

**HEARING BEFORE THE
HOUSE JUDICIARY SUBCOMMITTEE ON
IMMIGRATION POLICY AND
ENFORCEMENT**

**“VISA SECURITY:
PREVENTING TERRORISTS FROM
ABUSING U.S. IMMIGRATION POLICY”**

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TESTIMONY OF

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Former Counsel, 9/11 Commission

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Introduction

I want to thank full Committee Chairman Smith, Subcommittee Chairman Gallagly, Vice-Chairman King, and Ranking Member Lofgren for the invitation to testify on the importance of the visa security apparatus to curtail terrorist travel to the United States. My testimony is based on the following work, plus additional research specific to today’s hearing:

- As a counsel to the Senate Judiciary Subcommittee on Technology, Terrorism and Government Information prior to 9/11;
- As a counsel on the 9/11 Commission “border security team” which produced the *9/11 Final Report* draft recommendations and analysis;
- As an author of the 9/11 staff report, *9/11 and Terrorist Travel*;
- As the National Security Policy Director for the Center for Immigration Studies for nearly the past three years.

At the Commission, I was responsible for the investigation and analysis of the Immigration and Naturalization Service and current Department of Homeland Security (DHS) border functions as pertaining to counterterrorism, including the 9/11 hijackers’ entry and acquisition of identifications that are mostly contained in our staff report, “9/11 and Terrorist Travel.” My team also produced the terrorist travel portions of the *9/11 Final Report* that were unanimously agreed to and refined by 9/11 Commissioners led by Governor Tom Kean and Representative Lee Hamilton. I have spent the years since the publication of our 9/11 work ensuring, in part, that our border findings, lessons learned and recommendations are properly understood and implemented. I also work to assure that other types of terrorist travel that were not specifically covered as part of the 9/11 investigation are considered under the tenets and intentions of the 9/11 Commission findings, lessons learned and recommendations in light of ever-changing times. To be clear, the views I represent are my own, and not official positions of 9/11 Commission leadership.

I am glad this Committee takes to heart the policy put forth in the *9/11 Final Report* that securing our borders is not only in our national interest, but absolutely essential to our national security. Assuring that we fulfill key 9/11 Commission recommendations piece by piece, by extending

appropriate authorities judiciously where necessary, helps build a stronger and more flexible border framework that can adjust to changes in terrorist travel methods as we move forward. From this vantage point I testify on the Department of Homeland Security's (DHS) Visa Security Program (VSP) today.

Backdrop to Visa Security Program

In the aftermath of September 11 and the knowledge at that time that our immigration system had failed us in not keeping the hijackers out of the country and off our domestic planes, the DHS was created to pull a number of agencies under a national security umbrella. Some of these agencies, like the former Immigration and Naturalization Service (INS), had only a minor mission in national security prior to September 11. After September 11, and before the publication of the *9/11 Final Report* and accompanying *9/11 and Terrorist Travel* monograph, legacy INS was split apart and its component parts were all given a primary mission of countering terrorism. At the time, there was considerable discussion about whether all immigration-related functions, including the Department of State's Consular Affairs, responsible for issuing visas to foreign visitors from overseas, should also be folded into the DHS.

While that consideration faded, the Homeland Security Act of 2002 (P.L. 107-296) gave the Secretary of Homeland Security authority to issue regulations with respect to the issuance and refusal of visas. More specifically, Section 428 of the Homeland Security Act authorizes the DHS to assign DHS employees to consular posts overseas to support the visa process through various functions. This Section 428 authority quickly evolved into what are now the Visa Security Units (VSUs) in 19 countries operated by DHS' Immigration and Customs Enforcement Office of International Affairs. What is perhaps most interesting about the Section 428 language is that it is limited to visa "issuance and refusal;" the provision leaves out of DHS jurisdiction the adjudication of a visa revocations as well as official involvement in the Visa Viper process.

The value of the legislation before this Committee today is that it bundles the visa issuance process with the visa revocation process where it pertains to national security in the hands of the department tasked with national security, DHS. The Department of State retains its power to issue visas as they pertain to foreign and economic interests of the United States, also in line with the overall diplomatic mission of the State Department. Even with the three Memorandums of Understanding and a DOS cable on the subject of missions and responsibilities of the VSUs at consular posts, the clear lines demarking all national security-related visa reviews residing with the DHS (or the intelligence community) and all foreign and economic interest-related visa issuances residing with DOS makes common national security sense. In addition, while there are some minor criticisms of ICE's ability to self-assess its performance by a recent General Accountability Office (GAO) report, a two year old DHS Office of Inspector General (OIG) report provides sufficient detail on the VSU operations to conclude that these units even two years ago were bureaucratically mature enough to handle new responsibilities.

9/11 Commission findings of facts and recommendations support VSUs

The 9/11 Commission did not commence until after the passage of the 2002 Homeland Security Act and the creation of the VSUs. However, while our final report recommendations do not

mention VSUs directly, our terrorist travel monograph specifically references that after the passage of the Homeland Security Act, “State now coordinates visa determinations with DHS’s Immigration and Customs Enforcement officers in some overseas ports, including Saudi Arabia.” Moreover, our overall 9/11 Commission recommendations emphasize that terrorists are best stopped when “they move through defined channels”. The first, and best, opportunity to stop terrorist travel is in the visa adjudication process. It is best to stop at issuance, where triggers for further investigation can be anything from a recently obtained new passport, suspicious (fraudulent) travel stamps, or indicators of extremism, as was the case with the 9/11 hijackers.

Our key 9/11 Commission Findings of Fact show that: (1) visa acquisition was critical to the success of the 9/11 travel operation and execution of the plot; (2) fraud was an essential component of the visa applications submitted by Al Qaeda; and (3) terrorist passports contained indicators of extremism to which only the intelligence and law enforcement personnel would be privy to. Anti-crime, anti-fraud and anti-terror investigations can be intricately tied to each other, and the VSUs are providing a critical function in working alongside other law enforcement overseas in supporting a broad array of national security-related investigations.

Relevant Findings of Fact from *9/11 and Terrorist Travel*:

- **The success of the September 11 plot depended on the ability of the hijackers to obtain visas** and pass an immigration and customs inspection in order to enter the United States. If they had failed the plot could not have been executed.
- **The 9/11 hijackers submitted 23 visa applications during the course of the plot, and 22 of these applications were approved.** During the course of the plot, these visas resulted in 45 contacts with immigration and customs officials. The hijackers applied for visas at five U.S. consulates or embassies overseas; two of them were interviewed. One consular officer issued visas to 11 of the 19 hijackers.
- Fourteen of the 19 September 11 hijackers **obtained new passports** within three weeks before they applied for their U.S. visas, **possibly to hide travel to Afghanistan recorded in their old ones or to hide indicators of extremism that showed ties to Al Qaeda.** The new passports caused no heightened scrutiny of their visa applications as consular officers were not trained, and would not have been privy to, such intelligence.
- Two hijackers lied on their visa applications in detectable ways, but were not further questioned about those lies.
- **Three of the hijackers, Khalid al Mihdhar, Nawaf al Hazmi, and Salem al Hazmi, presented with their visa applications passports that contained an indicator of possible terrorist affiliation.** We know now that Mihdhar and Salem al Hazmi each possessed at least two passports, all with this indicator.
- **There is strong evidence that two of the hijackers, Satam al Suqami and Abdul Aziz al Omari, when they applied for their visas presented passports that contained fraudulent travel stamps that have been associated with al Qaeda.** There is reason to believe that three of the remaining hijackers presented such altered or manipulated passports as well.
- Hijackers Nawaf al Hazmi and Khalid al Mihdhar were the first to submit visa applications because they were originally slated to be pilots. The four hijackers who did

become pilots applied for visas in 2000. The remaining “muscle” hijackers applied in the fall of 2000 through the spring and summer of 2001, three applying twice.

- Twenty-two of the 23 hijacker applications were approved. Eight other conspirators in the plot attempted to acquire U.S. visas during the course of the plot; three of them succeeded. **Five were not part of the plot because they could not obtain visas. (None were denied due to national security concerns.)** One, al-Kahtani, was stopped at Orlando Airport by an astute immigration officer. One dropped out. The other was **Khalid Sheikh Mohammed, the mastermind of the 9/11 plot, who obtained a visa in Jeddah, Saudi Arabia, in July 2001 under an alias.**

While our 9/11 facts made abundantly clear that at least some of the most flagrant fraud employed Al Qaeda would require specially trained and cleared personnel to physically review it to determine its terrorist connection, most especially in indicators of extremism or even the fraudulent travel stamps, in visa issuance, we did not specifically address visa *revocation* namely because it fell outside of our immediate 9/11 facts. However, not always – nor usually – will triggers for further investigation be as obvious as we noted in these findings of fact (which were not obvious at the time). In addition an affiliation with terrorism may develop after – *or because of* – an already existing U.S. visa. Osama bin Ladin and Khalid Sheikh Muhammad specifically sought out individuals with existing U.S. visas.

Thus, information developed after issuance indicating a terrorism affiliation requires the same vigilance as prior to issuance, and a visa revocation is an excellent tool to deny entry, or support removal, if already in the United States. It is the VSU’s special agent expertise and access to information that can be the critical element to denying terrorist entry in such cases. With the death of Bin Ladin, and an increase in retaliatory statements by Al Qaeda, we may now experience even more splintering of Al Qaeda into factions or lone wolf-type terrorists. Our consular officers will be under more pressure than ever to get visa adjudications right.

Thus, the primary point is that the visa process does not end with issuance. The visa process continues during the life of the visa. Since visa life cycles (term life of the visa) and types of visas (single or multiple entry) are negotiated by the State Department on a case by case basis with countries (United Arab Emirates had ten year visas at the time of 9/11, for example), the ability to review the visa for security-related reasons remains throughout its life span. This is one reason why security reviews of visa revocation and pre-travel to the United States can be equally as important as visa revocations.

Yet again, it is not all about issuance. Those with existing U.S. visas will be sought after, and thus review of existing visas prior to travel (although not part of the legislation before this committee today) and revocations should weigh heavily in prioritization at consular posts worldwide. There should, in fact, be a heightened trigger to conduct a security review of visas (alongside a TSA or CBP review of travel authorization) when an air or sea reservation is made to enter the United States, much in the same way an Electronic Security Travel Authorization (ESTA) reviews visa waiver applicants today. Even with ESTA reviews in place, just to be clear, the VSUs in visa waiver countries where there is a known high rate of fraud and known evolving terrorist threat are a necessary and additional layer of hands-on vigilance that is not cosmetic, but essential, to the health of our border security apparatus.

However, a visa issued to an individual in a visa-issuing country will always be a greater security risk if it is not reassessed immediately prior to travel. This is because visa-issuing countries do not use ESTA, so there is no pre-travel security review of the applicant until airline check-in through TSA's Secure Flight. This is where the VSUs can play a key role, both pre-travel in and revocation reviews. A role VSUs do not have now, but falls in a direct linear line to the valuable work they currently conduct on Security Advisory Opinions and visa issuance. This work is equally as difficult, updating information where perhaps little or no derogatory information existed previously. Such vigilance is absolutely critical in non visa waiver (visa issuing) countries, as it is the last stop gap that can assure a reassessment and interview of an applicant pre-travel in a less time-sensitive manner than air travel where review can be limited to pre-boarding for international flights bound for the United States.

Abdullmulltalab's visa issuance

With the limited number of VSUs operational around the world—and not in Nigeria despite its long-known fraud problems-- alongside perhaps a narrower statutory language than intended in retrospect, our nation ended up with the unfortunate wildcard near-success of the 12/25 bomber, Umar Farouk Abdullmulltalab. With a VSU in place in Nigeria, Abdullmulltalab's visa may never have been issued. His visa revocation would most likely have occurred. Either way, he could have been prevented from boarding a plane on 12/24 and attempting to blow up a plane preparing for landing in Chicago on Christmas Day 2009.

The 9/11 Commission recommendations on border and aviation security eerily predicted an attempt such as that made Christmas Day by Abdulmutallab. One of the key phrases from the commission's report is that "for terrorists, travel documents are as important as weapons." This plot has made clear to the world that while travel documents such as visas are as important as weapons to terrorists, air travel itself is also an essential component of the weapon. But without the visa, the operation would never have taken flight.

The 9/11 Final Report and our staff monograph, *9/11 and Terrorist Travel*, hit all the important points - watch lists, visa adjudication and pre-boarding vetting. Other 9/11 recommendations with a direct bearing on Abdulmutallab findings of fact read as follows:

Because officials at the borders encounter travelers and their documents first ... they must work closely with intelligence officials.

The job of protection is shared among many defined border checkpoints. By taking advantage of them all, we need not depend on any one point in the system to do the whole job. The challenge is to see the common problem across agencies and functions and develop a conceptual framework - an architecture - for an effective screening system.

We need not go beyond the Christmas Day bomber to conclude that the visa process remains undeniably prioritized towards diplomacy, not security. In late March 2010, three and one half months after the attempted bombing and the intense scrutiny under which the event was reviewed, the *Washington Post* [released news](#) that the State Department had not included in its after-action reports that had been under media scrutiny for the prior three months: not once, but

twice, the State Department failed in keeping a U.S. visa out of a terrorist's hands. Abdulmutallab had initially had his visa denied in 2004, four years prior to his 2008 application. In 2004, he applied again, and the initial denial was overturned because a supervisory consular officer decided Abdulmutallab's father was too prominent in Nigerian politics and finance to upset the U.S. diplomatic apparatus in that country and deny his son a visa. Ironically, this was the same father who four years later visited the U.S. embassy in Nigeria and sought to help the U.S. keep his son out of the U.S., only subsequently to have the U.S. decide he was not important enough to listen to.

The legal kicker in this visa story is that on Abdulmutallab's 2008 application, he lied and said he had never received a prior denial, enough to deny him a visa under law and keep him out of the country. As the matter was "considered resolved," the State Department did not look again at the 2004 denial when the young Al Qaeda operative sought another visa in 2008. Instead, he was granted the multi-year visa he used to attend an Islamic convention in Houston in 2008 and again for airline check-in on Christmas Eve.

What comes to light is that not only was revocation at issue, issuance should have been at issue as well. Yet it was not. The crux of the State Department explanation of the 2004 denial and 2008 visa granted to Abdulmutallab is as follows, according to the [Washington Post](#):

A U.S. consular official originally denied terrorism suspect Umar Farouk Abdulmutallab a visa to enter the United States in 2004 after finding false information on his application, but that official was overruled by a supervisor, according to senior government sources.

Because the 2004 situation was considered resolved, it was not revisited in 2008, when Abdulmutallab received a second U.S. visa, which allowed him to board a Detroit-bound airliner on Dec. 25, officials acknowledged.

An official said the incident was left out because the move to overturn the initial decision did not seem out of the ordinary. That official and others said that, in reversing the initial decision and granting Abdulmutallab a visa, consular officials took into account that his father was a prominent Nigerian banker with strong ties to his community. There was no derogatory information or suggestion that he had ties to Islamist terrorism.

Abdulmutallab first applied for a U.S. visa in Lome, Togo, but was told that he needed to apply closer to his place of residence in Nigeria. He returned to Lagos and filed an application that stated incorrectly that he had never been denied a visa, leading a consular official to deny him one. [emphasis added]

Clearly, the political status of Abdulmutallab's father in Nigeria was the driver for overruling the 2004 visa denial. Without Abdulmutallab's father, it is likely that the Christmas Day bomber would never have gotten a visa at all. Yet, the father's political status was not sufficient to trigger a visa revocation when national security was at stake. This small gap of not adequately reviewing either Abdulmutallab's visa *during its life cycle* amounted to a huge failure. Filling

these gaps will never assure 100 percent against another successful terrorist attack, but it will edge border and aviation security ever closer to that assurance.

To be clear, the role of intelligence in preventing terrorist plots is essential, but when teamed with border and aviation security, its relevancy occurs only when: (1) The intelligence community has analyzed information, (2) aviation and border systems have sufficient access to the intelligence in real time, (3) the investigative and decision authority within these systems is sufficient to stop the traveler, and (4) policy structures put security first, especially in the area of visa issuance and revocation. If any of these circumstances is lacking, the risk of terrorist success is high. At consular posts, DHS is best equipped to assure that intelligence and operations are successfully fused to make solid visa issuance, and revocation, decisions. Their mission is right, as well as their expertise. (Both discussed below).

9/11 Commission Stance on the Visa Security Program

On the 9/11 Commission, numerous recommendations apply to the specific orientation of this hearing: the expansion of visa authority to DHS and consequential expansion of the VSUs operated by ICE that support visa adjudication at consulates around the globe. From a 9/11 Commission perspective, the expansion of visa authority and VSUs worldwide makes sense from a national and border security perspective.

While obvious, it is worthwhile to repeat that it is only DHS, by law, that is responsible for both (1) homeland security *and* (2) border security. The State Department has a very different mission. According to State's own statement about mission priorities in its "FY 2004-2009 Department of State and USAID Strategic Plan," diplomacy is the State's top priority, as it should be. Diplomacy is a vital and necessary function for which we should be grateful as a nation; State does arduous work to support U.S. interests with our foreign counterparts.

State's consular functions were created in part to support diplomacy. While State has done a solid job in layering in more full biometric enrollment of applicants; more robust biometric, passport and visa requirements with other countries; more in-person interviews for non-immigrant visa applicants; and a strong visa information system (CLASS), their visa mission remains under a mission of diplomacy, not security. To be clear, the terms "border", "security", "consular", nor "visa" are ever mentioned in the State's mission statement. It is, however, the primary function of DHS' Customs and Border Protection, ICE and US Citizenship and Immigration Services. Thus, what VSUs add to security of visa processing at consulates overseas is invaluable, because that *is* what they do.

While the 9/11 Commission did not ever offer an opinion on what federal government department should have visa authority, we did both (1) acknowledge the Visa Security Units in *9/11 and Terrorist Travel* as a crisis management tool in a post-9/11 environment and (2) continually emphasized that all aspects of our border framework, with emphasis on consular posts, need to be used to curtail terrorist mobility. Our most relevant and pertinent 9/11 recommendation to the issue of securing visa issuance, and the Visa Security Program issue we undertake today, are as follows:

Recommendation: Targeting travel is at least as powerful a weapon against terrorists as targeting their money. The United States should combine terrorist travel intelligence, operations, and law enforcement in a strategy to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility.

While the VSUs were created prior to the 9/11 Commission Final Report, the legal authority supporting the VSP dovetails with the above-quoted recommendation. The VSUs operate today, according to the According to the DHS Office of Inspector General Visa Security Program (VSP) Report (OIG-08-79), to combine intelligence, operations, and law enforcement to intercept terrorists and constrain terrorist mobility at the time of visa issuance. In the DHS OIG's "Results of Review", they conclude that "law enforcement expertise and resources add layer of security to visa process." The report continues with why ICE agents need to be at post, and provide an example of VSU value-added:

ICE special agents assigned to VSUs use their expertise in immigration and nationality law, investigations, document examination, intelligence research, and counterterrorism to complement the consular visa adjudication process with law enforcement and vetting and investigation. In addition, ICE special agents assigned to VSUs at post focus on identifying "not yet known" terrorists and criminal suspects and preventing them from reaching the United States.

While the VSU screening process is automated, the vetting process requires hands-on presence at post. During the vetting process, ICE special agents need access to relevant documents, such as the visa application and passport, as well as financial, employment, or other supporting documents. For example, three long-term residents of a country with a VSU applied for visas to visit the United States. Consular and VSU system checks resulted in no alerts on the applicants. An ICE special agent assigned to a VSU reviewed the visa application packages, including employment records, and determined that the applicants had merged personal bank accounts with their employer's bank account. Through further investigation, the agent identified a link from the employer to a company identified by the Department of Treasury's Office of Foreign Assets control as a Specially Designated Global Terrorist and Foreign Terrorist Organization. Because an agent was assigned to the VSU at post, a potential terrorism link was identified, the applicants' visas were denied, and further investigation could be performed to identify other related companies. (p. 9-10)

The value of the VSUs is not simply in anecdotal hits. Rather, they provide crucial functions in recommending refusal of visas, creating lookouts and subject records in a variety of government databases, participate in the Security Advisory Opinion process during visa adjudication, and nominate individuals for watchlisting. ICE special agents also create intelligence reports, conduct investigations and secondary interviewing of applicants, support domestic ICE investigations, identify the latest trends and terrorist travel tactics, and even remove inaccurate derogatory information from law enforcement systems.

While the VSP remains young and is still developing performance measures, the DHS OIG 2008 report indicated that the eight VSUs in existence at that time were providing value then, with

ICE agents recommending denial of 750 visas and identifying 49 “not yet known” terrorists in 2007. They also created 68 watchlist nominations, 933 lookouts, and 557 subject records. While I do not have the latest numbers, I assume that these numbers are significantly higher with 19 VSUs and a continued uptick in performance measures over the past two years.

Conclusion

It is time to extend DHS authority to visa revocation, and expand the VSU operations around the globe. An extension of VSU authority to the entire visa portfolio simply fills in a gap left by the Homeland Security Act of 2002 whereby many of the same types of investigative techniques, expertise and data brought to consular posts by VSU personnel that is now used to stop visa issuance can simply be used—with some training—in the visa revocation arena as well.

The other primary consideration to weigh expansion of authorities is feasibility. With a National Security Directive, three Memorandums of Understanding in place, cables, and robust—even if sometimes challenging—discussions on implementation between the State Department and DHS have resulted in the expansion of VSUs to 19 locations. While insufficient, we are dealing with more than survival of the program abroad. According to the DHS Office of Inspector General Visa Security Program (VSP) Report (OIG-08-79), “the VSP complements the DOS visa screening process with law enforcement resources not available to consular officers to ensure ineligible applicants do not receive U.S. visas.”

The national security of the United States depends, in part, on the robustness of our border security to keep out foreign nationals with nefarious intentions. Counterterrorism efforts are best outside of our physical borders, and thus, the visa process—both issuance and revocation—must be made as secure as possible. The entity with the mission, expertise and bureaucratic functioning on border security is DHS. In addition, DHS already has visa authority by law in issuance, and an extension of that authority to revocations makes sense. The VSP should be expanded in operations and authority. The State Department’s Chief of Missions should not have a say in determining VSU presence at a consular post; security must trump infrastructure, political or diplomatic considerations. The VSP is effective, offering up counterterrorism investigations and watchlist nominations out of consular posts that would not occur but for their presence. The VSP is the place to rest security related reviews in high risk areas of the world and throughout the visa process and legislation supporting this end should be considered a Congressional priority.