law for more than ten years, and have written and spoken extensively on the issue of immigration and national security. Over the years, I have

represented hundreds of businesses, immigrants, and citizens seeking to navigate the difficult maze of US immigration law.

I am honored to be appearing before you this afternoon to discuss the issue of “Visa Overstayers: Can We Bar the Terrorist Door?” This hearing could not be more important or timely because it comes as our nation is engaged in an important debate about how we should reform our immigration laws. This hearing can help us focus on the central issues that our nation must address successfully if we are to enhance our security and thrive as a nation. Hopefully, we can clarify the major issues at stake, judge where we have succeeded and failed, and question any false assumptions we may hold. For example, we must be willing to take a hard look at the measures we have taken to enhance our security and evaluate honestly whether or not they actually make us safer, and whether they are worth the cost. In addition, we must acknowledge that we cannot enhance our security unilaterally, and must work with other nations—this is an area where this Committee can make important contributions. Most of all, we must realize that in these times of unprecedented challenges, we must work together.

You asked me to address the threat that visa irregularities and overstays pose to the United States, especially in light of the War on Terror; the weaknesses of the overstay tracking system; the risks to domestic security; and what might be done to resolve the overstay problem. I want to make three key points:

- *First, we secure our borders best by enhancing our intelligence capacity.* We certainly need effective monitoring of status compliance within the United States combined with effective exit controls when it makes sense from a cost-benefit perspective; I support the Department of Homeland Security’s efforts in this regard. Yet visa overstayers are a very tiny piece of the security picture; very few visa overstayers are terrorists, and focusing too many resources on visa overstayers means that we neglect more effective measures, such as improving our intelligence capacity. Going after all visa overstayers is not a cost-effective way to stop terrorists; in fact, such an effort would likely divert resources better used on more focused efforts, such as the use of immigration information to enhance our intelligence on terrorists and their networks. In addition, US VISIT, the system that is supposed to let us track overstays, has been plagued with problems and delays, and the REAL ID Act has handicapped our ability to identify and find people within our borders. National security is most effectively enhanced by improving the mechanisms for identifying actual terrorists, not by implementing harsher immigration laws or blindly treating all foreigners as potential terrorists. Comprehensively reforming our immigration laws will help us to identify those who are here, and reduce significantly the number of visa overstayers.
- *Second, we need to make our borders our last line of defense.* If we are chasing after visa overstayers in order to stop terrorists, we have already in essence lost the fight. This approach assumes that we have already allowed the terrorists into the country. Once terrorists are inside the United States, it is very hard to find them, particularly now that we have decided to restrict the issuance of drivers’ licenses and state identification documents severely. In the past, we could locate foreigners within our borders by using the drivers’ license databases; that tool has now been degraded. Thus, we are forced to look to our physical borders as the next best option. And yet the physical borders of the United States should be our last line of defense because terrorism does not spring up at our borders. Rather than trying to chase visa overstayers, we should be focusing our efforts on getting resources to the consulates; providing the consulates with adequate, trained staff; and giving consulates access to accurate databases when they make the crucial decision to give someone a visa in the first place.
- *Third, comprehensive immigration reform is an essential component of enhanced security.* Our current immigration system is an obstacle to enhancing our security because it is dysfunctional. Visa overstayers are a function of the dysfunctional system that we have right now. The vast majority of people who overstay their visas are not terrorists; many are awaiting approval of an adjustment application; hoping that an immigrant visa number will become current; are afraid to leave the United States for fear of triggering a 3-year, 10-year, or permanent bar; or have become “overstays” through some bureaucratic glitch or a failure of their sponsor to file the correct paperwork. Allocating massive resources to find and deport these people makes little sense in a time when we have a far greater problem with poor intelligence on terrorists, an inability to disseminate that intelligence to the agents who need it, and a lack of consular resources to screen visa applicants properly. Once

people are in the country, however, it is far easier and more cost-effective to tackle the visa overstay problem with a program to get overstays to come forward voluntarily through comprehensive immigration reform than to try to find them without their cooperation.

In this mission to secure our borders, we need to grapple with the following questions:

1. *What security measures are most effective—and cost-effective—in preventing attacks?* If we are to succeed in reducing our vulnerability to further terrorist attacks, we must focus our attention and resources on the gaps in intelligence gathering and information sharing that allowed nineteen terrorists to enter the United States. National security is most effectively enhanced by improving the mechanisms for identifying actual terrorists, not by implementing harsher immigration laws or blindly treating all foreigners as potential terrorists. Policies and practices that fail to properly distinguish between terrorists and others take us down the wrong path as ineffective security tools that do more harm than good. Comprehensively reforming our immigration laws is an essential tool to help us distinguish between those who mean to do us harm and those who are here to fill our labor market needs and reunite with close family members.

2. *What is the role of our “borders” in enhancing security?* When people refer to our “borders,” they usually mean the geographic boundaries that separate the United States from Canada and Mexico. Yet to enhance our security we must make our physical borders the last line of defense against terrorism, not the first. We must pursue initiatives including multilateral strategies with Canada and Mexico to create a North American Perimeter Safety Zone, and increase the use of pre-clearance and pre-inspection programs that provide U.S. officials the opportunity to check passengers for admission before those passengers board a flight to the United States (while including safeguards to allow asylum protection for those who truly deserve it). We must also provide more resources to our overseas consulates, giving those who make initial visa decisions the tools they need to make the right decisions.

Our government has been touting the United States Visitor and Immigrant Status Indicator Technology program (US VISIT) as a tool that will help to make us safer by identifying terrorists. While US VISIT can help to identify people, its utility as a security tool is unclear. On the issue of overstays, US VISIT is not much help. Once someone is in the United States and fails to depart timely, US VISIT does nothing to help us find them. The only method of finding such overstays is (1) by accident, or (2) by checking other, internal databases that might tell us the location of the overstays. We have crippled our capacity to find such people by enacting REAL ID, because once REAL ID goes into effect, we will no longer be able to find overstays through state driver license databases. While other databases such as ChoicePoint can provide some alternative information that might allow us to find people, these databases are not nearly as reliable as the state DMV records were prior to enactment of REAL ID.

I call your attention to a June 1998 Senate Judiciary Committee Report (Senate Judiciary Report 105–197 on S. 1360, the Border Improvement and Immigration Act of 1998, June 1, 1998), which made the following apt comment about US VISIT and its utility in tracking overstays:

The Committee is keenly aware that implementing an automated entry/exit control system has absolutely nothing to do with countering drug trafficking, and halting the entry of terrorists into the United States, or with any other illegal activity near the borders. An automated entry/exit control system will at best provide information only on those who have overstayed their visas. Even if a vast database of millions of visa overstayers could be developed, this database will in no way provide information as to which individuals might be engaging in other unlawful activity. It will accordingly provide no assistance in identifying terrorists, drug traffickers, or other criminals.

With regard to tracking visa overstayers, the report further stated:

Even if a list of names and passport numbers of visa overstayers would be available, there would be no information as to where the individuals could be located. Even if there was information at the time of entry as to where an alien was expecting to go in the United States, it cannot be expected that 6 or more months later the alien would be at the same location. Particularly, if an alien were intending to overstay, it is likely that the alien would have provided only a temporary or false location as to where the alien was intending to go.

It is also important to note that US VISIT has serious problems: Recent government reports reveal that there is a high risk that US-VISIT will not meet its stated goals. Specifically, according to four highly critical GAO reports, US-VISIT has a poor management record. Links to these reports follow:

- In March of 2004, the U.S. Government Accountability Office (GAO) conducted a study of US-VISIT and found that it is “inherently risky” because of the demanding and challenging implementation schedule, enormous potential cost, uncalculated and underestimated costs, and problematic program management. A link to the study follows: <http://www.gao.gov/highlights/d04569thigh.pdf>
- In a February 2005 study, the U.S. Government Accountability Office (GAO) found that a high risk remains that US-VISIT will fail to meet its stated goals. Among other findings, the study found that DHS has failed to identify non-governmental costs such as social costs associated with adverse potential economic impact at the border that may be attributable to US-VISIT implementation. A link to the study follows: <http://www.gao.gov/new.items/d05202.pdf>.
- In a January 2006 study, the U.S. Government Accountability Office (GAO) found that DHS return-on-investment analyses for US-VISIT exit tracking systems do not demonstrate that these schemes will be cost-effective or work as intended. A link to the study follows: <http://www.gao.gov/cgi-bin/getrpt?GAO-06-318T>
- In February 2006, the US Government Accountability Office issued a report that was highly critical of the overall management of US-VISIT. The report incorporates the criticisms of the January 2006 report but also looks at deficiencies in VISIT “critical areas” more broadly than does the January report. The February report states: “[P]rogress in critical areas has been slow. . . . [T]he longer that US-VISIT takes to implement our recommendations, the greater the risk that the program will not meet its stated goals and commitments.” A link to the February report follows: <http://www.gao.gov/cgi-bin/getrpt?GAO-06-296>

The January 2006 GAO report found that DHS return-on-investment analyses for US-VISIT exit tracking systems do not demonstrate that these schemes will be cost-effective or work as intended. The report is unequivocal that US-VISIT’s operational and technology context remains “unclear.” At page 12 it states:

A prerequisite for prudent investment in programs is having reasonable assurance that a proposed course of action is the right thing to do, meaning that it properly fits within the larger context of an agency’s strategic plans and related operational and technology environments, and that the program will produce benefits in excess of costs over its useful life. We have made recommendations to DHS aimed at ensuring that this is in fact the case for US-VISIT, and the department has taken steps intended to address our recommendations. These steps, however, have yet to produce sufficient analytical information to demonstrate that US-VISIT as defined is the right solution. Without this knowledge, investment in the program cannot be fully justified.

The report’s conclusion observes that US-VISIT’s “core capabilities, such as exit, have yet to be established and implemented, and fundamental questions about the program’s fit within the larger homeland security context and its return on investment remain unanswered.” (Emphasis added.)

US-VISIT Director Jim Williams has acknowledged US-VISIT’s technological challenges. At a January 5, 2006 media round table discussion on US-VISIT, he admitted that the technological solutions do not exist at present. “We’re pushing the industry” he is quoted as saying. In respect to technological solutions, he later acknowledged “Our toughest challenges in the long term are probably around exit (procedures) and the ability to link databases.” (See “US-VISIT system hitting a technological wall,” by Meg Olson, The Northern Light (Blaine WA) Jan 12, 2006). Thus, although US-VISIT has been in existence for four years and over a billion dollars has been spent on it to date, major technological issues remain unresolved.

Spending more and more on a system with such problems risks our security if we neglect other, more focused efforts. To improve our security by using the immigration system, we must push for more funding for the DOS and the immigration and intelligence components of DHS, require federal agencies to coordinate and share information needed to identify and intercept terrorists; encourage the use of new technologies by authorizing funds to improve technology and infrastructure at DHS and DOS; and implement the North American Perimeter Safety Zone.

Congress must step up to the plate and provide the federal agencies impacted with the staffing and funding levels they need to implement these measures, as well as perform adequate oversight. It is simply unacceptable for Congress to pass laws and not give the federal agencies (and states) the funding they need to do a good job.

3. *What is the role of immigration in the post-September 11 world?* Because all nineteen of the September 11th terrorists were foreigners, some observers have been quick to blame our vulnerability to terrorist attacks on lax immigration laws. While such a response was predictable, it was misguided and has inevitably resulted in overreaction. Although the attacks of September 11th revealed serious management and resource deficiencies in the bureaucracies that administer our borders, U.S. immigration laws in and of themselves did not increase our vulnerability to attack. In fact, U.S. immigration laws already are among the toughest in the world and have long provided the federal government with broad powers to prevent anti-American terrorists from entering or residing in the United States. A careful analysis of the September 11th attacks reveals that deficiencies in U.S. intelligence collection and information sharing, not immigration laws, prevented the terrorists' plans from being discovered.

The Joint Inquiry into the events of September 11th, conducted by the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, confirmed that better intelligence—and action on that intelligence—might have prevented the attacks on the Pentagon and World Trade Center. Similarly, a comprehensive study by the Migration Policy Institute points out that “Immigration measures are an important tool in the domestic war against terrorism, but they are not effective by themselves . . . the lead domestic security response to terrorism should be strengthened intelligence and analysis, compatible information systems and information-sharing and vigorous law enforcement and investigations.” In fact, tightening immigration laws and policies in an unfocused manner will make it more difficult for the United States to win the global war on terrorism by damaging the U.S. economy and alienating the immigrant communities and foreign allies whose cooperation the U.S. government most needs. In contrast, immigration reform would allow enforcement efforts to focus on terrorists.

President Bush has been eloquent in his recognition that immigration is in America's self-interest, and that “one of the primary reasons America became a great power in the 20th century is because we welcomed the talent and the character and the patriotism of immigrant families.” The President correctly recognizes that our current immigration system makes more difficult the urgent task of securing the homeland. Importantly, President Bush also succinctly identifies a problem that needs immediate attention when he said that “[a]s a nation that values immigration and depends on immigration, we should have immigration laws that work and make us proud. Yet today we do not.” Our immigration laws do not make us proud.

4. *Is an “enforcement only” approach sufficient in itself to secure our borders and enhance our security?* No. Our current immigration laws do not make sense, do not make us safer, do not support our economy, and do not reflect our tradition as a nation of immigrants. It is my view that to secure our borders and effectively reform our immigration laws we need comprehensive immigration reform that includes, along with a worker program, an earned adjustment and family backlog reduction. People who work hard, pay taxes, and contribute to the U.S. should be allowed to obtain permanent residence and pursue a path to citizenship. Reform should stabilize the workforce of U.S. employers, encourage people to come out of the shadows to be scrutinized by our government, and allow immigrants to work and travel legally and be treated equally. Many have been here for years, are paying taxes, raising families (typically including U.S. citizen and lawful permanent resident spouses and children), contributing to their communities and are essential to the industries within which they work. In order to unite families and keep them together, appropriate waivers must be available for grounds of admissibility and deportability. In addition, our immigration system has been characterized by long backlogs in family-based immigration and long delays in business-based immigration. Illegal immigration is a symptom of a system that fails to reunify families and address economic conditions in the U.S. and abroad. To ensure an orderly future process, our system must reduce bureaucratic obstacles and undue restrictions to permanent legal immigration. Developing an increased legal migration flow will make immigration more orderly and legal. It also will allow more people to reunite with their families and work legally in the U.S., and would facilitate fair, equitable, and efficient immigration law, policy, and processing. It is essential to make legal future immigration that otherwise will happen illegally.

Because many of the problems with the current U.S. immigration system are interrelated, reform must be comprehensive to successfully address our nation's

needs and realities. The status quo is unacceptable, especially in a post-September 11 world. Enhanced security is central, but part of that security is keeping our economic security through the continued flow of people and goods. Our current system is characterized by families being separated for long periods of time and U.S. employers unable to bring in needed workers. People are forced to live an underground existence, hiding from government for fear of being separated from their families and jobs. The current enforcement system fails to prevent illegal immigration, and precious resources that should be spent on enhancing our security are wasted on stopping hard-working people from filling vacancies in the U.S. Our immigration system must be reformed so that legality is the norm, and immigration is legal, safe, orderly, and reflective of the needs of American families, businesses, and national security.

Immigration reform that legalizes hard-working people already here and that creates a new worker program will help the U.S. government focus resources on enhancing security, not on detaining hard-working people who are filling vacancies in the U.S. labor market and/or seeking to reunite with their close family members. In addition, an earned adjustment program will encourage people to come out of the shadows and be scrutinized by our government, and a new worker visa program will create a legal flow through which people can enter and leave the U.S. The legality that results from these initiatives will contribute to our national security by helping to focus resources on those who mean to do us harm. Such legality also will facilitate enforcement efforts by allowing our government to focus resources. Enforcing a dysfunctional system only has led to more dysfunction, not better enforcement.

5. *How do we resolve the overstay problem?* We resolve the overstay problem through better interior enforcement—to find and track those who overstay their visas, we must have accurate data on who enters the United States and if they depart. If they do not depart, we must try to obtain the most accurate data necessary to find them. Unfortunately, DHS does not have accurate data—within its own systems—to determine who is an overstay and where the overstays are. When and if the US VISIT exit feature is ever fully implemented, DHS should have data on those who have not departed in a timely fashion—but DHS must still rely on other sources of information to find any overstays. To this end, it was a mistake to enact REAL ID, which will deprive us of valuable interior enforcement data, as I have explained thoroughly in my paper on *Drivers Licenses and Security: Myths and Reality* (copy attached). Yet in the end, we must recognize that any effort to find and deport overstays will have little to do with fighting terrorism.

Mr. ROHRBACHER. Let me begin with you, Professor Stock; and then we will ask questions as well of Mr. Krikorian and Mr. Cutler, who I am sure are just biting at the bit to have their chance to answer some things as well.

Let me note that your testimony does not seem to believe in deterrence. Your analysis, that we will have to hire all of these people, is all based on that. There is no deterrent factor and that brings down the workload of what you are saying about having to hire so many people.

Now—and I have heard that every time that people are opposed to basically enforcing certain laws, the fact is, they are negating the fact that if we enforce certain laws, there will be fewer people breaking the law, and deterrence is a major factor in what we are talking about here. In other words, right now, by not enforcing the law on visa overstays, we have an expanding challenge, because the word is out that we don't enforce the visa laws.

I mean, the people overseas aren't dumb. They may be less educated, they may be in desperate situations, but they are not dumb. If they can get a visa and they know that we don't enforce visa overstay rules, they are going to overstay their visa, and they are going to try much harder to get that visa knowing that we don't enforce it.

I am not sure if you have done a cost analysis of exactly how much it costs to find out intelligence information overseas. It doesn't sound like you have. Have you?

Your whole predicate is that we are going to give more information, we are going to find out more intelligence overseas before the visa has issued. Well, how much is that going to cost? How many intelligence officers does it take to track down something overseas where they can't operate in the open, where they can't operate with existing computer systems, where they can't operate with current local officials helping you get the information? How much more costly is it going to be to track down a potential terrorist, as compared to making sure that, if he has gotten into the country, we have a unified system that is designed to have the police officer at the local level all the way up to the guy who checks the guy coming in the front door, working together to see that that terrorist is caught.

Ms. STOCK. Thank you, Mr. Rohrabacher. I understand your concerns, and I am not in favor of people breaking the law. However, enforcing the law at the back end makes no sense. We should be enforcing the law at the front end at the consulates. If somebody is a potential visa overstayer, we should not be granting him a visa in the first place.

Mr. ROHRABACHER. But if they do end up here and they find out that there is the lack of enforcement once they get in, will that not encourage more people to bend over backwards and go through every machination possible in order to get in that front door and defeat the system on the front side?

Ms. STOCK. Mr. Rohrabacher, I am not advocating that we never enforce visa overstayers. I am just saying that focusing on that to the exclusion of running a cost-benefit analysis on other parts of the system that would work more effectively makes no sense.

Mr. ROHRABACHER. But you are opposing making it illegal. Frankly, your argument about saying that we have to hire more judges and lawyers I think shows a misunderstanding of how that law applies. From what I understand, Mr. Cutler can correct me if I am incorrect, by making it a misdemeanor rather than a felony if the people have overstayed their visa, they do not then have the procedural rights that you are talking about and can be deported without having to hire the judges and the lawyers and the rest of the system. Is that right, Mr. Cutler and Mr. Krikorian, or I am wrong?

Mr. KRIKORIAN. No, the point is, it would be parallel to the entry without inspection, which is also a Federal crime. But it is also a civil offense. In other words, the point is to allow flexibility for the government either to deport the person, which is not a criminal process and does not require all the due process protections, or prosecute the person if there is a need to do so. The problem is that option does not exist now.

Mr. CUTLER. Prosecutorial discretion.

Mr. KRIKORIAN. And the idea of making illegal presence a criminal offense that is going to require every single one of those persons to go through a full criminal trial is disingenuous. The fact is only a handful of those people are going to be prosecuted.

Mr. ROHRABACHER. So why make it illegal in the first place?

Mr. KRIKORIAN. Number one, it allows any illegal immigrant to be prosecuted rather than just those who have entered without in-

spection; in other words, skipped the border. And that is almost impossible to prosecute. If you get an illegal immigrant in Chicago or Los Angeles, you have to find out where they crossed the border because that is where the offense was committed.

Mr. CUTLER. It is a continuing offense.

Mr. KRIKORIAN. But it is difficult to prove. The fact is illegal presence makes visa overstayers—puts them on the same playing field with those that snuck across the border.

Mr. ROHRABACHER. Is it correct that we would have to give them the procedural rights which would then mandate the hiring of more individuals? It is my understanding, if we made it a misdemeanor, that those procedural rights could be waived.

Mr. CUTLER. Only if they were going to be prosecuted. You have prosecutorial discretion—in other words, even though the law says you could prosecute. If we did not prosecute, it would appear to me in my experience there is no general prosecution that you would need to go through. You could use it with discretion. The problem is—

Mr. ROHRABACHER. In other words, you could tell the person you have arrested, we have got you here. You can make us go through all of this procedure, and this is what you are going to be punished with if you make us go through this procedure. Or we will waive that and you can be just extradited?

Mr. CUTLER. And it also gives the police officer coverage if he apprehended that person for that violation of law where they could not say, we had no right to make that arrest. They could assist that way.

There is one point that needs to be made. I was an inspector at Kennedy airport 4 years before I became an agent. And the problem we had as inspectors is the same problem that consular officials have. You have about a minute to make a decision about whether or not to let somebody come into the United States. It is kind of like Lucy in the bonbon factory where you are trying to move the people quickly.

It is inevitable that you are going to make mistakes and give people visas to come here who should not have gotten them because we have limited resources and time. That is why it is important to backstop the consular process and the admissions process at the port of entry. But those agents, by the way, would not only chase people who were here in violation, they would also conduct investigations into benefit fraud and other issues that plague the system right now.

The GAO did a study that came out March 10th that talked about how prevalent immigration benefit fraud was. And these agents could also help to lend integrity to that process as well. So there are a bunch of reasons why it is important to have those agents to do the work.

Mr. ROHRABACHER. Okay. Let me just note this. That we have in this country—and I believe that this is intentional and not just something we have neglected—there have been people who intentionally wanted to have high levels of illegal immigration in this country. There are policymakers who have not been honest with the American people and said, “We need more illegals to come in because we want to make our wages competitive with the world,

which means bringing down American wages”—which they will never say to the American people. It is not just an accident that we are being flooded right now with illegal immigration that in California is destroying our healthcare system—it is destroying our education system and our criminal justice system and it has deleterious effects on many other States and it will bring them down too unless we reverse the trend that we have had for the last 20 years.

But the point is this: The system is now out of control and it will cost a certain amount of money in order to fix it, to hire certain people to make sure that we now bring the system under control, which then will create a deterrent. If all along we had enforced the law and decided that this was not going to happen, the cost would have been minuscule compared to what the challenge is today. We can continue emphasizing what we did in the past and let the visa overstay system basically stay the way it is, but it is going to prove incredibly costly because it has contributed greatly to this idea that people can get in here, and that is how they be beat the system.

Mr. Delahunt.

Mr. DELAHUNT. I am really confused. I would suggest this—I was the State’s attorney in the greater Boston area for 22 years. And it is my recollection that the Constitution of the United States incorporates due process, even in misdemeanor cases. Is that your understanding, professor?

Ms. STOCK. That is correct, Mr. Delahunt. You are absolutely correct. If there can be any jail time that the person might be facing, then the government is required to provide that person with an attorney if the person cannot afford an attorney.

Mr. DELAHUNT. I think we have to understand that.

Mr. ROHRABACHER. Maybe that is one reform we need to make, that people who are here illegally—

Mr. DELAHUNT. We can amend the United States Constitution and chuck the Bill of Rights for that matter. The reality is—

Mr. ROHRABACHER. Maybe we need to say that. That the people who are here illegally do not have the same rights as American citizens. Mr. Krikorian wants to make a point about that.

Mr. KRIKORIAN. My point is none of that is relevant until the person is being prosecuted. The misdemeanor and felony issue to me is more frankly a political question that you and your colleagues will have to—

Mr. DELAHUNT. Mr. Krikorian, once an arrest is effected, due process attaches. This is a very interesting discussion, but my understanding of American jurisprudence is that once those cuffs go on and you are charged with a crime, yes, you are correct about prosecutorial discretion, but you are talking about millions. People actually are taken not to a detention center, they are taken to jail. They do have to go in front of a judge. You know, a prosecutor does have that discretion not to pursue with the prosecution.

But let me tell you, and be very candid about it, I don’t think any prosecutor would willy-nilly nol. pros. or terminate prosecutions. That is not going to happen.

I am not disagreeing with the substance, but let’s get real about what the costs are going to be. And I really do think that it is important to understand that a cost-benefit analysis is necessary for a rational discourse. And my friend, the Chairman, says that he be-

lieves—and maybe he has evidence that there is an intentional conspiracy on the part of some in a massive way to circumvent or to welcome illegal immigration. If he has any evidence of that, I will work with you and we will send a letter today to the Department of Justice to launch an investigation to determine the validity of that assertion.

Mr. ROHRABACHER. I believe that when you—

Mr. DELAHUNT. I understand what you believe, Mr. Chairman. But there is a big difference in believing and making a statement and an allegation and an assertion that has no basis in fact. If it is true, I am with you.

Mr. ROHRABACHER. Let me note to the American people who are reading this or watching this, that anyone who believes that this system just by accident did not get to our attention—that millions upon millions of illegals were pouring into our country in this last decade—that that was just an accident by the people in power, that they just did not see it happening, and it happened on his own—anybody who believes that, I am sure will believe all the other promises that the Democratic party has to make in the next election.

Mr. DELAHUNT. I don't want to make this a partisan issue, but where has this Administration been, Mr. Chairman, for 6 years in terms of the enforcement of the immigration laws?

Mr. ROHRABACHER. I am being more bipartisan than you on this, because my President, who I agree with on Iraq, and which we disagree on, has exactly the opposite opinion of me on this issue and, in fact, agrees with you. He probably has had his attention some place else, and they were just sneaking in, and he did not know anything about it.

Mr. DELAHUNT. I want to be very clear. I don't think there is very much, including immigration, that I agree with your President on. So let's make that—don't put words in my mouth. I don't want to confuse—there may be people back in Massachusetts that hear that, and they would be very upset with me.

Ms. STOCK. Thank you, Mr. Delahunt.

I want to make two quick points. One, the reason why we have so many illegal immigrants today is because we have been pursuing an enforcement-only strategy for the last 20 years; an ill-funded enforcement-only strategy. If we had not passed 3-year bars, 10-year bars, permanent bars, we would have a lot fewer illegal aliens. We would have a lot fewer illegal aliens if the visa numbers were available to meet the needs of American families and employers.

The second point I think that was said earlier is that you want to pass a law making it a crime to be in the country illegally, and then your plan, which you have just publicly stated, is not to enforce it. I don't think that does anything. If you are going to make something a crime, you have to enforce it.

Mr. ROHRABACHER. Let me defend my statement. The fact is, if we have an illegal immigrant who is arrested and brought before a judge and it is immediately said, "This illegal immigrant has agreed to go home," that is a 10-minute process, I believe, and is much less costly than any other alternatives you are talking about

in terms of beefing up intelligence systems overseas to make sure the guy did not overstay his visa.

Mr. Wilson, please feel free. You have 5 minutes.

Mr. WILSON. Indeed, I want to encourage visas. I want to encourage people to visit our country, and I want Americans to be able to travel freely abroad. But I am very concerned that 30 to 40 percent of the illegals in our Nation are possibly here because they are overstays. And so I am really hoping that there might be a comprehensive approach to this, beginning at the consular offices. And I am very hopeful in my visits with consular officials around the world. It is startling, as you read in the media, that people don't like America. It certainly is startling that there are lines of people who surround every Embassy who can't wait to get here. And so it defies common sense because people do love America. They want to visit.

But what concerns me is that the consular officials are overwhelmed with numbers. Additionally, there are tables set up where fraudulent documents can be secured almost within sight of the Embassy. It is a spectacle, and I hope that can be reformed.

I would think somehow that there should be a cost recovery where it is neutral, that the fees for visa should be of an amount maybe adjustable to the country so that it is not impossible. But surely the fees should be addressed. Additionally, I don't understand—and I would like an explanation; maybe one of you could tell me about the biometric visa. But I was hoping there could be like a swipe card where once a month you would have to go by the local post office or whatever and just swipe the card and verify that you are in the country; that the identification that you provided was correct. Otherwise, you file an amendment as to your address.

Another proposal that I have spoken about with consular officials—I have been a sponsor in the past for students legitimately in this country from Bulgaria. I was happy to be a sponsor. There was a financial angle to this—if in fact they violated their visa, I could be responsible for a pretty sizable amount of money. I don't see why that can't be done, where sponsors would be responsible by way of a fine if the people failed to follow through.

Additionally, I have stated that there should be bonds—as a probate attorney, I used to deal with bonds all the time—that people have to comply, and if you fail to comply, then the government can go against the bond, \$25,000, whatever it takes to cover the cost so that there is an incentive to discover persons and legitimately deport them. But have a workable system.

Ms. STOCK. Mr. Wilson, there currently is a system in place that allows a sponsor to post a bond for somebody visiting the United States. However, the State Department usually, when you offer to post a bond, says no because the requirements of the paperwork are difficult. They would prefer to turn the person away rather than let you post a bond.

Mr. WILSON. I think that is so wrong because you can get a bond in a flash. You can go by any insurance agency and apply and get a sealed bond. File that. I just don't see why this has been made so difficult.

Ms. STOCK. The system is in place to do it. You can do it today. If they want you to post a bond, there is a procedure to go ahead and do that. I believe, Mr. Cutler—

Mr. CUTLER. We used to do that at the airport. We used to do the maintenance of status and departure bonds. There was a point made about comprehensive immigration reform where, if we had drivers licenses, we would know who we are dealing with. The problem we have, if you look at the terrorists of 9/11, according to the 9–11 Commission staff report on terrorist travel, the 19 terrorists used 364 aliases. Without manpower to back up what we are doing on the benefit side—and if you look at the GAO report about how prevalent fraud is—there would be no way to prevent the terrorist from walking into an immigration office, providing a false name, getting official ID in that false name and being free to wander around our country and travel across our borders under a program that does not have the resources to impose integrity.

The problem is, the immigration system lacks integrity. And if the system has no integrity, and you provide official identity documents for people within a system that does not have the resources to make certain that people aren't committing fraud, then this is an invitation to fraud. The terrorists know how to game the system, and that is why I am dead set against, number one, what is called comprehensive immigration reform. Guest worker program. And number two, why what we have got do is have a Real ID Act, simply because giving someone a drivers license gives them a de facto national identity document. Besides the fact that they shouldn't be here, it is another incentive to come here.

I made the point at prior hearings that no one would break into an amusement park if they couldn't go on the rides. Well, this is one of the rides. So you want to take away the incentives and you want to create a situation where people understand that we are serious about our laws from day one. That is why I hold the positions that I hold, sir.

Mr. WILSON. As I conclude, I look forward to working with the Chairman. I am confident we can convince Congressman Delahunt at some time in the future for some type of progressive reform.

Mr. DELAHUNT. Don't state what my position is, because I haven't stated my position. You are making presumptions, my friend, that are inaccurate. I might be much closer to your position than you realize. Let's be very clear about that. What I am suggesting is that I think what we have to do, and I think Congressman Wilson made the point, is enhance—we need to enhance—in other words, the culture has to reconcile our concerns for national security.

And also, as Congressman Wilson indicates, the fact that, you know, we want to be welcoming. The number of international visits, for example, are way down. It is impacting our economy. And the reality is that there are many legitimate individuals who want to come to this country who are being turned off because of the procedures that they have to go through. And let's be very clear about it: Our own GAO has reported that anti-American sentiment is broadening and deepening in the world, whether we like it or not. And the GAO states unequivocally that it is putting our national security at risk, this anti-American sentiment.

This is not susceptible to a panacea. It is a complex issue, and we need to reconcile not just our national security, but all of these other components. And I believe that we can do it in a thoughtful way if we put our heads to it. And thank you all for your testimony.

Mr. ROHRABACHER. Let me note that we are going to have to end this in about 2 or 3 minutes. This shows you how bad it was that I was 15 minutes late because another 15 minutes of this discussion would have been very beneficial to everyone. And I apologize for being late. The Chairman wanted me to chair that other hearing, and that is why I was late. And that was about the India and United States nuclear pact, which is an important issue in and of itself.

Let me just say that we appreciate all of the witnesses. Thank you, Professor Stock, for adding flavor to the hearing today and a little bit of spice and back and forth. And that is really an important thing. I obviously have some disagreements with you and have some other agreements with our other two witnesses.

I think that illegal immigration is a crisis in America today. It is the greatest threat to the wellbeing of average Americans, a greater threat than anything else. The war with radical Islam, China, you name it, Iran. The massive flow of illegal immigration into this country with the terrorist implications that it has, as well as the economic implications that it has, is just a disaster for average working people in this country.

And I know a lot of people who are in the upper middle class don't feel that. But upper middle class people are having their lawns done, having their nannies, they have their cheaper meals when they eat out. But the working class people have had their wages dramatically reduced by a massive flow of illegals into this country. In our State—and I know this is spreading across the country—working people send their kids to school to get educated, and their kids now are not receiving an adequate education, because not only are we spending limited resources on educating illegals, but also the time and the attention of teachers goes to people who have just come into our country illegally when they should be paying attention to the young people of the citizens and legal residents, legal immigrants' children in our country.

And the healthcare system—we have emergency rooms in California closing down, and when our people are in traffic accidents, they are dying because illegal immigrants come into those hospitals and use up the time just as an HMO (Health Maintenance Organization). And the doctors feel compelled to treat these people.

And of course, they are being hired by employers who are paying substandard wages and giving them no benefits so that they have to go to the emergency rooms for care, which is a double whammy because it brings down the wages of those Americans who are working.

So this is not just some theoretical issue for elites to discuss. And this has not happened by accident. I will reiterate: This has not happened because the powers that be in this country just were not paying attention, and because we were looking in that direction instead of over here where they were all overstaying their visas or crossing the border illegally. That is not what happened.

There has been a decision by someone somewhere, whether Republicans and Democrats, not to enforce the law. And visa overstays I believe—and correct me if I am wrong—it is against the law for someone to overstay their visa. They are here in an illegal status.

We should start enforcing all of our immigration laws, and we should toughen the laws right now in order to protect those middle class people, because that is who we are responsible to. We are not—and yes, I want to consider the rights of all people everywhere, and I want to consider their well-being. But the focus of our efforts in the United States Congress should be on the well-being of the American people. They are who we represent. And we have not been representing their interests in allowing the illegal immigration to flow into our country that we have seen in the last two decades.

With that, this hearing is adjourned. Thank you very much.
[Whereupon, at 3:37 p.m., the Subcommittee was adjourned.]

