



TESTIMONY OF

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BEFORE

U.S. House of Representatives
Committee on the Judiciary
Subcommittee on
Immigration and Citizenship

and

U.S. House of Representatives
Committee on Foreign Affairs
Subcommittee on
Oversight and Investigations

ON

“Oversight of the Trump Administration’s Muslim Ban”

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Chairwoman Lofgren, Chairman Bera, Ranking Member Buck, Ranking Member Zeldin, and distinguished Subcommittee Members, it is our honor to appear before you today regarding the U.S. Department of Homeland Security's (DHS) implementation of Executive Order 13769 (January 27, 2017) and Executive Order 13780 (March 6, 2017), both entitled, *Protecting the Nation from Foreign Terrorist Entry into the United States*, and Presidential Proclamation 9645, *Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public Safety Threats* (September 24, 2017).

Department Mission

The United States utilizes a robust screening and vetting enterprise to determine whether an individual seeking entry to or an immigration benefit in the United States is who they claim to be; whether the individual poses a risk to national security or public safety; and whether the individual qualifies for the immigration status they seek.

DHS components like U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) work to identify risks as early as possible in the travel continuum, and to implement secure protocols for addressing potential threats. They accomplish this by receiving advance information, employing sophisticated targeting systems to detect risk, and acting through a global network to address risks or prevent the movement of identified threats toward the United States at the earliest possible point in their travel, including through the sharing of information with the Department of State (DOS) for use by consular officer in the adjudication of visa applications. At the same time, DHS also protects the privacy and civil liberties of travelers. DHS is committed to treating all individuals in a non-discriminatory manner, regarding all forms of protected status under federal law, regulation, Executive Order, or policy, and with full respect for individual rights including equality under the law, due process, and freedom of religion.

In concert with its partners, DHS strives to ensure that travelers who may present a risk are appropriately vetted, that consular officers have the information they need to interview visa applicants and adjudicate their applications, and that any document deficiencies are addressed before traveling to the United States. CBP and ICE have placed officers in strategic locations overseas to work with air carriers and host nation authorities at airports. Further, CBP and ICE collaborate closely with other host nation investigative authorities and DOS at U.S. Embassies and Consulates. DHS and DOS play a vital role in our nation's efforts in vetting all travelers to prevent terrorists and other criminal actors from acquiring U.S. visas or traveling through the Visa Waiver Program (VWP) to the United States.

Foreign Partner Information Sharing

The screening and vetting enterprise is made all the more effective and robust with the inclusion of reliable information from foreign partners. This information is critical to validating an individual's identity and determining whether they pose a national security or public safety threat to the United States. The individuals' home government often has information about their citizens' and residents' identity and risk that are not otherwise readily available in U.S. databases. The U.S. Government (USG) has faced inconsistent access to foreign government

information about foreign nationals seeking to enter the United States. Therefore, the USG has worked to update international partnerships and standards to assist screening and vetting programs. These efforts include improving international security standards for travel documents via the International Civil Aviation Organization (ICAO), reporting lost and stolen travel documents through INTERPOL, and adding some regularity to traditional liaison relationships through Homeland Security Presidential Directive-6. However, prior to Executive Order (EO) 13780, the USG had not developed a holistic means for assessing the performance of these relationships or for encouraging compliance with standards.

Presidential Proclamation 9645

In July 2017, the Secretary of Homeland Security, in consultation with the Secretary of State, established baseline criteria. The baseline included three components. The first, “identity-management information,” focused on whether a foreign government ensures the integrity of travel documents by issuing electronic passports, reporting lost or stolen passports, and making available additional identity-related information. The second, “national-security and public-safety information,” focused on whether a country shares criminal history information as well as the identities of known and suspected terrorists, provides travel document exemplars, and facilitates the USG’s receipt of information about airline passengers and crews traveling to the United States. Finally, the third, “a national-security and public-safety risk assessment,” focused on indicators of national security risk, including whether the foreign government is a known or potential terrorist safe haven and whether it regularly declines to receive returning nationals following final orders of removal from the United States. The criteria reflect a combination of long-standing USG goals, as well as standards established by international bodies such as the United Nations (UN), ICAO, and INTERPOL. The baseline requirements incorporate best practices derived from proven and effective security partnerships, and from internationally-recognized identity management, law enforcement, and national security practices and initiatives.

DHS collected and evaluated data regarding all foreign governments. DHS identified 16 countries as having deficient information-sharing practices and presenting national security concerns, and another 31 countries as “at risk” of similarly failing to meet the baseline. The State Department then undertook diplomatic efforts over a 50-day period to encourage all foreign governments to improve their practices. As a result of that effort, numerous countries provided DHS with travel document exemplars and agreed to share information on known or suspected terrorists.

On September 24, 2017, the President issued Proclamation 9645 which imposed tailored restrictions on the entry of certain nationals from Iran, North Korea, Syria, Chad, Libya, Yemen, Venezuela, and Somalia. All of these countries, except Somalia, remained deficient in terms of their risk profile and willingness to provide requested information. Although Somalia generally satisfied the information sharing component of its baseline standards, its identity management deficiencies and significant terrorist presence presented special circumstances warranting additional limitations.

Proclamation 9645 was initially enjoined by multiple courts before taking effect. On December 4, 2017, the Supreme Court stayed those injunctions and permitted the Proclamation to take effect. On June 26, 2018, the Supreme Court vacated the preliminary injunctions in *Trump v. Hawaii*, 138 S. Ct. 2392.

Waivers from the suspension of entry under Proclamation 9645 can be obtained during the visa application process with DOS; the Proclamation provides that a waiver issued as part of the visa adjudication will be effective for the issuance of and entry on the visa. The individuals impacted by Proclamation 9645 are all persons for whom a visa would be required to seek entry into the United States. While CBP retains the ability to issue a waiver if needed, all waiver adjudications will naturally occur at the earlier encounter with a DOS consular officer during the visa application process.

The President's Proclamation serves as a basis for the USG to assess and improve information sharing by all countries to support enhanced vetting, and to encourage specific foreign governments to participate in more advanced information sharing partnerships or commit to resolving lingering data sharing gaps. The Proclamation makes clear that its conditional restrictions will remain in force only so long as necessary to address the identified inadequacies and risks within the covered nations.

Presidential Proclamation 9645 directed DHS to conduct persistent monitoring of foreign governments' compliance with the baseline criteria. In Proclamation 9723, dated April 10, 2018, the President withdrew the entry restrictions on nationals of Chad, noting that the government of Chad had made marked improvements in its identity-management and information-sharing practices. As demonstrated by the Republic of Chad's example, correcting identity management protocols allowed for the travel restrictions to be lifted. DHS recognizes that every country has unique laws, policies, and regulations pertaining to information-sharing, and countries may encounter some challenges in implementing all information-sharing standards. DHS actively works on long-term implementation plans and mitigation strategies, including with countries currently under restriction, such as Libya.

At present, the persistent monitoring required by Presidential Proclamation 9645 is executed by the DHS Office of Strategy, Policy, and Plans, in consultation with DOS and interagency stakeholders. DHS and its interagency partners actively work with all countries to maximize the quality of their identity-management and information-sharing relationships with the United States, including engaging foreign government officials to explore the country's challenges and obstacles, and proposing potential solutions, which may include U.S. foreign assistance.

CBP fulfills its role by continuing to use enhanced information sharing and analytical tools in collaboration with law enforcement and intelligence community partners to improve the interagency screening and vetting enterprise. CBP has also initiated the execution and accelerated the deployment of several vetting initiatives that have enabled the USG to collect more information from immigration benefit applicants, enhance the interview process of travelers and applicants deemed to pose elevated risk, and improve the comparison of traveler and applicant information against the USG's terrorist watchlist and other derogatory information.

Conclusion

The threat against our nation remains significant, and every day DHS is dedicated to identifying and preventing access to the homeland by those who intend to harm our country and its people. We want to thank Chairwoman Lofgren, Chairman Bera, Ranking Member Buck, Ranking Member Zeldin, and the Members of the Subcommittees for their support of DHS's counterterrorism mission. We appreciate your time and look forward to your questions.