



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

***“THE LESSONS AND IMPLICATIONS OF THE
CHRISTMAS DAY ATTACK: SECURING THE VISA PROCESS”***

BEFORE THE

UNITED STATES SENATE

**COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS**

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342 Dirksen Senate Office Building**

INTRODUCTION

Chairman Lieberman, Ranking Member Collins, distinguished Members of the Committee:

On behalf of Secretary Napolitano, thank you for the opportunity to discuss the international efforts of U.S. Immigration and Customs Enforcement (ICE) to protect national security and prevent terrorist attacks. Today, I plan to discuss the Visa Security Program (VSP) in the context of the 9/11 Commission's findings, which emphasized the importance of our immigration system more thoroughly vetting individuals entering our country and developing functional counterterrorism measures.

Within the Department of Homeland Security (DHS), ICE's VSP is one of a number of programs designed to protect the homeland and identify individuals who present a risk before they can harm the United States. The VSP places a DHS law enforcement officer (i.e., an ICE special agent) in a United States embassy to work collaboratively with Department of State (DOS) consular officers and Diplomatic Security Agents to secure the visa adjudication process. Before describing the VSP, our budget, the plans for expansion, and challenges of expanding, let me describe ICE's international efforts more generally.

ICE's Presence Overseas

ICE, as the second largest federal investigative agency, has a significant international footprint. ICE, through our Office of International Affairs (OIA), has 63 offices in 44 countries, staffed by more than 300 personnel. ICE personnel in these offices collaborate with foreign counterparts in joint efforts to disrupt and dismantle transnational criminal organizations engaged in money laundering, contraband smuggling, weapons proliferation, forced child labor,

human rights violations, intellectual property rights violations, child exploitation, and human smuggling and trafficking, and facilitate repatriation of individuals with final orders of deportation.

In fiscal year (FY) 2009, ICE opened offices in: Amman, Jordan; Brussels, Belgium; Cartagena, Colombia; Guayaquil, Ecuador; and Jakarta, Indonesia and continued to expand its coordination with U.S. military commands, specifically United States Southern Command (SOUTHCOM), United States African Command (AFRICOM), and United States European Command (EUCOM). In FY 2010, to increase our overseas presence and advance the efforts to investigate crimes that reach beyond our borders, ICE is proposing to open offices in Afghanistan, Israel, Vietnam, and Yemen.

ICE's OIA is responsible for administering and staffing the VSP.

The Visa Security Program

During the creation of DHS, Congress gave DHS some oversight responsibilities for the visa process. Specifically, Section 428 of the Homeland Security Act (HSA) of 2002 authorized the Secretary of Homeland Security to: administer and enforce the Immigration and Nationality Act (INA) and other laws relating to visas; refuse visas for individual applicants in accordance with law; assign DHS officers to diplomatic posts to perform visa security activities; initiate investigations of visa security-related matters; and provide advice and training to consular officers. In short, the HSA directed DHS to assist in the identification of national security threats to the visa security process.

The visa adjudication process is often the first opportunity our government has to assess whether a potential visitor or immigrant presents a threat to the United States. The United States

Government has long recognized the importance of this function to national security. DHS regards the visa process as an important part of the border security strategy, and VSP is one of several programs focused on minimizing global risks. The VSP relies on trained law enforcement agents to look at an applicant in greater depth and examine their social networks and business relationships with a goal of developing information previously unknown to the United States Government to assess whether individual applicants pose security threats to the United States. ICE agents assigned to Visa Security Units (VSU) are professional law enforcement agents who focus on selected applicants and any connection the applicants may have to terrorism.

In the context of the visa security process, they begin by reviewing documents submitted by applicants, and reviewing the results of automated checks (from the Consular Lookout and Support System (CLASS), and others). To conduct a thorough investigation, an ICE agent assigned to a VSU must have the ability to interview the applicant of concern and must be exposed to local information to understand whether the applicant's affiliations raise any particular flags. Each individual VSU, with input from DOS, develops a targeting plan, based on assessed conditions and threats. Depending on the nature of the concern that an applicant poses a threat, the ICE agent's investigation may be complex and in-depth, in some cases taking months to complete. Of course, not every investigation lasts months. ICE agents assigned to the VSP are experienced law enforcement agents who have spent years developing interview, interrogation, and other skills while investigating crimes in the United States.

DHS does not participate in all visa adjudication procedures; rather, DHS becomes a part of the process following initial screening of an applicant. As such, where VSU's are present,

DOS consular officers and ICE agents must establish effective and productive partnerships in order to enhance the security of the visa process.

VSP efforts complement the consular officers' responsibility for interviewing the applicant, reviewing the application, and supporting documentation and conducting automated screening of criminal and terrorist databases, with proactive law enforcement vetting and investigation. In carrying out this mission, ICE special agents conduct targeted, in-depth law enforcement-focused reviews of individual visa applications and applicants prior to issuance, as well as recommend refusal or revocation of applications when warranted.

ICE now has VSU's at 14 high-risk visa adjudication posts in 12 countries. While I can not identify the specific posts in this forum, I will gladly brief the members and staff of this committee in a classified or law enforcement sensitive setting at a later date. At these 14 posts, in FY 2009, ICE agents screened 904,620 visa applicants and with their DOS colleagues determined that 301,700 required further review. Following investigation, in collaboration with their DOS colleagues, ICE recommended refusal of over 1,000 applicants. In every instance, DOS followed the VSU recommendation and ultimately refused to issue the visa. VSP recommendations have also resulted in DOS visa revocations.

Expansion of the Visa Security Program

Under the direction of the Homeland Security Council, beginning in May 2008, ICE and DOS collaborated on the development of the VSP Site Selection Methodology. In brief, the process for selecting a particular site for a VSU begins with an ICE site evaluation, which involves a quantitative analysis of threats posed and site assessment visits. The DHS formal nomination process follows, involving an analysis of ICE's proposals by DHS. Then, the

National Security Decision Directive-38 (NSDD-38) process, a mechanism that gives the Chief of Mission in a particular post control over the size, composition, and mandate of full-time staffing for the post, commences within DOS. Only once the Chief of Mission has approved an NSDD-38 request can ICE begin deployment.

ICE continues to look for opportunities to establish offices overseas to screen and vet additional visa applicants at high-risk visa issuing posts beyond the 14 posts at which we are currently operating. The FY 2010 budget designated \$7.3 million to sustain and expand the VSP. With this funding level, ICE estimates that it can deploy to four additional posts. ICE has been conducting site visits and facilitating the NSDD-38 process in an effort to determine whether it would be beneficial to expand VSP operations to additional high-risk visa adjudicating posts. Based on collaborative site selection methodology with DOS, ICE conducted additional classified threat assessments on four posts in preparation for joint VSP-DOS site visits to embassies/consulates abroad. The VSP program has continued to grow since its inception. While ICE is continuing to expand the program, further expansion is contingent on ICE's dedicating existing overseas funding to these efforts and approval of NSDD-38 requests at the posts in question.

ICE will continue moving forward to deploy new offices to the highest risk visa adjudicating posts worldwide as resources allow, and will continue to conduct joint site visits with DOS to create opportunities for deployment. Moreover, ICE recognizes that the VSP is but one relatively small component in the nation's counterterrorism strategy. My counterparts at DOS and I are engaged now in a process of determining a common strategic approach to the broader question of how best to collectively secure the visa issuance process. We look forward to continuing to report back to you with updates on this process.

Recent Successes

To put the VSP discussion in perspective, I offer two brief examples of the results of including ICE in the visa process. In September 2008, DOS raised concerns about visa applicants sponsored by an international non-governmental sports group. ICE investigated and determined that the majority of past applicants sponsored by the group remained in the United States beyond their period of admission, and that the sport group's president had three previous visa denials, with one on national security grounds. ICE disseminated information about potential future applicants throughout DHS and to DOS visa-issuing posts. This equipped CBP Inspectors stationed at airports and the border and DOS consular officers with detailed information about the sports group to prevent future use of the club as a mechanism to gain entry into the United States, and to prevent national security threats from exploiting the scheme to gain entry.

Secondly, in July 2009, again while examining visa applications, ICE agents identified an Iranian national who applied for a visitor's visa to come to the United States to attend an information technology (IT) conference on behalf of his employer. Although the Security Advisory Opinion (SAO) process did not reveal a basis to find the Iranian national ineligible, ICE's review revealed that the Iranian national's employer—on whose behalf he was attending the IT conference—is an Office of Foreign Assets Control (OFAC)-designated organization allegedly used by the government of Iran to transfer money to terrorist organizations, including Hezbollah, Hamas, the Popular Front for the Liberation of Palestine-General Command and Palestinian Islamic Jihad.

The visa applicant himself stated that he planned to attend the IT conference to explore the purchase of technology for his employer. While attending the conference alone did not

render the Iranian national inadmissible, the combination of attending on behalf of his employer (an OFAC-designated entity) and the stated purpose to “explore purchasing options” for IT equipment constituted reasonable grounds for denial of the visa. Therefore, ICE recommended that DOS deny the visa on national security grounds, in accordance with the INA, as his purpose for coming to the United States was to possibly procure IT equipment for a designated OFAC organization. DOS concurred with ICE’s recommendation and denied the visa.

I offer these examples to illustrate in real terms the benefit of a strong working relationship with DOS, and how the partnership advances the goal of preventing those who may intend to harm the United States from using a visa to enter our nation.

The Visa Security Program’s Security Advisory Opinion Unit (SAOU)

The Security Advisory Opinion (SAO) process is the mechanism administered by DOS, supported by other government agencies, to provide consular officers advice and background information to adjudicate visa applications abroad in cases of security or foreign policy interest. In May 2007, Congress mandated the creation of a Security Advisory Opinion Unit (SAOU) within the VSP. VSP now supports the SAO process and the SAOU’s findings are incorporated into the overall SAO recommendation used by consular officers to adjudicate targeted visa applications of national security or foreign policy interest.

The SAOU is currently operating a pilot program that screens visa applicants and communicates any potential admissibility concerns to DOS. The SAOU currently has co-located personnel at the Human Smuggling and Trafficking Center (HSTC), the National Targeting Center-Passenger (NTC-P), both located in the National Capital Region, and also has personnel assigned to the National Counterterrorism Center (NCTC). The integration of the SAOU into

these centers allows for real-time dissemination of intelligence between the various stakeholders in the visa adjudication process.

CONCLUSION

I would like to thank the Committee for the opportunity to testify today and for its continued support of ICE and our law enforcement mission. In partnership with the State Department and other vital partners, I will continue collaborating to ensure the security of the visa while maintaining a fair and efficient process for legitimate visitors and immigrants to enter the United States.

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