

Testimony of
Mr. Michael Dougherty

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U.S. Department of Homeland Security

STATEMENT

OF

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REGARDING A HEARING ON

VISA REVOCATION/INFORMATION SHARING BETWEEN DHS AND DOS

BEFORE THE

SENATE SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY AND CITIZENSHIP

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2:30 pm

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MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, thank you for the opportunity today to update you on the Bureau of Immigration and Customs Enforcement's (BICE) efforts to combat terrorism and to explain our role in the visa revocation process as well as our efforts to improve information sharing within the Department and with the Department of State on visa revocations and related national security information. No mission of the U.S. government is more important than protecting the Nation and the American people against future terrorist attacks. That mission is the paramount responsibility of the newly created Department of Homeland Security (DHS). The work of BICE is an indispensable part of fulfilling this mission.

Equally as important is knowing in real time when Department of State (DOS) or another government agency has developed information about or taken action, including a visa revocation, with respect to an individual who has entered but not departed. Since September 11, the law

enforcement community has risen to the challenge of increasing communications and following through in national security information gathering, intelligence sharing, and investigations. I am pleased to be here today to discuss BICE's role in the investigations of all referred visa revocation matters.

INTRODUCTION

As the tragic events of September 11, 2001 illustrate, those intent on destroying America took advantage of our generosity and openness by exploiting any mechanism to gain access to the United States. The nineteen hijackers used our immigration system to enter this country and carry out the deadly attacks of September 11th. These horrific events highlighted vulnerabilities in our immigration system. Also, our experience with prior terrorism cases showed that operatives have used fraudulent identities, visas, and travel documents to gain access to our country and further their operations. Our country needs an effective immigration enforcement process to ensure that any vulnerabilities in our system cannot be exploited by terrorists and other violent criminals.

OVERVIEW

As this is the first time that BICE has had the opportunity to testify before this Subcommittee, I would like to provide a brief overview of our mission. The Homeland Security Act of 2002 abolished the Immigration and Naturalization Service (INS) and the President's Reorganization Plan established BICE. BICE combines the investigative and intelligence functions of the INS and the U.S. Customs Service with the Federal Protective Service (FPS). In addition, the President's Plan merged the Air and Marine Interdiction Unit and the legacy INS Detention and Removal Program into BICE. The new agency brings together approximately 14,000 employees, including some 5,500 special agents making BICE the second largest investigative team in Federal law enforcement.

Examples of our authority include investigating immigration violations, migrant and contraband smuggling, human trafficking, money laundering, trade fraud, export violations and document fraud. Controlling the flow of goods and people within our country, verifying the authenticity of identity and travel documents, and monitoring the legal transfer of funds are functions critical to reducing our vulnerability to terrorist attacks. Meeting BICE's critical responsibilities requires a robust intelligence capability, an air and marine interdiction capability, and an ability to apprehend, detain, prosecute, and remove illegal aliens. Finally, BICE is charged with protecting more than 8,000 Federal facilities nationwide against terrorism, a responsibility carried out by a component part of the Agency, the FPS.

HISTORY

The focus of this hearing is visa revocation and how notice of such revocations had been handled by the former INS. Today we are prepared to discuss how BICE, through the National Security Unit (NSU), is responsible for investigating all leads and referrals involving terrorism and national security matters, to include all cases where an issued visa has been subsequently revoked.

GENERAL ACCOUNTING REPORT

On June 18, 2003 the General Accounting Office (GAO) issued a report entitled *Border Security: New Policies and Procedures Needed to Fill in the Visa Revocation Process*. BICE appreciates the review and comments of the GAO. While we disagree with some of the findings, we agree with the GAO that the Secretary of Homeland Security should work with the Secretary of State and the Attorney General to strengthen the visa revocation process as an antiterrorism tool and establish specific policies and procedures that ensure timely and direct notification of visa revocations to both the Bureau of Customs and Border Protection (BCBP) and BICE. BICE considers the timely notification of DOS visa revocations to be an important element in protecting the United States against the entry of inadmissible aliens, including possible terrorists. DHS and BICE have begun a dialog with DOS to modify existing procedures to strengthen the government's ability to take timely action against those who have had visas revoked and should be removed from the U.S.

Currently, the Department of State has agreed to provide BICE notice of visa revocations. The GAO recommendation that is particularly relevant to BICE is the one regarding determining if any persons with revoked visas on terrorism grounds are in the United States and if so whether they pose a security threat. In making these determinations during an NSU investigation, BICE relies on BCBP information to ensure that it has all appropriate information regarding entries into the United States. DHS will work closely with the Department of State to implement new procedures that we expect will be agreed to between DHS and DOS on visa revocations. BICE will also continue to work internally within DHS to increase the timeliness of the information flow among our Bureaus.

The NSU receives a number of national security leads and referrals, including visa revocations, and does not discriminate between types of national security referrals. The NSU has a clearly defined role in respect to visa revocation: to investigate those cases involving aliens who may have had their visa revoked after admission or were admitted despite the revocation of their visa. The Department of State has agreed to notify BICE of visa revocations. Pursuant to NSU standard operating policy, visa revocation cases are investigated and coordinated in the same manner as all other types of cases handled by the unit including, but not limited to, the gathering and exploitation of intelligence information to generate leads; creating a target folder for referral to Special Agents in the field; full field investigation of all leads; determination on possible violations; and if applicable, arrest.

BICE's records indicate that during the time period studied in the report the NSU received information on ten leads involving visa revocations. In all 10 cases the NSU followed standard operating procedure for such referrals. The NSU conducted follow-up investigation in all 10 cases, concluding that there was insufficient evidence under current civil and criminal immigration law to allow BICE to take action against the visa holders. Despite these facts, GAO erroneously reported that BICE did not routinely investigate, locate or take any action on individuals with revoked visas. To the contrary, BICE always takes actions to investigate cases referred to the NSU and NSU conducted a full investigation of 100% of the referrals received.

As highlighted in Appendix II of the GAO draft report, the different standards of proof required for revocation and removal proceedings pose significant difficulties in resolving these matters. In

this context, it is important to note that the information used to revoke a visa is not necessarily sufficient for BICE to initiate removal proceedings against an alien who has been admitted to the United States and is otherwise maintaining his or her status. When an alien is admitted to the United States, certain legal rights are attached to the admission. These legal rights require that BICE present clear and convincing evidence to demonstrate that the alien is a national security threat or is removable on other statutory grounds before an Immigration Judge.

Another factor in prosecuting these revocation cases is the current language used on the revocation certificate provides that if an alien is present in the United States, the visa revocation takes effect after the alien departs from the United States. Consequently, the visa remains valid and the alien maintains lawful status while in the United States absent any conduct making him or her subject to removal on other grounds. However, as previously stated, DHS and DOS are reviewing this language to determine what steps can be taken to improve our ability to remove an alien who has been admitted. Additionally, DHS and DOS have agreed to develop standard operating procedures to stop an alien of potential security concern at a port of entry and request of DOS that the alien's visa be revoked effective immediately.

CONCLUSION

Deterring illegal migration and combating immigration-related crime have never been more critical to our national security. The men and women of BICE are tackling this challenging mission with diligence, determined to ensure that no duty is neglected even as they continue to adjust during this time of transition into the new Department. We look forward to working with other DHS components, Department of Justice, and DOS on strengthening the visa revocation process and flow of critical information. Thank you. I look forward to your questions.