



**U.S. Citizenship
and Immigration
Services**

WRITTEN TESTIMONY

OF

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FOR A HEARING ON

“The Aftermath of Fraud by Immigration Attorneys”

BEFORE

**THE HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT**

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Introduction

Chairman Gallegly and Members of the Subcommittee, my name is Sarah Kendall. I am pleased to have the opportunity to testify on U.S. Citizenship and Immigration Services' (USCIS) process for reviewing cases associated with attorneys and preparers suspected or convicted of immigration fraud. USCIS created the Fraud Detection and National Security Office (FDNS) in 2004 and Director Mayorkas promoted FDNS to a Directorate in early 2010 to reflect and implement his prioritization of our agency's mission to help safeguard our nation's security and protect the integrity of its immigration system. As the Associate Director of FDNS of USCIS, I have oversight responsibility for USCIS's fraud detection and national security efforts.

USCIS's process for combating fraud includes case identification, close collaboration with our partners at Immigration and Customs Enforcement (ICE) and our other Federal, State, local and tribal law enforcement partners, appropriate follow-up based on investigation outcomes, and application of what we have learned in adjudication, training and investigation. More specifically, my testimony will review USCIS's work reviewing pending and previously approved immigration cases that attorney Earl Seth David and his law firm associates at the David Law Firm filed on behalf of their clients. I will provide an overview of the processes in place today that would assist us in detecting fraud schemes similar to the one the David Law Firm perpetrated. I will begin my testimony with a summary of the procedural steps for reviewing cases of suspected fraud, including those of attorneys suspected or convicted of perpetrating immigration fraud.

FDNS Administrative Investigations

The Secretary of Homeland Security maintains broad authority to administer and enforce the Immigration and Nationality Act (INA) and all other laws relating to the naturalization and immigration of aliens. Among the authorities the Secretary delegated to the Director of USCIS is the authority to conduct interviews and investigate civil violations of immigration law. USCIS does this by verifying information applicants and petitioners submit to USCIS, in order to ensure compliance with applicable laws and regulations before USCIS makes a decision in a case. USCIS also reviews some cases after adjudication as an added means to detect and deter fraud.

Within USCIS, FDNS is responsible for managing procedures and policies governing USCIS's management of fraud detection and prevention efforts. FDNS also manages policies and procedures governing USCIS's detection of persons seeking immigration benefits who pose a threat to national security and/or public safety. FDNS officers are located in every domestic USCIS office and certain overseas locations. They conduct administrative investigations focused on the detection of immigration benefit fraud and on cases in which national security and public safety concerns have been identified.

FDNS conducts administrative investigations to produce and document findings that USCIS adjudicators may use to determine an individual's eligibility for an immigration benefit. FDNS performs administrative investigations that are tailored to verify relationships and

circumstances that purport to form the basis of an immigration benefit and to identify violations of relevant sections of the INA and/or other grounds of inadmissibility or removability.

FDNS administrative fraud investigations follow standard procedures designed to ensure consistent detection, documentation, and prevention of immigration benefit fraud. These procedures set forth the guidelines for the receipt, documentation, investigation, and recording of the results of investigative action for either criminal investigation referral to ICE or administrative investigation to remain within USCIS. The standard procedures also address the sharing of information for adjudicative review and follow-up actions.

The administrative investigation of immigration benefit fraud is generally initiated by the articulation of fraud to FDNS from one of three primary sources: referral from an adjudications officer, referral from another government agency, or a referral received from the public. FDNS processes all fraud referrals similarly, irrespective of the source of referral. The FDNS process typically begins with an officer systematically determining whether or not the referral contains sufficient amount of information to continue with its review or whether it is possible to open a case for further investigation. The officer then identifies the referral type, determines if the matter is a new or existing referral, enters the referral into the system of record, and evaluates the referral for the next level of scrutiny.

The standard process then requires FDNS to determine whether there is sufficient public and government information to support the initiation of an administrative investigation. FDNS officers rely on varied sources of information to assess referred cases and take into consideration factors including whether there is a reasonable suspicion of fraud that is clearly articulated and actionable. An administrative investigation may include searches of government and commercial databases, file reviews, domestic or overseas site visits, overseas verification of documents, witness interviews, and verification of facts and events relevant to the case.

Upon conclusion of an administrative investigation, and as described in further detail below, the FDNS officer will then document the results into the FDNS Data System (FDNS-DS) to allow for tracking, collaboration, and information sharing across USCIS. FDNS will also then provide USCIS adjudicators with a written statement of findings. USCIS adjudicators use these findings to inform their decisions on the immigration applications. When fraud has been verified by FDNS, in an individual case, USCIS adjudicators generally will deny the case or, if the benefit has already been granted, issue a Notice of Intent to Rescind or Revoke the benefit. In either case, the USCIS adjudicator will then issue a Notice to Appear (NTA), subjecting the applicant to removal proceedings.

In addition, if USCIS uncovers information during the course of an administrative investigation that warrants any criminal investigation, FDNS will suspend adjudication of the matter and refer the case to ICE's Benefit Fraud Unit (BFU) which reviews the referral and potentially refers the suspected fraud to the appropriate Homeland Security Investigations (HSI) field office. The ICE HSI field office then reviews the case to determine whether it will accept it for criminal investigation. If the case is not accepted for criminal investigation,

USCIS will resume administrative investigative action on the case to include further inquiry and adjudication. It is important to note if ICE's determination is that it will not pursue prosecutorial action, the determination does not preclude USCIS from taking all appropriate action, including denial of the immigration benefit sought, based on USCIS's civil immigration fraud authorities or from referring the case to another law enforcement agency for review and possible acceptance for investigation. Each case is evaluated on its own merits under the applicable legal authorities.

USCIS's Joint Anti-Fraud Strategy with ICE

Since 2004, USCIS and ICE have collaborated in a strategic partnership to combat immigration fraud through the coordinated referral of benefit fraud cases for criminal investigative action. This approach has enhanced DHS's effectiveness in detecting, deterring, and combating immigration benefit fraud as it maximizes both USCIS's civil immigration authority with ICE's criminal immigration authorities, as delegated, to address fraud under the Immigration and Nationality Act. Over time USCIS and ICE have refined the referral process to remain consistent with Departmental priorities and resources.

Under this initiative, FDNS refers to ICE for criminal investigation all fraudulent cases involving attorneys, notaries, interpreters and preparers, and those classified as major conspiracies. In instances when USCIS suspects other criminal activity, USCIS will also refer cases to ICE for investigation and subsequent presentation to the Department of Justice for prosecution. Until ICE completes its criminal investigation, FDNS suspends its administrative adjudication process.

In situations involving an attorney or a law firm, such as in the case of the David Law Firm, HSI agents work directly with FDNS officers to share information to address all facets of the investigation. After HSI has completed its criminal case, FDNS officers will use the information provided by HSI or other sources to open administrative investigations on cases associated with an attorney or preparer either suspected or convicted of immigration fraud. When an attorney or preparer is suspected or has been convicted of fraud, USCIS will conduct a thorough review of each pending and previously approved case to determine the appropriate administrative follow-up action to be taken against the parties involved. Where, as in the David Law Firm case, the matter raises concerns of a major conspiracy involving attorneys or preparers, FDNS undertakes specific additional steps to appropriately partner with ICE on such a complex investigation, as explained below in more detail.

USCIS Combats Major Conspiracies Involving Attorneys and/or Preparers

FDNS action on major conspiracy cases often involves filings across multiple offices and large volumes of applications and petitions that originate from a single source. These cases require close coordination with multiple USCIS field offices. Once such cases are referred to ICE, FDNS coordinates closely to help develop the investigation. This is essential as both ICE and USCIS have multiple field offices providing support and resources working toward the shared goal of allowing ICE to successfully present the case to the appropriate U.S. Attorney's Office for criminal prosecution. Finally, FDNS works with USCIS adjudications units after

ICE has concluded its action to determine which cases in the system were affected by the fraud scheme and to address any fraud on a case-by-case basis.

When working a possible major conspiracy investigation, the FDNS process is to first identify the scope of the conspiracy, then to identify the conspiracy's structure in order to make a referral to ICE. When USCIS identifies a major conspiracy to commit immigration benefit fraud, the USCIS adjudication component with jurisdiction over the case will conduct a thorough review of each implicated application or petition to determine the appropriate follow-up action to be taken against the parties involved. To ascertain the scope of the scheme, USCIS conducts systems searches using the indicators specific to the suspected conspiracy to identify other associated cases. FDNS then reviews USCIS records to identify pending and previously approved immigration filings that relate to the scheme. FDNS reviews each relevant case or file identified during the investigation of a major conspiracy to determine if characteristics of the conspiracy are present, and subsequently catalogues any related cases in the FDNS-DS system for management and tracking purposes. FDNS also carefully reviews each case on its individual merits. FDNS and USCIS adjudications units first identify those who participated in the fraud or who are otherwise not qualified for the benefit they received so that USCIS may deny applications or revoke benefits. USCIS can then ensure that innocent parties who qualify for immigration benefits are not disadvantaged by the actions of a conspirator in the fraud scheme.

Once a suspected major conspiracy has been successfully prosecuted, USCIS will identify, retrieve, and review any remaining related cases. Where jurisdiction rests with a USCIS Service Center, as in the David Law Firm case, the Service Centers will work in consultation with FDNS and USCIS Counsel to determine the most appropriate action to be taken on each grouping of cases. Where appropriate, Service Centers will take action to revoke or deny cases through the creation of customized notices for those cases that are determined to be part of the fraud scheme. In certain instances, cases related to the party or parties involved in the fraud, but which do not have the identified characteristics of the fraud scheme, may be left intact.

Similarly, cases requiring action from a USCIS Field Office, such as rescission of permanent resident status, will be referred to the appropriate jurisdiction after consultation with the Field Operations Directorate and/or the appropriate Regional Office. Applicants or petitioners who are identified as removable may be issued an Notice to Appear (NTA), the charging document that initiates removal proceedings before the Department of Justice, consistent with our existing fraud policies and priorities. NTAs are issued when a Statement of Findings (SOF) substantiating fraud is part of the record. An NTA will be issued upon final adjudicative action on the petition and/or application or another appropriate eligibility determination. NTAs will be issued even if the petition and/or application is denied for a ground other than fraud (such as lack of prosecution or abandonment), is terminated based on the petitioner's or applicant's withdrawal, or where an approval is revoked, provided an SOF substantiating fraud is in the record.

Background of the Earl Seth David Case

According to the criminal indictment, Earl Seth David perpetrated a fraud scheme that caused as many as 25,000 fraudulent petitions to be filed between 1996 and 2009, when law enforcement officials shut down the David Law Firm. The fraud scheme generally operated through the filing of fraudulent immigration petitions using non-existent U.S. companies or shell companies. These companies then “sponsored” aliens for employment in the U.S. To support this scheme, David and his associates in the David Law Firm submitted false records of employment, Federal tax returns, and corporate governance documents and provided falsified evidence to substantiate applicants’ work experience and special skills, all of which were required to establish lawful eligibility for the visa.

USCIS’s Discovery of the David Law Firm’s Fraud Scheme

USCIS first recognized irregularities in David Law Firm filings in 2005, when internal referrals of petitions for employment-based visas were made by Vermont Service Center (VSC) adjudicators to the FDNS officers located at VSC.

FDNS personnel at the VSC initiated an administrative investigation into David Law Firm cases involving petitions for nonimmigrant workers (filed on Form I-129) due to articulated suspicions of immigration fraud. The Form I-129 is used by an employer to petition USCIS for an alien beneficiary to come as a nonimmigrant to the United States temporarily to perform services or labor or to receive training. The suspicions included a lack of supporting documentation and FDNS’ identification of shell companies that the David Law Firm used in filings for the immigration benefits. During the course of its investigation, FDNS learned that ICE also had an open criminal investigation into the David Law Firm and closed its administrative investigation. At the conclusion of its administrative investigation, FDNS consulted with ICE and then provided USCIS adjudicators with information about the presence of fraud indicators and recommended that requests for evidence be issued to any petitioning employers and reviewed carefully to establish the legitimacy of the business. The David Law Firm continued to file applications and petitions with the USCIS.

Shortly thereafter, in 2006, the Texas Service Center’s (TSC) FDNS personnel initiated an administrative investigation into David Law Firm cases involving immigrant petitions for alien workers (filed on Form I-140) due to articulated suspicions of immigration fraud. The Form I-140 is used to petition USCIS for an immigrant visa for an alien worker and can be filed by the employer or the alien, depending on the circumstances of the case. Unlike the Form I-129, which is a nonimmigrant petition, the I-140 could eventually lead to lawful permanent residence. FDNS’ suspicions were whether the petitioning organization existed and whether the David Law Firm had misrepresented the alien beneficiaries’ work experience.

During the course of its administrative investigation, TSC’s FDNS personnel coordinated with ICE and Department of Labor (DOL) in reviewing David Law Firm-associated cases located at the TSC in an attempt to ascertain the scope of the fraud being committed. At the conclusion of the administrative investigation, TSC FDNS personnel issued a fraud alert to the Associate Center Directors at the TSC for dissemination to adjudications officers, alerting

them to the David Law Firm fraud scheme. This resulted in a more thorough and scrutinized review of David Law Firm filings to ensure the bona fides of the individual case being adjudicated.

USCIS's Review and Analysis of All David Law Firm Filings

USCIS is continuing to identify and review the more than 25,000 receipts in our system associated with the David Law Firm. These are receipts for petitions and applications that USCIS has not already denied on other grounds. We are also searching our systems to locate additional receipts associated with the David Law Firm and the other individuals who have been charged in the indictments related to this scheme. As we continue to proceed with this search we expect the total number of filings to be higher than the current number because we will also review filings for other types of immigration benefits, such as extension of nonimmigrant status, petitions for family-based immigrant status, and the replacement of lawful permanent residence cards. To date, of the over 29,000 previously approved applications associated with the David Law Firm, USCIS has reviewed over 2,000 substantive cases, of which 203 have subsequently been denied or revoked for fraud, or are in the process of being denied for fraud. USCIS continues to review the remaining approved cases to determine whether any benefits were obtained through fraud.

USCIS Has Strengthened Its Fraud Detection Capabilities

USCIS takes careful note of fraud indicators, patterns, and schemes, as it did in the David Law Firm case. This allows us to strengthen our standard operating procedures and reduce program vulnerabilities, ensuring that future cases are identified and dealt with swiftly. USCIS has implemented new operational tools and process improvements to detect and combat attorney-based fraud and major fraud conspiracy cases, like the David Law Firm case.

For example, to assist the agency in identifying and verifying key information about suspect sponsoring employers, organizations, or companies earlier in the adjudicative process, USCIS has implemented a screening tool referred to as VIBE, the Validation Instrument for Business Enterprises. VIBE became fully operational in December 2011. It is a web-based system to enhance our ability to verify key information for certain employment-based petitions, including the financial standing of the company, the number of employees both on-site and globally, and the status of the company as either active or inactive. With the advent of VIBE, we have made a monumental shift away from reliance on paper documentation submitted by a petitioning company or organization to an ability to verify its assertions against commercially-held information in establishing a petitioner's existence and eligibility for the requested benefit.

Other improvements that have been implemented since the initiation of the David Law Firm investigation, although not all directly related to that case, include enhanced fraud referral criteria and processes and increased targeted site visits of those suspected of committing immigration benefit fraud. Standard Operating Procedures have been updated to reflect improvements in fraud detection capabilities. In order to detect and deter fraud, USCIS has also implemented an Administrative Site Visit and Verification Program (ASVVP). USCIS

uses the ASVVP to verify information contained within certain employment-based petitions, including religious worker petitions. The ASVVP process is explained in more detail below. Critical to the understanding and identification of fraud, USCIS has implemented an improved training program that will provide training to all adjudicators by the end of the second quarter of FY 2013. This training provides information on current fraud trends and indicators while also alerting adjudicators to the new tools and capabilities that FDNS offers. Through the implementation of such specific efforts, USCIS is confident that if the David Law Firm filed its first cases today, USCIS and ICE would identify and dismantle the scheme very early in its life.

I will now explain these efforts in further detail, along with other proactive measures USCIS is undertaking to strengthen its national security safeguards.

USCIS's Anti-Fraud Enhancements

As Director Mayorkas testified before this Committee in February, USCIS has undertaken significant steps to protect the integrity of our nation's immigration system and to help safeguard our nation's security. I want to provide again a synopsis of just a few of these proactive measures and our current progress in the area of anti-fraud enhancements:

- To date, we have increased the number of FDNS officers, analysts, and staff to more than 780, an approximately 25 percent increase over the prior two years, and allocated new FDNS positions in Field Offices and Service Centers to strengthen coordination and collaboration with our front-line employees.
- We have worked with the Department of Justice's Civil Division and Executive Office for Immigration Review (EOIR) and the Federal Trade Commission to launch the Unauthorized Practice of Immigration Law initiative. Together, we have partnered with state and local governments to develop and implement a comprehensive initiative that combats the unauthorized practice of immigration law by building capacity to deliver legitimate assistance, educating the public about finding bona fide legal advice, and strengthening prevention and enforcement efforts.
- Specifically relating to the practice of law, in a memo dated May 23, 2012, USCIS established guidelines for the eligibility of attorneys and other representatives to appear before USCIS while representing applicants for immigration benefits. This guidance encourages USCIS officers to verify the eligibility of attorneys and other representatives by consulting the DHS Disciplinary Counsel website and the list of disciplined practitioners maintained by EOIR. The memo cautions USCIS officers to be aware of individuals who have falsely claimed to be attorneys or other accredited representatives, as well as individuals who have been the subject of federal, state, or local court action to stop their unauthorized practice of law or to stop their theft of fees for legal services they may not lawfully provide.
- We have enhanced our overseas verification efforts by increasing our FDNS staffing footprint and collaborating with the Department of State's Fraud Prevention Program

in countries where there is no USCIS presence. Our overseas verification program combats immigration fraud, both in pre- and post-adjudication of benefits, by assisting domestic USCIS adjudicators in the verification of an applicant's assertions through site visits or the authentication of suspect documents by liaising with the issuing authority in the host country. We continue to develop and update standardized protocols to enhance the program's consistency and effectiveness, and we continue to support domestic offices by sharing best practices and up-to-date verification information. Additionally, USCIS continues to participate in the development of immigration fraud information sharing under international agreements.

- Our Administrative Site Visit Verification Program (ASVVP) performed more than 17,000 site inspections in FY 2011 (an increase of over 2,000 ASVVP inspections from the previous fiscal year). Through ASVVP, we conduct unannounced pre- and post-adjudication site inspections to verify information contained in certain visa petitions. The program is designed both to detect and deter fraud. We hired and trained more than 75 new federal officers to replace contractors, and hired 13 senior officers and analysts to oversee the program. We also are expanding the use of data derived from the ASVVP that will inform and improve our ongoing anti-fraud efforts by establishing fraud indicators, as derived from site visits, to be used earlier on in the adjudicative process and allow the adjudicators to make a more well-informed decision on the case before them.
- We enhanced the analytics and reporting capabilities of our Fraud Detection and National Security Data System (FDNS-DS). FDNS uses the system to document, analyze, and manage our agency's fraud and national security cases. Among other advances, the separate processes previously used to manage fraud and national security cases, respectively, were combined into a single system. The new, consolidated system allows officers to conduct person-centric queries and display all relevant information about an applicant, petitioner, or beneficiary. We also expanded the system's ability to import application-related data from other USCIS systems, substantially enhancing the breadth, accuracy, and utility of records in FDNS-DS. As system limitations are identified and as our anti-fraud and national security programs mature, FDNS-DS is updated to reflect the needs and capabilities of our officers. Along with improvements in data integrity, these refinements give us better capabilities in the identification, tracking, and resolution of fraud, national security, and public safety issues.
- We launched fraud reporting tools and began delivering fraud bulletins in real-time to agency personnel. The fraud-detection bulletins are designed to inform our officers of the latest fraud issues, including identifiable trends and practices.
- The USCIS FDNS Training Branch and Fraud Division, in partnership with the Field Operations Directorate (FOD), Refugee, Asylum, and International Operations (RAIO) Directorate, and Service Center Operations (SCOPS) Directorate have created a standardized training course—Identifying and Combating Immigration Benefit Fraud (FRAUD)—to assist FDNS officers and immigration service officers in identifying,

detecting, and deterring immigration fraud. This course is the first step in providing standardized national fraud detection and deterrence training to USCIS officers and includes techniques to identify various types of immigration fraud, discusses best practices to follow in file review and interviewing, and emphasizes the fraud referral and statement of findings processes as communication tools between FDNS and adjudications. Training has already been initiated and will occur throughout the year and beyond. All adjudicators will have received this training by the end of the second quarter of FY 2013.

- Finally, we have enhanced our collaboration with ICE Document and Benefit Fraud Task Forces (DBFTFs), the FBI Joint Terrorism Task Forces (JTTFs), and all State and Major Urban Area Fusion Centers. FDNS officers are detailed to the ICE National Security Unit, the U.S. Customs and Border Protection National Targeting Center, the Department of Homeland Security's Office of Intelligence and Analysis, the Department of Homeland Security's Threat Task Force, the National Joint Terrorism Task Force, the National Counter-Terrorism Center, the Department of State's Kentucky Consular Center and National Visa Center, the FBI's Operational Deconfliction and Analysis Team, the Terrorist Screening Center, the FBI's National Name Check Program, the Central Intelligence Agency, and INTERPOL's U.S. National Central Bureau. These relationships provide USCIS with greater access to information that is critical to the development of fraud inquiries, while also facilitating the sharing of USCIS information and subject matter expertise that is useful to our partners.

Conclusion

USCIS, with the support and oversight of its FDNS Directorate, takes every measure to ensure that it detects immigration benefit fraud and aggressively addresses cases that involve it. USCIS is vigilant in addressing all cases involved in an immigration conspiracy and revoking or rescinding benefits that have been obtained through fraud, while at the same time ensuring that individuals who are eligible for benefits are not harmed by the unscrupulous actions of others.

On behalf of USCIS Director Alejandro Mayorkas and all of our colleagues at USCIS, I thank you for your continued support of the work of the Fraud Detection and National Security Directorate.

Mr. Chairman and Members of the Subcommittee, thank you again for the opportunity to provide information on the status of our program. I look forward to answering your questions.