



U.S. Immigration and Customs Enforcement

STATEMENT

OF

**JOHN MORTON
ASSISTANT SECRETARY**

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY**

REGARDING A HEARING ON

“VISA OVERSTAYS: CAN THEY BE ELIMINATED?”

BEFORE THE

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON HOMELAND SECURITY**

**Thursday, March, 25, 2010 - 10:00 a.m.
311 Cannon House Office Building**

INTRODUCTION

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

It is my honor and privilege to appear before you today to discuss the efforts of U.S. Immigration and Customs Enforcement (ICE) to confront the problem of visa overstays. This issue of visa overstays and other forms of status violation blends two critical areas of ICE's mission—national security and immigration enforcement. In my view, ICE plays an important and effective role in enforcing the law related to visas, including working with the Department of State (DOS) in combating visa fraud and removing those who overstay their visas. ICE's Compliance Enforcement Unit (CEU) was created in 2003 to help confront the problem of visa overstays and other status violations, thereby enhancing national security.

Today, through the CEU, ICE proactively develops cases for investigation in cooperation with the Student and Exchange Visitor Information System (SEVIS), the National Security Entry/Exit Registration System (NSEERS), and the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program. These programs and their related data systems enable ICE to access information about the millions of students, tourists, and temporary workers present in the United States at any given time, and identify those who have overstayed or otherwise violated the terms and conditions of their admission.

As we move forward, it is imperative that we expand the nation's enforcement efforts concerning overstays and other status violations. This includes our continued focus on targeting overstays and other status violations that, based on available

intelligence, may threaten national security. We must also expand our focus to other priority classes of status violations. Efficiently targeting and removing more aliens who overstay their authorized periods of admission, or who have otherwise violated their status, as early as possible, will help preserve valuable prosecutorial and investigative resources and improve our national security. Accordingly, ICE is analyzing various approaches to this issue, including sharpening the focus of proven programs that currently address vulnerabilities exploited by visa violators.

The Compliance Enforcement Unit

In June 2003, the ICE Office of Investigations (OI) established the CEU, the first national program dedicated to the enforcement of nonimmigrant visa violations. Previously, no resources had been dedicated exclusively to the enforcement of visa noncompliance. As such, at its inception, the CEU was staffed almost entirely with personnel on temporary assignment. The CEU has grown considerably since then as ICE has prioritized its expansion. The first official funding for the CEU came in the FY 2004 appropriations, in which \$6.7 million was provided for 51 positions. Roughly one-third (16) of the FY 2004 CEU positions were placed at ICE headquarters. The remaining 35 were placed in field offices throughout the country. At the end of FY 2004, ICE obligated an additional \$1.4 million toward compliance enforcement efforts. The total dollar amount spent includes the salaries, expenses, and other costs for 59 full time equivalent (FTE) investigative positions. During FY 2009, ICE expended \$68.3 million (272 investigative FTE) toward compliance enforcement activities from appropriated resources. In addition, \$21.2 million was expended from student exchange fees.

ICE received the following funding increases for compliance enforcement investigations since the CEU's inception in 2003:

- FY 2004 - \$6.7 Million
- FY 2005 - \$8.3 Million
- FY 2007 - \$10.0 Million
- FY 2008 - \$9.0 Million
- FY 2009 - \$3.9 Million

Each year, the CEU analyzes records of hundreds of thousands of potential status violators, after analysis of data from SEVIS, NSEERS, and US-VISIT, along with other information. These records are resolved by further establishing potential violations that would warrant field investigations, establishing compliance or establishing departure dates from the United States. Between 15,000 and 20,000 of these records are resolved by in-house analysts each month. Since the creation of the CEU in 2003, analysts have resolved more than 1 million such records. On average, ICE opens approximately 6,000 investigative cases annually, and assigns them to our agents in the field for further investigation. On average, these cases have resulted in over 1,400 arrests per year.

A recent ICE investigation in Las Cruces, New Mexico, highlights how the CEU functions. As a result of CEU data analysis and field investigation, last month ICE agents arrested two foreign nationals who were admitted as F-1 nonimmigrant students and violated the terms and conditions of their admission. Both individuals were referred for investigation after their status was terminated in SEVIS for failure to maintain student status. These individuals possessed several other indicators of national security concerns.

Agents and analysts in ICE monitor the latest threat reporting and proactively address emergent issues. This practice has contributed to ICE's counterterrorism mission by initiating or supporting high-priority national security initiatives based upon specific intelligence.

In order to ensure that the potential violators who pose the greatest threat to national security are given priority in targeting, ICE uses intelligence-based criteria, developed in close consultation with the intelligence and law enforcement communities. ICE assembles the Compliance Enforcement Advisory Panel (CEAP) on a tri-annual basis to ensure that it uses the latest threat intelligence to target nonimmigrant overstays and status violators who pose the highest risks to national security.

Through the CEU, ICE also supports and promotes school fraud investigations through the Student and Exchange Visitor Program (SEVP). In March 2010, ICE's Compliance Enforcement Group in Miami, Florida, initiated "Operation Class Dismissed," a criminal investigation that led to the indictment of the owner/operator of a Miami-based foreign language school and one of its employees on four counts of conspiring to commit a criminal offense against the United States. The owner and employee were suspected of fraudulently sponsoring foreign students by certifying student status to non-immigrants, without requiring them to maintain full courses of study as required to lawfully comply with the terms of their admission. The ICE investigation uncovered information that only approximately five percent of the school's students attended class on any given day. In addition to the indictment, follow-up investigation by ICE resulted in the administrative arrests of 81 student visa violators purported to be attending the school from countries including Thailand, Syria, Honduras, South Korea,

Japan, Colombia, Dominican Republic, Turkmenistan, Turkey, Indonesia, Venezuela, Brazil and Kyrgyzstan.

Coordination with US-VISIT and Other DHS Components

Through the CEU, ICE works in close collaboration with US-VISIT, part of the Department of Homeland Security's National Protection and Programs Directorate (NPPD). US-VISIT supports the Department of Homeland Security's mission to protect our nation by providing biometric identification services to federal, state and local government decision makers to help them identify the people they encounter accurately, and determine whether those people pose risks to the United States. DHS's use of biometrics under the US-VISIT program is a powerful tool in preventing identity fraud and ensuring that DHS is able to rapidly identify criminals and immigration violators who try to cross our borders under a new name. Biometric information sharing between the Federal Bureau of Investigation's Criminal Justice Information Services and US-VISIT also provides critical support to ICE's Secure Communities Program.

Through Secure Communities, aliens—including those who have overstayed their visas or otherwise violated their immigration status and are then encountered by law enforcement—can be identified when booked for crimes by state and local law enforcement. Currently, this capability is available in 119 jurisdictions in 16 states. US-VISIT also supports the Department's ability to identify international travelers who have remained in the United States beyond their periods of admission by analyzing related biographical information. US-VISIT stores biographic entry and exit records in the Arrival and Departure Information System.

ICE receives nonimmigrant overstay and status violation referrals from US-VISIT's Data Integrity Group (DIG). ICE currently receives three types of nonimmigrant status violator leads from US-VISIT.

The first type, Nonimmigrant Overstay Leads, is used by the CEU to generate field investigations.

A second type of lead pertains to the CEU's Visa Waiver Enforcement Program (VWEP). The Visa Waiver Program (VWP) is the primary source of nonimmigrant visitors from countries other than Canada and Mexico. Although the overstay rate from this population is less than 1 percent, we created a program dedicated to overstays arising from this VWP population given the high absolute number of individuals in this category.

Prior to the implementation of the VWEP in 2008, there was no national program dedicated to addressing overstays within this population. ICE receives a weekly list of individuals that US-VISIT has identified as potential overstays who entered the United States under the VWP. In accord with its intelligence-based criteria, a relevant portion of this report is imported into the CEU's internal lead tracking system for review and possible field assignment.

The third type of lead is generated from biometric data collected by US-VISIT. US-VISIT routinely receives fingerprint records from a variety of governmental sources and adds them to a biometric watch list of individuals of national security concern. These new watch list records are checked against all fingerprints in the Automated Biometric Identification System, managed by US-VISIT, to determine if DHS previously encountered the individual. If US-VISIT identifies a prior encounter, such as admission to the United States, the information is forwarded to ICE for review and possible field

assignment. Similarly, US-VISIT monitors records for individuals who, at the time of admission to the United States, were the subject of watch list records that did not render the individuals inadmissible to the United States. Therefore, if such individuals overstay their terms of admission, information on the subjects is forwarded to ICE for review and possible referral to investigative field offices for follow-up.

Additionally, the CEU develops potential overstay and status violation leads from SEVIS and NSEERS. The CEU imports these leads directly from those databases, and applies its intelligence-based criteria to determine whether investigative referral is appropriate.

Broadening the Mission of the Compliance Enforcement Unit

In 2004, the United States Government Accountability Office (then called the United States General Accounting Office) estimated that one-third of the illegal alien population had entered the United States legally but had overstayed their periods of authorized stay.¹ According to annual overstay analysis produced by US-VISIT, the number of individuals who overstayed the terms of their admission each year has remained above 300,000 for Fiscal Years 2007, 2008, and 2009. The Pew Hispanic Center estimates the total number of visa overstays in the United States at approximately 4.4 million.² ICE is currently reviewing its policies, programs and procedures concerning

¹ U.S. General Accounting Office “Overstay Tracking: A Key Component of Homeland Security and a Layered Defense”, 5/1/2004, <http://www.gao.gov/new.items/d0482.pdf>

² Pew Hispanic Center, “Modes of Entry for the Unauthorized Migrant Population”, 5/22/2006, <http://pewhispanic.org/files/factsheets/19.pdf>. The estimate assumes the range of 4-5.5m for overstays and 250,000 – 500,000 for Border Crossing Cards. The Pew estimate is based on an assumption that Visa Overstays represent 40-50% of the unauthorized population. The estimate for Visa Overstays and Visa Waiver Overstays employs the middle of the range based on conversations with the DHS Office of

visa overstays, and continues to explore how to most effectively allocate its finite resources. Additional targeting and enforcement actions could provide a significant deterrent to overstays and could reduce the overall number of visa overstays in the United States.

CONCLUSION

I thank the Committee for its support of ICE and our law enforcement mission. Your support is vital to our work. Your continued interest and oversight of our actions is important to the men and women at ICE, who work each day to ensure the safety and security of the United States.

I would be pleased to answer any questions you have at this time.

Immigration Statistics. The estimate of Border Crossing Card Overstays employs the higher estimate based on a recommendation from OIS that BCC Overstay Population increases each year. The Office of Immigration Statistics agrees the Pew analysis is the best existing estimate on the visa overstay population.