

Testimony of

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March 14, 2005

U.S. Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship
and
U.S. Senate Judiciary Subcommittee on Terrorism, Technology, and Homeland Security

"Border Security and Enforcement: The 9/11 Commission Staff Report on Training for Border Inspectors, Document Integrity, and Defects in the U.S. Visa Program"

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Introduction

Good afternoon and thank you for the opportunity to discuss terrorist travel with you today. My testimony is based on my work as a counsel on the 9/11 Commission "border security team," as an author of the 9/11 staff report, 9/11 and Terrorist Travel, and as a senior consultant for The Investigative Project on Terrorism. At the Commission, I was responsible for the investigation and analysis of the INS and current DHS border functions as pertains to counterterrorism, including 9/11 hijackers' entries and acquisition of identifications in the United States. My current work includes a study of terrorist travel tactics in the United States; specifically focusing on the abuse of our immigration system by 118 indicted and convicted terrorists.

Please note that the views I present here today are my own, and do not necessarily reflect those of the 9/11 Commission. I want to thank both Chairmen Cornyn and Kyl, as well as Vice Chairman Kennedy and Vice Chairwoman Feinstein and Members of the Subcommittees on Immigration and Terrorism, Technology and Homeland Security for holding this important hearing I also wish to applaud Congress for passing the National Intelligence Reform Act of 2004 that contained many valuable terrorist travel provisions born of the 9/11 Commission's recommendations, including the requirement for a terrorist travel strategy. It is the hope of many of us who are working on this important topic that this Subcommittee and Congress as a whole will continue to exercise its oversight authority on this important issue, to ensure that our Government continues to implement the important lessons learned as a result of the tragic events of September 11, 2001.

From the outset, let me make it clear that I, like many, consider the benefits and wealth of human potential that immigration brings to this country to be one of our greatest strengths as a nation. However, I also believe that we owe it to all Americans to maintain the integrity of our borders. To do so, we must scrutinize effectively those who seek to come here. September 11 has taught us that secure borders are a matter of national security. We will not have

secure borders until we enforce the laws already in place; until we properly train, equip and support our first line of defense; and until we are prepared to share more, not less information with one another.

Today I plan to discuss with you: (1) the threat posed by foreign terrorist travel operations; (2) examples of foreign terrorist travel operations; (3) current vulnerabilities that remain in the U.S. border system; and (4) potential recommendations for your consideration.

Foreign terrorist travel operations

Despite good initiatives by the administration, such as the deployment of U.S. VISIT to international airports, weaknesses in the U.S. border system still exist. Terrorists will continue to successfully enter the United States, because we still lack adequate technologies; integrated information systems that house biometric travel histories of visitors and immigrants; and specialized training in terrorist travel tactics. As noted in 9/11 and Terrorist Travel, front line immigration officers are not adequately trained to detect fraudulent travel stamps in passports, terrorist indicators in passports, or behavioral cues. Indeed, as a staff member for the 9/11 Commission I had access to more information about the techniques that terrorists use to gain unlawful entry in the United States than frontline officers. Without repeating the content and findings of 9/11 and Terrorist Travel, terrorists will use any infiltration tactic if it works, from hiding in a ship's hull or car trunk, to seeking legitimate visas, to entering into a sham marriage that will gain them access to either a visa waiver, or, better yet, a U.S. passport.

The travel operation and jihad. The vulnerability of our border system is well known to foreign terrorists. Take, for example, this translation of an August 2000 wiretap recently acquired from Italian authorities, discussing entering fraudulently the United States, the importance of jihad, and what seems to be a pending operation where "the goal is the sky." The conversation takes place between Es Sayed (the document forger active in Italy) and Abdulsalam Ali Ali Abdulrahman (a Yemeni who, according to the wiretap report, travels on a "diplomatic passport"):

A: This is worse than Iran, it's a terrifying thing, it moves from north to south from east to west: they see this thing only through a picture but it's crazy, who planned this is crazy but is also a genius, it will leave them mesmerized, you know the verse that says he who touches Islam or believes himself to be strong against Islam must be hit?

S: God is great and Mohammed is his prophet. They are dogs' sons.

A: They are. Let me go to Germany and we'll see: there are beautiful and brave women there, we have Jamal Fekri Jamal Sami. We marry the Americans, so that they study the faith and the Quran.

S: I know many brothers who want to get married, the American woman must learn the Quran.

A: They think they are lions but they are traitors, they perceive themselves as the world power but we'll deal with them. I know brothers who entered the US with the scam of the wedding publications, claiming they were Egyptians and not revealing their true identity and they were already married.

S: You must be an actor, if they catch you it's serious.

A: Because they like Egyptians there because Mubarak has many interests with them, but sooner or later he'll end up like Sadat.

S: It was a good attack that at the military parade.

A: A mujahid for the cause of jihad never gets tired for jihad gives you the strength to go on. We are in a country of enemies of God but we are still mujahideen fighting for a cause and we should take the youth here as Sheikh Abdelmajid does. The mujahid that fights in the enemy's lines has a greater value. Sheikh Abdelmajid is considered the emir of propaganda for the entire ummah. We can fight any force by using candles and planes and they won't be able to stop us with their heavy weapons. We have to hit them day and night. Remember: the danger in the airports, in that country the fire is burning and is only waiting for some wind. Our goal is the sky . . .

Preparing to travel west. Once Al Qaeda recruits are trained and given instructions, they are schooled in travel techniques. A travel manual discovered on the hard drive of a computer that had belonged to al Qaeda's top leadership (Ayman Al-Zawahiri and Mohammed Atef) before an American journalist acquired it in the autumn of 2001 discusses the special care recruits should use to pass unnoticed into the West. Its advice to operatives on how to

avoid raising any red flags that could bring great scrutiny includes:

? Don't wear short pants that show socks when you're standing up. The pants should cover the socks, because intelligence authorities know that fundamentalists don't wear long pants . . .

? If a person, for example, wears a T-shirt or a shirt that has the drawing of a spirit--that is, a bird, an animal, etc.--don't cut off the head [the Islamic tradition frowns on the depiction of living beings]. Either wear it with the drawing, or don't wear it at all. ...

? Don't wear clothes made in suspect countries such as Iran, Pakistan, Iraq, Libya, Sudan, North Korea, Cuba, etc.

? Underwear should be the normal type people wear, not anything that shows you're a fundamentalist.

? A long time before traveling--especially from Khartoum--the person should always wear socks and shoes, to get rid of cracks in the feet from barefoot walking, which take about a week to cure.

? If the mission requires wearing a chain, you should show it by opening the top buttons of the shirt . . .

? Never use perfumes used by the brothers [advice goes into much detail here].

The Vulnerabilities of the U.S. Border System

Once the terrorist decides or is instructed to come to the United States, he must determine how to enter. For the 9/11 hijackers, the instruction was to get a legal visa. Since Saudis were treated as a "de facto" visa waiver country, al Qaeda leadership soon figured out that Saudis could easily gain access to the United States. On 9/11, all but one of the unskilled "muscle" hijackers was Saudi.

Getting the visa. Terrorists prefer to enter the United States under the guise of legitimacy, most often by obtaining US visas. Every potential 9/11 hijacker sought a visa to come to the United States. Of the 20 granted (included is Mohamed Al-Kahtani), nineteen were for B1/B2 (business/tourist) visas and one was for a student visa (when the tourist visa application failed). Two other visa applications were denied to Yemenis because the consular officers feared they were intending immigrants; that once here they would not leave for economic reasons.

In thirteen instances, hijackers presented passports less than three weeks old, but this did not result in any extra scrutiny by the consular officers adjudicating their visas. Our analysis led us to conclude that the 9/11 hijackers acquired new passports in order to hide travel stamps that would have revealed travel to Afghanistan, which could have raised red flags for border inspectors. In fact, we know that two of the hijackers did attempt to camouflage their travels to Afghan training camps by having an Al Qaeda document forger insert false entry/exit stamps (or cachets) into their passports.

In a study I have conducted at the Investigative Project on Terrorism since the end of the 9/11 Commission, I have studied a total of 118 indicted and convicted individuals related to terrorism. In that study, I have found that thirty-seven held a valid visa upon entry. This number includes the six 9/11 hijackers known to have committed immigration violations while in the United States. Student visas to attend various universities were used by 16 individuals and four had applications approved to change status from tourist to student. Another 17 used a visitor visa--either tourist (B2) or business (B1)--to enter. In at least 13 instances, the persons in our study overstayed their visas. In all 118 cases, the terrorist sought to stay in the United States once he or she had successfully entered.

Seeking admission. One of the larger questions I tried to answer for the Commission was how the 9/11 hijackers only failed once in 34 attempted entries at airports of entry over 21 months. My summarized answer to that question was as follows:

Border inspectors at U.S. airports were unaware of the potential significance of indicators of possible terrorist affiliation in conspirators' passports and had no information about fraudulent travel stamps possibly associated with al Qaeda. No inspectors or agents were trained in terrorist travel facilitation and document practices. The culture at the airports was one of travel facilitation and lax enforcement, with the exception of programs to interdict drug couriers and known criminals.

These conclusions were the result of my interviewing 26 of 38 inspectors involved in 28 of the attempted entries. In the four instances where there was a secondary immigration inspection, I was able to interview both the primary and secondary inspectors involved with those adjudications.

The interviews served multiple purposes: (1) memory about contact with the hijackers; (2) training specific to counterterrorism, inspection procedure and immigration law; and (3) the current state of border security at ports of entry (many of the recommendations in this testimony evolved from these interviews). I summarize those interviews in 9/11 and Terrorist Travel, pp. 131-138, and need not do so here. However, it is worth noting a few of these interviews' findings that continue to hold resonance today.

? Terrorist indicators. Immigration inspectors are still not provided declassified information about some fairly obvious terrorist indicators in documents that should have resulted in secondary inspection for at least three 9/11 hijackers.

One of those hijackers was Khalid Al Mihdhar, who had a terrorist indicator in his passport when he entered at John F. Kennedy International Airport on July 4, 2001. When I showed a digital image of that passport to the immigration inspector who admitted him nearly three years later (in June 2003), and asked her if she noticed anything unusual about the document (she was trained in document fraud), she did not note the terrorist indicator. The irony was, I

could not tell her. The information was classified and remains so today.

? Lack of clear guidance on admission rules and tourist length of stay. Immigration inspectors do not have any discretion in determining a tourist's length of stay. Tourists on visas receive an automatic six-month length of stay and are not required to produce a return ticket. Therefore, when the immigration inspector asks the tourist how long he intends to stay, and the answer is, (as was the case with a few of the 9/11 hijackers), "a few weeks," the inspector is required by law to give that visitor a six month length of stay. Ironically, visitors from visa waiver countries, which are considered lower risk than visa country visitors, are only permitted a three-month stay by law. In contrast, immigration inspectors have full discretion when granting a business length of stay, and views about the "standard" length of stay for business visitors differs amongst inspectors; there are no standard rules for these types of visitors.

? Inadequate primary inspection training and no secondary inspection training. Prior to 9/11, immigration inspectors only received about a half-day training in primary inspections (a 45 second to 1 minute interview) and none in secondary inspections. The hijackers were referred for a total of six secondary inspections, four immigration secondaries and two customs secondaries. One result of the lack of standardized training for these inspectors was that a "red flag" to one primary inspector meant nothing to others- for example, sufficiency of funds. Therefore, the very reason one of the hijackers (Saeed Al-Ghamdi) was referred to secondary inspection was considered of little interest to other primary inspectors with similar information presented to them by hijackers. That also meant that when Al-Ghamdi was interviewed in secondary inspection, the inspector who conducted his interview did not consider sufficiency of funds valid criteria for questioning, and admitted him.

? Lack of adequate information. At the time the 9/11 hijackers were entering the United States, immigration inspectors did not have available to them basic information to verify identities, information provided by the hijackers, or the validity of travel documents. There were no images of visa application photos available; no lost and stolen passport database; no efficient way to research fraudulent stamps or other characteristics in travel documents; watchlisting was entered manually and not real time; the student-school system was wholly dysfunctional. And certainly there was no one-stop-shopping for traveler histories that tied together biometrics and entry/exit/benefit data.

Immediately after 9/11, INS Commissioner Jim Ziglar and Assistant Secretary for Consular Affairs Mary Ryan worked together to make sure immigration inspectors would have adequate access to consular photos. However, today, for example, while Interpol has produced a lost and stolen passport database that holds more than 5.6 million records from sixty-seven countries, including the United States, China, and Russia, it is only available at secondary inspection terminals at ports of entry. And libraries worth of fraudulent document examples are not electronically accessible, but rather exist as overwhelming sets of incomplete binders full of "alerts" at ports of entry.

Illegal entry. James Loy, deputy secretary of the Department of Homeland Security told Congress last week that "several al-Qaeda leaders believe operatives can pay their way into the country through Mexico and also believe illegal entry is more advantageous than legal entry for operational security reasons." This information dovetails with an unclassified post-9/11 Border Patrol warning that I came across on the Commission warning of meetings in Madrid, Spain between members of Al Qaeda and the FARC. A topic of discussion at this meeting was the use of Mexican Islamist converts to infiltrate the United States across the southwest border, (presumably illegally, since the alert went to the Border Patrol). Recent reports warn that a "growing number [of illegal aliens picked up by the Border Patrol on the southwest border] hail from Central and South America, Asia, even Mideast countries such as Syria and Iran. In 2003, the Border Patrol arrested 39,215 so-called 'OTMs,' or other-than-Mexicans, along the Southwest border. In 2004, the number jumped to 65,814."

? A Hizballah operative in a car trunk enters the United States over the southwest border. Mahmoud Youssef Kourani left Lebanon to travel to Mexico after bribing a Mexican consulate official in Beirut with \$3,000 to obtain a Mexican visa. Once in Mexico, he sought entry into the United States. Around February 2001, Kourani succeeded: he illegally entered the United States across the southwest border by hiding in a car trunk.

In November 2003, a federal grand jury indicted Kourani on charges of conspiring to provide material support to Hizballah, a designated foreign terrorist organization. The indictment alleges that Kourani was a "member, fighter, recruiter, and fundraiser for Hizballah who received specialized training in radical Shiite fundamentalism, weaponry, spy craft, and counterintelligence in Lebanon and Iraq." It also claims that Kourani recruited and raised money for Hizballah while in Lebanon. Kourani goes to trial in April 2005.

? An Al Qaeda operative attempts entry over the northern border. Nabil Al-Marabh stayed at a terrorist guesthouse in Pakistan known as the House of Martyrs, engaged in weapons training in Afghanistan, and worked for the Muslim World League--then an important source of al Qaeda's funds --in the early 1990s. He then worked at the same Boston cab company as individuals convicted in Jordan for the Millenium plot to blow up religious and western tourist

locations in Jordan. These individuals identified Al-Marabh as an al Qaeda operative. Al-Marabh maintained a Boston address from 1989 to 2000. He also lived in Toronto, Detroit, Tampa, and Chicago.

On June 27, 2001, Al-Marabh tried to illegally enter the United States near Niagara Falls by hiding in the back of a tractor-trailer. He had a forged Canadian passport and fake social insurance card. Previously, he had regularly traveled illegally between Canada and the United States. Moreover, Michigan state records showed Al-Marabh receiving five driver's licenses there in thirteen months; he had licenses for Massachusetts, Illinois, Ontario, and Florida, and a commercial driver's license and a permit to haul hazardous materials, including explosives and caustic chemicals.

In September 2001, authorities raided a Detroit residence that had Al-Marabh's name on the mailbox. They found three men with fake immigration documents, airport identification badges, and a notebook containing handwritten notes about security at a U.S. military base in Turkey and an airport in Jordan. These men, who may also have been involved in a plot to kill former defense secretary William Cohen during a visit to Turkey, were later charged with being part of an al Qaeda sleeper cell. They were convicted, but the verdict was thrown out in September 2004.

Al-Marabh was arrested in Chicago in September 2001 on a parole violation related to his stabbing of a man who had lived in his apartment. In 2002, he pled guilty to conspiracy to smuggle an alien into the United States and was ordered deported. Prosecutors said the government had no evidence linking him to terrorism. The judge questioned the government's previous documentation of Al-Marabh's ties to terror and also noted he was found with \$22,000 in cash and \$25,000 worth of amber jewels in his possession when he was arrested. He was deported to Syria in January 2004. Months later, a press release from Immigration and Customs Enforcement called Al-Marabh a "suspected terrorist."

Embedding in the United States. There is nothing more important to a terrorist than getting where he needs to go and being able to stay there long enough to carry out his or her instructions. We call this "embedding." As I wrote in 9/11 and Terrorist Travel, "while the rhetoric continues to focus on the critical mission of terrorist entry, virtually no attention is being given to the most recent information about terrorist travel and to the mission... of preventing terrorists who get in from staying in."

Immigration benefits. The inadequacies of our Citizenship and Immigration Services agency continue to make embedding relatively easy. Political asylum and naturalization are two of the benefits most rampantly abused by terrorists. And even when naturalization is acquired, we do not require the new U.S. citizen to renounce his or her country of origin, or hand in old passports. One well-known terrorist and naturalized U.S. citizen, Abdulrahman Alamoudi, now spending 23 years in prison for illegal financial dealings with the Libyan government (which included a plot to assassinate a Saudi prince), was able to hide much of his travel abroad from U.S. immigration inspectors for years by using his old passports for travel while he was visiting countries outside the United States.

? Political asylum. Terrorists have, and will continue to, claim political asylum. Case law in the Ninth Circuit today holds that if the basis for an asylum applicant's claim is that his home government has accused (but not prosecuted) that applicant of being a terrorist or member of a terrorist organization, such an accusation stands alone as a valid basis for a claim of political persecution. The Ninth Circuit will overturn an immigration judge's finding of credibility while essentially refusing to hear any evidence that contradicts the applicant's credibility. In addition, Ninth Circuit case law places the burden on the government in terrorism cases, essentially requiring the government to prove that the asylum applicant is a terrorist rather than placing the burden of proof on the applicant that he or she is not a terrorist. The Ninth Circuit thus contradicts both immigration reforms passed into law via this committee in 1996 and Supreme Court holdings that the asylum applicant bears the burden of proof that he or she is entitled to relief. A 2002 Supreme Court petition by the Solicitor General describes the problem in the Ninth Circuit as follows: "the Ninth Circuit has developed a body of circuit law that relieves the applicant of his burden of proof in asylum cases and allows the court to substitute its own views about contested record evidence for reasonable determinations of the [immigration court]." The problem is compounded by the fact that the Ninth Circuit decides about one-third of the 45,000 to 75,000 asylum claims filed annually, with appeals "disproportionately" sought here because of its case law. In 2001, 333 of 541 asylum cases were 9th Circuit decisions. The petition concludes, the "9th Circuit's departure from the judicial-review requirements of the Immigration and Naturalization Act therefore compromises enforcement of the immigration laws." Across the nation, affirmative political asylum cases in FY 2003 had an approximate 60% success rate; defensive claims had a 26% success rate. The 60% success rate holds steady as well for the period 1973-2003.

In my recent study of 118 terrorists, 23 who lacked proper travel documents or sought to avoid deportation claimed political asylum. Below are examples of terrorists who have claimed political asylum- some of whom have only done

so once deportation proceedings are initiated against them, basically as a last effort to delay or avoid being deported.

- o Shahawar Matin Siraj planned to pack bombs in backpacks and detonate them about a block from the Republican National Convention in August 2004. He was picked up after wiretaps recorded him asking an informant for help building a bomb. Siraj's family had requested political asylum in 1998.

- o Nuradin Abdi, indicted in June 2004 for participating in an al Qaeda plot to blow up a Columbus, Ohio, shopping mall. Abdi applied for and received asylum in 1999.

- o Aksoy, aka Hasan Yilmaz, is currently serving a ten-year sentence for making false statements in immigration proceedings, possessing a false alien registration card, and being an illegal alien in possession of a firearm. Aksoy had unsuccessfully filed for political asylum under a false identity prior to his indictment in 2000. Agents discovered a loaded 9 mm semiautomatic pistol under Aksoy's mattress. They also found numerous false identity documents, as well as an instruction manual on procuring and manufacturing such documents. Another manual provided information on bomb making. Aksoy's detailed handwritten notes on how to construct a bomb were examined by an FBI bomb expert who declared them quite practicable.

- o Hesham Hedayet, who killed airline personnel at LAX on July 4, 2002, filed for political asylum in 1992 but ended up acquiring legal status through a diversity immigration lottery.

- o Rabih Haddad, a Lebanese citizen and the founder and chairman of GRF (Global Relief Foundation, a Specially Designated Global Terrorist), was arrested on December 14, 2001, the same day that its offices were raided. Haddad was originally admitted to the United States in 1998 as a non-immigrant visitor. His visa expired on August 31, 1999. Haddad filed for asylum to prevent deportation, but was ordered deported with an immigration judge finding Haddad "a substantial risk to the national security of the United States." Haddad appealed again and was denied again, and on July 14, 2003, Haddad was deported to Lebanon.

- o At least three people closely associated with the September 11 hijackers claimed political asylum: Eyad Mohammed Mohammed Mustafa, who aided hijackers in fraudulently obtaining Virginia identification cards); Anwar Nasser Aulaqi, the spiritual advisor to two hijackers; and Mohdar Mohamed Abdullah, who helped two hijackers in California and claimed to know about 9/11 weeks prior to the attacks.

- o Sometime prior to 2000, Abdel Hakim Tizegha, an associate of the LAX Millennium plotters, claimed political asylum based on persecution by Muslim fundamentalists. He said he entered at Boston as a stowaway on an Algerian gas tanker. Hearings were rescheduled five times. The claim was denied two years later, and then appealed. Nine months later his location was unknown.

- o Abu Mezer, responsible for the New York City subway plot in August 1997, was arrested in Washington State in January 1997 after his third attempt to illegally enter the United States. The next month, he applied for political asylum, denying an affiliation with Hamas. In July, he did not show up for his hearing. Instead, he called his attorney and stated he had married a U.S. citizen and was living in Canada. On Aug. 1, 1997, he was arrested in New York City based on an informant's tip.

- o Abdelhaleem Al-Ashqar was indicted in Chicago for RICO with Mousa Abu Marzook (who just ran for president of the Palestinian Authority) for running Hamas. Ashqar overstayed his visa, went to jail in New York for refusing to testify before a grand jury, and then claimed asylum on the grounds that if he were deported (to Israel) he would be persecuted because the Israelis believed he was Hamas. His asylum claim was denied, but he fought through the appeals for at least six years. He is still being detained today.

- o Muin Mohammad (aka Muin Shabib, Kamel Mohammad Shabib, and Abu Muhammad) was identified by the government of Israel as a senior Hamas operative formerly in charge of Hamas' Central Section (Ramallah-Jerusalem) in the West Bank. On March 16, 1994, Shabib admitted during an FBI interview that he supported Hamas financially and politically. Shabib was interviewed under the pretext of gaining information relating to his immigration status (he had applied for political asylum in December 1993).

- o Three terrorists involved in the Feb. 26, 1993, World Trade Center bombing, Ramzi Yousef, Biblal Alkai, and Sheik Omar Abdel Rahman all sought political asylum. Yousef, mastermind of the bombing, was initially arrested with fraudulent travel documents upon entry at JFK International Airport in August 1992. Yousef claimed political asylum and was released pending a hearing. Alkai, also a key witness in the Meir Kahane murder, filed for "temporary protected status" using a fake birth certificate and fake immigration entry record in August 1991, and for political asylum in May 1992 falsely claiming a prior illegal entry. Sheik Rahman, who issued the fatwa for Anwar Sadat's assassination and was also convicted for his role as the spiritual leader of the 1995 conspiracy to bomb New York City landmarks, had a long history of immigration violations and fraud, including a March 1992 political asylum claim to prevent his pending deportation.

- o Mir Aimal Kasi, who killed two people outside CIA headquarters on Jan. 25, 1993, became an illegal overstay in February 1991. In February 1992, he simultaneously sought both political asylum and amnesty under a 1986 law. While the applications were pending, he was able to obtain a Virginia driver license and work as a courier.

? Naturalization. My recent study shows that in the case of 25 sham marriages, at least 18 resulted in legal

permanent residency or naturalization.

o Sham marriage. Seven of the ten conspirators in the 1993 Landmarks plot married U.S. citizens. Six of them successfully converted the marriage into legal permanent residency or naturalization. Three key defendants in the 1998 East Africa bombings also did so: Ali Mohamad (who trained at Fort Dix and then trained Osama Bin Ladin's bodyguards in Africa and Afghanistan); Wadi El-Hage (Bin Ladin's personal secretary and leader of the Nairobi cell until his capture in September 1997); and Khalid Abu Al-Dahab (who married three American women before he finally was able to secure legal permanent residency, and eventually naturalization). During his twelve years in the United States, he provided money and fraudulent travel documents to terrorists around the globe, including those involved in the East Africa bombings.)

From January 1999 through January 2000, Said Mohamad Harb, one of the key figures in Hizballah's North Carolina cigarette smuggling operation run by Mohamad Hammoud, which raised millions of dollars for Hizballah, helped secure three fraudulent visas and three sham marriages for the purpose of "legally" bringing to the United States his brother, his brother-in-law, and sister so that they might become legal permanent residents. The two men each obtained a nonimmigrant visa from the U.S. embassy in Cyprus; though given one- and two-week lengths of stays for conducting business upon entry into the United States, each married a U.S. citizen immediately after his arrival and therefore was allowed to stay indefinitely. In the case of Harb's sister, a male U.S. citizen was paid to meet her in Lebanon and then travel with her to Cyprus, where their marriage enabled her to acquire an immigration visa. In June 2000, Harb also attempted to give an immigration special agent a \$10,000 bribe so that another brother could enter the United States. All the conspirators were convicted of all counts against them, including the immigration violations.

o Terrorist Affiliation. The case of Fawaz Damrah is a success story of U.S. law enforcement. Damrah is an imam in Cleveland with heavy ties to the Palestinian Islamic Jihad. He was convicted in September 2004 of "illegally procuring" his naturalization by failing to make clear his terrorist affiliations on his naturalization application. The result was that he was stripped of his citizenship based upon a somewhat novel approach to these cases taken by the Justice Department's Counterterrorism Section, and the prosecutor in that case, Cherie Kringsman. The 2004 National Intelligence Reform Act provides for a "Special Office of Investigation" for the purpose of dealing with these types of issues.

Identification documents. Once in the United States, it is essential to the terrorist that he carries out his instructions. In our experience, that means finding a "legitimate" way to stay here. State and federal-issued identifications are critical for proper assimilation.

The hijackers acquired a total of thirty-four identifications: thirteen driver's licenses, two of which were duplicates, and twenty-one USA or state issued identification cards, usually used for showing residence in the United States or a state. Seven hijackers used fraudulent means to acquire legitimate identifications in Virginia, through fake residency certificates provided by bribed Virginia residents. If a birth certificate or social security card had been required (whose verification was also required) the hijackers would have been hard pressed to obtain validly issued state/U.S. identifications. We do not know how the other identifications were obtained; except for recent information that one hijacker's California license was apparently acquired through a loophole in identification requirements under California law.

The hijackers' acquisition of driver's licenses and identification cards was clearly part of the hijackers' overall travel strategy that included fraud in every aspect of their travel: using fraudulently altered passports to obtain visas, entry, and immigration benefits through fraud. I, along with my 9/11 border team, think they obtained the U.S. issued identifications to help them stage their operation inside the United States, as these identifications allowed them to move freely around the country to meet, plan, and case targets, open bank accounts, rent cars, take flying lessons, and ultimately, board the airplanes on 9/11.

FAA regulations required that airline screeners view a government-issued identification as part of airline screening procedures. On at least six occasions, hijackers boarding aircraft on the morning of 9/11 gave U.S. issued identifications to airline personnel as their form of ID when checking in. Three of these were fraudulently obtained in Virginia and used at Dulles (in northern Virginia) to board flight 77 (into the Pentagon). The logical reason for this was so they could show the Dulles screeners Virginia identification documents, as opposed to Saudi passports, as their required ID, and thereby avoid raising suspicion. Airline personnel told us that the Virginia identifications did just that.

The only hijacker that we know did not use a U.S.-issued identification was Satam Al-Suqami, who was the only person who knew he was in the United States illegally. He used his passport instead. The fact that Suqami was the only hijacker who did not try to obtain a U.S. issued identification is an indication that terrorists consider obtaining a U.S. issued identification risky to their status inside the United States, if they think applying for that identification will expose their true identity or purpose. In Suqami's case, he may well have avoided seeking one because he knew he had been out of status since May 2001. Therefore, when his co-conspirators were obtaining their multiple identifications in August 2001, he feared he or the operation might be exposed if he tried to secure identification for

himself. (Suqami had already tried to get an expanded length of stay in April, but had been refused by Bahamian immigration and returned to the United States.)

As to the hijackers who did obtain driver's licenses and U.S. issued identifications, if our issuing regime had been tighter in other ways, such as demanding more secure documentation before the identification could be issued, or limiting the issuance of a driver's license to more permanent U.S. residents, more of the 9/11 terrorists would have had difficulty obtaining a driver's license or other state identification. This, in turn, would have made it more difficult for them to travel, plan, meet, case, finance and carry out the attacks. If the hijackers had not been able to obtain state identifications, they all would have been required to show screeners their Saudi, Lebanese, and UAE passports to gain access to the planes. In some instances, showing these passports on a domestic flight could have triggered greater scrutiny, including at checkpoints where their knives and pepper spray could have been detected. When "legitimate" identifications are not accessible, terrorists will resort to fake identifications. Take, for example, El Sayyid Nosair, who married a U.S. citizen in 1981 and was naturalized in 1989. When he was naturalized, the Immigration and Naturalization Service (INS) was unaware that the FBI had knowledge of Nosair's weapons training of Islamic militants.

In November 1990, a year after Nosair was naturalized, the radical rabbi Meir Kahane was murdered in New York City. Nosair, seen holding the gun at the scene, attempted to flee but was caught. He was eventually acquitted of murder but convicted of weapons charges. He was later indicted for his role in the 1993 World Trade Center bombing, in part because he had in his apartment numerous sensitive U.S. military documents from Fort Bragg, thought to have been acquired from Ali Mohamed. In March 1993, while searching the apartment of Ibrahim El-Gabrowni, who was the messenger in the World Trade Center plot, authorities discovered a series of fraudulent Nicaraguan passports for his cousin Nosair and Nosair's family. They also found five birth certificates-- for Nosair, his wife, and their three children--and driver's licenses, all in the names of aliases.

My study shows that in addition to Nosair, at least 14 individuals connected to terrorism were indicted for identification scams. As long as we can force terrorists to revert to fake id scams, we are more likely to catch them before they launch an attack.

Recommendations for Consideration

These hearings today are an indication that the putting measures in place to deal with terrorist travel increasingly are becoming a priority for the U.S. Government. However, our current border security measures remain woefully inadequate. We must put in place adequate resources to make them effective and enforceable. Right now, our border officers do not have the tools they need to keep us safe. Below are a few specific recommendations, born of conversations with U.S. immigration officers and supervisors in the field, and the forensic document examiners who work with our front line immigration officers daily.

U.S. border functions overseas and at home.

? We should require passenger manifest lists an hour prior to the departure of international flights.

? An easily searchable e-library of fraudulent documents and entry/exit stamps, should be accessible from all consular offices, ports of entry, Border Patrol stations, at the Law Enforcement Service Center, and to state and local law enforcement.

? Border security personnel must have access to the travel intelligence they need to detect terrorists, through a combination of increasing the security levels of border facilities or through declassification of the necessary information.

? DHS, CIA, and the State Department should consider cross training specialists who can be deployed to locations where intelligence indicates high levels of terrorist travel.

? Consular offices should have a version of a "visa secondary" similar to an immigration secondary, with training and guidelines that consider the potential national security risk of each applicant. For example, seeking a visa (when one is already valid) with a new passport may be considered a reason for a visa secondary. (Such was the case with 13 of the 9/11 hijackers.)

? We should continue to monitor implementation of expedited removal at our land borders, but require biometrics to be taken prior to release. In addition, we should pass legislation that bars those who voluntarily depart or are removed on an expedited basis from receiving any U.S. immigration benefit for a specified time period.

? Whenever travel documents are verified to be fraudulent, they should be confiscated. This was done in San Diego in the early 1990s and statistics showed a marked decrease in recidivism.

? Training must include adequate role-playing in primary and secondary inspections, including key behavioral cues that indicate a possible national security risk.

? Information systems must contain full traveler histories with biometrics, and must be available throughout the U.S. border system.

? The former TIPOFF watchlist, now housed with the FBI, must be available in a real time, business-to-business manner to consular and immigration officers.

? Interpol's lost and stolen passport database should be made available in a real time, business-to-business manner to consular and immigration officers.

U.S. border functions at home.

? At ports of entry, personnel should have standardized operating procedures, including guidelines for screening each class of entrant (e.g. tourists, students, immigrants, U.S. citizens).

? At ports of entry, personnel should have adequate time to screen incoming visitors, and their efforts to enforce the law in a customer-oriented manner should be applauded.

? Length of stay for visa holders should match, at maximum, the three-month length of stay afforded visa waiver visitors.

o Consular officers should be able to make recommendations on length of stay for tourists from visa countries, with immigration inspectors being given discretion to consider the recommendation and length of stay.

o Eliminate extension of stay benefits for first time visitors, similar to the elimination of change of status for those seeking to attend a U.S. school.

o Adopt national standard operating guidelines for length of stay determinations for tourist and business visitors.

o Require a return ticket for tourist and business visitors.

? Supervisors at ports of entry must be required to have adequate training in immigration law and procedures prior to attaining that position. Across the country today, former Customs officers unfamiliar with immigration law are ultimately responsible for making decisions on removals of visitors seeking admission.

? Continue deployment of U.S. VISIT, and maintain a priority in developing exit kiosk technologies.

Enforcing immigration laws and benefits.

? For persons with legal U.S. immigration status who have been convicted of a terrorism-related offense, it should be considered whether legal status-legal permanent residency or naturalization-should be automatically revoked upon conviction. An appellate process should be streamlined.

? Political asylum should be reserved for those with legitimate claims, and courts should be required to consider all relevant evidence pertaining to the credibility and political persecution claims of an asylum applicant.

? Those seeking state-issued identifications must have their legal status and identity verifiable the duration of the ID should match length of stay, and states should follow standards that assure greater security to their identification documents.

? Memorandums of Understanding (such as in Alabama and Florida) that establish training and cooperative interaction between state police and federal immigration agents should be encouraged.

? Adequate human and technical resources should be deployed to consular offices, ports of entry and Border Patrol stations according to need and risk.

We also must consider the bureaucracy that houses the U.S. border system, and should give serious consideration to the creation of a Department of Immigration and Border Protection. Right now, immigration services, (CIS) immigration enforcement (CBP and ICE), and border policy (BTS) are all co-located at DHS. Visa issuance remains at the State Department. It is not the fragmentation of these agencies that is necessarily the problem, however. Instead the problem is one of accountability and access to information. Right now, there is no one who answers directly to the President solely on border issues, nor has direct access to the top tiers of intelligence.

Instead, the creation of DHS has replicated one of the problems of legacy INS: too many layers of bureaucracy between the president and those on the front lines of immigration policy-making and information gathering. This problem is documented in 9/11 and Terrorist Travel.

Today's DHS Secretary not only has to deal with an overly complex set of border, immigration and customs enforcement, and immigration benefit issues, but wholly new arenas for the government such as information assurance and infrastructure protection. This inevitably means that the DHS Secretary (like all previous parent organizations of immigration agencies) has a multitude of responsibilities, only a handful of which are critical to border security. No one thoroughly knowledgeable or directly responsible for the border system is available to answer questions at a cabinet meeting or listen to critical intelligence briefings. Consider the following factors:

? Accountability and access to the President are keys to having the right information from the right people to make border security effective. Border security never has been effective in this country.

? U.S. immigration policies inform our foreign policy and affect the world's view of the United States. Immigration has always been central to shaping our identity as a nation. A Department of Immigration and Border Protection would reflect that importance.

? Immigration issues and laws are immensely complex, politically and legally, and require a tremendous amount of expertise to deal with them effectively.

? Well-honed border policies have become a top priority for national security.

? About 40 percent of DHS employees, or about 40,000 personnel, are in a border-related agency or directorate. That is more than the year 2000 Congressional Budget Office numbers for the Department of State (27,000); the Department of Labor (16,000); Department of Education (5,000); Department of Energy (16,000); and the Department of Housing and Urban Development (10,000).

As described in 9/11 and Terrorist Travel, ever since their inception, immigration services have been treated poorly in the hierarchy of government bureaucracies:

Although the nation's growth depended on successive waves of immigrants, the Bureau of Immigration never seemed quite important enough to become its own department, with its own secretary reporting directly to the president of the United States. In fact the bureau was something of an administrative orphan. Over the century its name and bureaucratic home changed repeatedly, and increasing numbers of confusing statutes created conflicting jurisdictions in both immigration services and enforcement.

The endnote to that paragraph reads:

In 1895, the Bureau of Immigration was created and placed under the Secretary of the Treasury. In 1903, the bureau moved to the newly created Department of Commerce and Labor, taking the name the Bureau of Immigration and Naturalization in 1906. When the Department of Labor was created in 1913, the bureau moved with it. In 1933, these functions were consolidated to form the Immigration and Naturalization Service under a commissioner. In 1940, the Service was transferred to the Department of Justice where it remained until March 2003. See "History of Immigration and Naturalization Agencies," 8 U.S.C. § 1551. In addition, there are at least 150 statutes providing the legislative history of immigration.

With rumors that CBP seeks to absorb ICE, interest in shifting the BTS policy shop into the office of the DHS Secretary, and infighting between CIS and ICE, and ICE and CBP, many bureaucratic issues remain to be resolved. Perhaps placing these border functions in a standalone department would allow desperately needed reforms to be put in place, including strategic planning for budgets and resources that could finally make the U.S. border system enforceable and effective.

Conclusion

Terrorists are creative and adaptable enemies. The 9/11 hijackers probed our defenses, found our weakest points, and ruthlessly exploited them. To counter the threat, we must be aware of new trends in terrorist travel. We must be more flexible in our efforts to counter them.

We must upgrade our border system now. Our current system sets the bar far too low for terrorists trying to enter the United States. Fortunately, our frontline officers are extremely dedicated, talented, and eager to do everything they can to protect this country. Now they need the tools and the authority to do their job. Better training, government-wide integrated databases, standardized procedures, biometrics, the latest technology, and the authority to trust their hard-earned instincts, will empower these dedicated officers to keep our country safe.

The thousands of dedicated officers responsible for visa issuance, entry, and immigration adjudications have an overwhelming task: to identify, out of the millions who seek entry into this country each year, the few who represent a danger to the United States. Keeping our borders open to well-meaning legal immigrants, who contribute to our economy and society, while keeping out terrorists and others seeking to harm us, should be a top priority. The recommendations in this testimony can make our borders more secure, and more efficient, than ever before.