United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Immigration, Refugees, and Border Security, Committee on the Judiciary, U.S. Senate

For Release on Delivery
Expected at 10:00 a.m. EDT
Tuesday, March 27, 2012

VISA WAIVER PROGRAM

Additional Actions Needed to Mitigate Risks and Strengthen Overstay Enforcement

Statement of Rebecca Gambler, Acting Director
Homeland Security and Justice

and

Michael J. Courts, Acting Director
International Affairs and Trade

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GAO-12-599T

AILA InfoNet Doc. No. 12032712. (Posted 03/27/12)

March 27, 2012

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Highlights

Highlights of GAO-12-599T, a testimony before the Subcommittee on Immigration, Refugees, and Border Security, Committee on the Judiciary, U.S. Senate

VISA WAIVER PROGRAM

Additional Actions Needed to Mitigate Risks and Strengthen Overstay Enforcement

Why GAO Did This Study

DHS manages the Visa Waiver Program, which allows nationals from 36 countries to apply for admission to the United States as temporary visitors for business or pleasure without a visa. From fiscal years 2005 through 2010, over 98 million visitors were admitted to the United States under the Visa Waiver Program. During that time period, the Department of State issued more than 36 million nonimmigrant visas for temporary travel to the country. DHS is also responsible for investigating overstays—unauthorized immigrants who entered the country legally on a temporary basis but then overstayed their authorized periods of admission. The Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) required DHS, in consultation with the Department of State, to take steps to enhance the security of the program. This testimony is based on GAO products issued in September 2008; April, May, and December 2011; and selected updates from DHS as of March 2012 on the status of DHS's efforts to implement the 9/11 Act requirements and to address prior GAO recommendations. As requested, it addresses the following issues: (1) challenges in the Visa Waiver Program, and (2) overstay enforcement efforts.

What GAO Recommends

GAO made recommendations in prior reports for DHS to, among other things, strengthen plans to address certain risks of the Visa Waiver Program and for overstay enforcement efforts. DHS generally concurred with these recommendations and has actions planned or underway to address them.

View GAO-12-599T or key components. For more information, contact Rebecca Gambler at (202) 512-6912 or gamblerr@gao.gov.

What GAO Found

GAO has reported on actions that the Department of Homeland Security (DHS) has taken to improve the security of the Visa Waiver Program; but, additional risks remain. In May 2011, GAO reported that DHS implemented the Electronic System for Travel Authorization (ESTA), required by the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), and took steps to minimize the burden associated with this requirement. DHS requires Visa Waiver Program travelers to submit biographical information and answers to eligibility questions through ESTA prior to travel. DHS made efforts to minimize the burden imposed by this requirement. For example, although travelers formerly filled out a Visa Waiver Program application form for each journey to the United States, ESTA approval is generally valid for 2 years. However, GAO reported that DHS had not fully evaluated security risks related to the small percentage of travelers without verified ESTA approval. In 2010, airlines complied with the requirement to verify ESTA approval for almost 98 percent of Visa Waiver Program passengers prior to boarding, but the remaining 2 percent—about 364,000 travelers—traveled under the program without verified ESTA approval. In May 2011, GAO reported that DHS had not yet completed a review of these cases to know to what extent they pose a risk to the program and recommended that it establish timeframes for regular review. DHS concurred and has since established procedures to review a sample of noncompliant passengers on a quarterly basis. Further, per the 9/11 Act, DHS requires Visa Waiver Program countries to enter into three information-sharing agreements with the United States; however, DHS reported that only about half of the 36 countries have fully complied with this requirement as of March 2012, and many of the signed agreements have not been implemented. DHS, with its interagency partners, established a compliance schedule to finalize these agreements by June 2012. Also, DHS and its interagency partners have developed measures short of termination that could be applied on a case-by-case basis to countries not meeting their compliance date.

In April 2011, GAO reported that federal agencies take actions against a small portion of overstays, but improving planning could strengthen overstay enforcement. Immigration and Customs Enforcement's (ICE) Counterterrorism and Criminal Exploitation Unit (CTCEU) is responsible for overstay enforcement. CTCEU arrests a small portion of the estimated 4 to 5.5 million overstays in the United States because of, among other things, competing priorities, but ICE expressed an intention to augment its overstay enforcement resources. From fiscal years 2006 through 2010, ICE reported devoting about 3 percent of its total field office investigative hours to CTCEU overstay investigations. ICE was considering assigning some responsibility for noncriminal overstay enforcement to its Enforcement and Removal Operations (ERO) directorate, which apprehends and removes aliens subject to removal from the United States. In April 2011, GAO recommended that developing a time frame for assessing needed resources ICE could strengthen ICE's planning efforts. DHS concurred and stated that ICE planned to identify resources needed to transition this responsibility to ERO as part of its fiscal year 2013 resource planning process.

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Chairman Schumer, Ranking Member Cornyn, and Members of the Subcommittee:

I am pleased to be here today to discuss the Visa Waiver Program, which allows nationals from 36 countries to apply for admission to the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. consular office abroad.[1] This statement also addresses activities to identify and take enforcement against overstays—individuals who were admitted to the United States legally on a temporary basis—either with a visa, or in some cases, as a visitor who was allowed to enter without a visa such as under the Visa Waiver Program—but then overstayed their authorized periods of admission.[2] From fiscal years 2005 through 2010, more than 98 million visitors were admitted to the United States under the Visa Waiver Program. During this same time period, the Department of State issued more than 36 million nonimmigrant visas for business travel, pleasure, tourism, medical treatment, or for foreign and cultural exchange student programs, among other things.[3] In addition, the

[1]To qualify for the Visa Waiver Program, a country must meet various requirements, such as entering into an agreement with the United States to report lost or stolen passports within a strict time limit and in a manner specified in the agreement. Currently, 36 countries participate in the Visa Waiver Program: Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, and the United Kingdom. Visitors who are also allowed to seek admission without a visa include citizens of Canada and the British Overseas Territory of Bermuda (and certain residents of other adjacent islands, such as the Bahamas) under certain circumstances.

[2]In-country overstays refer to nonimmigrants who have exceeded their authorized periods of admission and remain in the United States without lawful status, while out-of-country overstays refer to individuals who have departed the United States but who, on the basis of arrival and departure information, stayed beyond their authorized periods of admission.

[3]Temporary visitors to the United States generally are referred to as “nonimmigrants.” For a listing and descriptions of nonimmigrant categories, see 8 U.S.C. § 1101(a)(15); see also 8 C.F.R. § 214.1(a)(1)-(2). Generally, nonimmigrants wishing to visit the United States gain permission to apply for admission to the country through one of two ways. First, those eligible for the Visa Waiver Program apply online to establish eligibility to travel under the program prior to departing for the United States (unless they are seeking admission at a land port of entry, in which case eligibility is established at the time of application for admission). Second, those not eligible for the Visa Waiver Program and not otherwise exempt from the visa requirement must visit the U.S. consular office to obtain a visa. Upon arriving at a port of entry, nonimmigrants must undergo inspection by U.S. Customs and Border Protection officers, who determine whether or not they may be admitted into the United States.

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most recent estimates from the Pew Hispanic Center approximated that, in 2006, out of an unauthorized resident alien population of 11.5 million to 12 million in the United States, about 4 million to 5.5 million were overstays.[4]

The Visa Waiver Program was established in 1986 to promote the effective use of government resources and facilitate international travel without jeopardizing U.S. security.[5] We have reported that the program was designed to boost international business and tourism, and allow the Department of State to shift its consular resources to posts with higher-risk visa applicants.[6] However, we have also reported that the program has inherent risks.[7] The Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) called for DHS, which implements the Visa Waiver Program, to take steps to enhance its security.[8] Among the mandated changes were (1) the implementation of an electronic system for travel authorization designed to determine in advance of travel the eligibility of Visa Waiver Program applicants to travel to the United States under the program, (2) a requirement that all Visa Waiver Program countries enter into agreements to share information with the United States on whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States, and (3) a requirement that all Visa Waiver Program countries enter into agreements with the United States to report or make available lost and stolen passport data to the United States. Prior to these changes, the Enhanced Border Security and Visa Entry Reform Act of 2002 mandated that DHS evaluate and report on the security risks posed by

[4]Pew Hispanic Center, *Modes of Entry for the Unauthorized Migrant Population* (Washington, D.C.: May 22, 2006).

[5] The Immigration Reform and Control Act of 1986 (Pub. L. No. 99-603, 100 Stat. 3359) created the Visa Waiver Program as a pilot in 1986. It became a permanent program in 2000 under the Visa Waiver Permanent Program Act (Pub. L. No. 106-396, 114 Stat. 1637 (2000)).

[6] GAO, *Visa Waiver Program: Actions Are Needed to Improve Management of the Expansion Process, and to Assess and Mitigate Program Risks*, GAO-08-967 (Washington, D.C.: Sept. 15, 2008).

[7] GAO, *Border Security: Stronger Actions Needed to Assess and Mitigate Risks of the Visa Waiver Program*, GAO-06-854 (Washington, D.C.: July 28, 2006).

[8]Pub. L. No. 110-53, § 711(d), 121 Stat. 266, 341-45.

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each Visa Waiver Program country's participation in the program at least once every 2 years.[9]

DHS has certain responsibilities for implementing the Visa Waiver Program, as well as for overstay enforcement efforts. Overall, DHS is responsible for establishing visa policy, including policy for the Visa Waiver Program. Within DHS, U.S. Customs and Border Protection (CBP) is tasked with, among other duties, inspecting all people applying for entry to the United States to determine their admissibility to the country and screening Visa Waiver Program applicants to determine their eligibility to travel to the United States under the program. DHS's U.S. Immigration and Customs Enforcement (ICE) is the lead agency responsible for enforcing immigration law in the interior of the United States and is primarily responsible for overstay enforcement. Within ICE, the Counterterrorism and Criminal Exploitation Unit (CTCEU) is primarily responsible for overstay investigations, including investigations of Visa Waiver Program participants who overstay their authorized periods of admission. Further, the Department of State is responsible for adjudicating visas for foreign nationals seeking admission to the United States.

Since September 11, 2001, GAO has published 5 reports on the Visa Waiver Program. The reports have examined, for example, DHS's assessment of security risks associated with the program and proposed changes to the program. As requested, my testimony will cover the following key issues: (1) challenges and weaknesses in the Visa Waiver Program; and (2) efforts to take enforcement action against overstays and reported results. This testimony is based on our prior reports on the Visa Waiver Program, and overstay enforcement efforts published in September 2008 and May 2011, and April 2011, respectively.[10] It is also based on our December 2011 testimony on these issues.[11] For these

[9] Pub. L. No. 107-173, § 307(a), 116 Stat. 543, 556.

[10] GAO-08-967; GAO, *Visa Waiver Program: DHS Has Implemented the Electronic System for Travel Authorization, but Further Steps Needed to Address Potential Program Risks*, GAO-11-335 (Washington, D.C.: May 5, 2011); and *Overstay Enforcement: Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS's Efforts but Would Have Costs*, GAO-11-411 (Washington, D.C.: Apr. 15, 2011).

[11] GAO, *Visa Waiver Program: Additional Actions Needed to Address Risks and Strengthen Overstay Enforcement*, GAO-12-287T (Washington, D.C.: Dec. 7, 2011).

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reports, we examined program documentation, such as standard operating procedures, guidance for investigations, and implementation plans. We also interviewed DHS and Department of State officials. Additional details on the scope and methodology are available in our published reports. In addition, this statement contains updates to selected information from these reports on, for example, the number of signed information-sharing agreements. For these updates, we examined documentation from DHS as of March 2012. All of our work was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Further Steps Are Needed to Mitigate Risks in the Visa Waiver Program

In May 2011, we reported that DHS implemented the Electronic System for Travel Authorization (ESTA) to meet a statutory requirement intended to enhance Visa Waiver Program security and took steps to minimize the burden on travelers to the United States added by the new requirement.[12] However, DHS had not fully evaluated security risks related to the small percentage of Visa Waiver Program travelers without verified ESTA approval. DHS developed ESTA to collect passenger data and complete security checks on the data before passengers board a U.S. bound carrier. DHS requires applicants for Visa Waiver Program travel to submit biographical information and answers to eligibility questions through ESTA prior to travel. Travelers whose ESTA applications are denied must apply for a U.S. visa for travel to the United States. In developing and implementing ESTA, DHS took several steps to minimize the burden associated with ESTA use. For example, ESTA reduced the requirement that passengers provide biographical information to DHS officials from every trip to once every 2 years. In addition, because of ESTA, DHS informed passengers who do not qualify for Visa Waiver Program travel that they need to apply for a visa before they travel to the United States. Moreover, most travel industry officials we interviewed in six Visa Waiver Program countries praised DHS's widespread ESTA outreach efforts,

[12]See 8 U.S.C. § 1187(h)(3).

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reasonable implementation time frames, and responsiveness to feedback, but expressed dissatisfaction over ESTA fees paid by ESTA applicants.[13]

In 2010, airlines complied with the requirement to verify ESTA approval for almost 98 percent of the Visa Waiver Program passengers prior to boarding, but the remaining 2 percent—about 364,000 travelers—traveled under the Visa Waiver Program without verified ESTA approval. In addition, about 650 of these passengers traveled to the United States with a denied ESTA. As we reported in May 2011, DHS had not yet completed a review of these cases to know to what extent they pose a risk to the program. At the time of our report, DHS officials told us that there was no official agency plan for monitoring and oversight of ESTA. DHS tracked some data on passengers that traveled under the Visa Waiver Program without verified ESTA approval but did not track other data that would help officials know the extent to which noncompliance poses a risk to the program. Without a completed analysis of noncompliance with ESTA requirements, DHS was unable to determine the level of risk that noncompliance poses to Visa Waiver Program security and to identify improvements needed to minimize noncompliance. In addition, without analysis of data on travelers who were admitted to the United States without a visa after being denied by ESTA, DHS could not determine the extent to which ESTA was accurately identifying individuals who should be denied travel under the program. In May 2011, we recommended that DHS establish time frames for the regular review and documentation of cases of Visa Waiver Program passengers traveling to a U.S. port of entry without verified ESTA approval. DHS concurred with our recommendation and has established procedures to review quarterly a sample of noncompliant passengers to evaluate potential security risks associated with the ESTA program.

Further, in May 2011, we reported that to meet certain statutory requirements, DHS requires that Visa Waiver Program countries enter into three information-sharing agreements with the United States; however, only about half of the countries had fully complied with this requirement and many of the signed agreements have not been

[13]In September 2010, the U.S. government began to charge ESTA applicants a $14 fee when they applied for ESTA approval, including $10 for the creation of a corporation to promote travel to the United States and $4 to fund ESTA operations.

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implemented.[14] The 9/11 Act specifies that each Visa Waiver Program country must enter into agreements with the United States to share information regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States and to report lost or stolen passports. DHS, in consultation with other agencies, has determined that Visa Waiver Program countries can satisfy the requirement by entering into the following three bilateral agreements: (1) Homeland Security Presidential Directive (HSPD) 6, (2) Preventing and Combating Serious Crime (PCSC), and (3) Lost and Stolen Passports.[15]

- HSPD-6 agreements establish a procedure between the United States and partner countries to share watchlist information about known or suspected terrorists. As of January 2011, 19 of the 36 Visa Waiver Program countries had signed HSPD-6 agreements, and 13 had begun sharing information according to the signed agreements. Noting that the federal government continues to negotiate HSPD-6 agreements with Visa Waiver Program countries, officials cited concerns regarding privacy and data protection expressed by many Visa Waiver Program countries as reasons for the delayed progress. According to these officials, in some cases, domestic laws of Visa Waiver Program countries limit their ability to commit to sharing some information, thereby complicating and slowing the negotiation process. In March 2012, DHS reported that 24 of the 36 Visa Waiver Program countries have signed HSPD-6 agreements.

- The PCSC agreements establish the framework for law enforcement cooperation by providing each party automated access to the other's criminal databases that contain biographical, biometric, and criminal history data. As of January 2011, 18 of the 36 Visa Waiver Program countries had met the PCSC information-sharing agreement requirement, but the networking modifications and system upgrades required to enable this information sharing to take place have not been completed for any Visa Waiver Program countries. According to officials, DHS is frequently not in a position to influence the speed of PCSC implementation for a number of reasons. For example,

[14]See 8 U.S.C. § 1187(c)(2)(D), (F).

[15]For the HSPD-6 and PCSC agreements, DHS made the determination in consultation with State and Justice. For the Lost and Stolen Passports agreement, DHS made the determination in consultation with State.

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according to DHS officials, some Visa Waiver Program countries require parliamentary ratification before implementation can begin. Also, U.S. and partner country officials must develop a common information technology architecture to allow queries between databases. DHS reported in March 2012 that the number of Visa Waiver Program countries meeting the PCSC requirement had risen to 23.

- The 9/11 Act requires Visa Waiver Program countries to enter into an agreement with the United States to report, or make available to the United States through Interpol or other means as designated by the Secretary of Homeland Security, information about the theft or loss of passports. As of March 2012, all Visa Waiver Program countries were sharing lost and stolen passport information with the United States, and all of the countries had entered into Lost and Stolen Passport agreements, according to DHS.

DHS, with the support of interagency partners, established a compliance schedule requiring the last of the Visa Waiver Program countries to finalize these agreements by June 2012. Although termination from the Visa Waiver Program is one potential consequence for countries not complying with the information-sharing agreement requirement, U.S. officials have described it as undesirable. DHS, in coordination with the Department of State and the Department of Justice, developed measures short of termination that could be applied to countries not meeting their compliance date. Specifically, DHS helped write a classified strategy document that outlines a contingency plan listing possible measures short of termination from the Visa Waiver Program that may be taken if a country does not meet its specified compliance date for entering into information-sharing agreements. The strategy document provides steps that would need to be taken prior to selecting and implementing one of these measures. According to officials, DHS plans to decide which measures to apply on a case-by-case basis.

In addition, as of May 2011, DHS had not completed half of the most recent biennial reports on Visa Waiver Program countries' security risks in a timely manner. In 2002, the Enhanced Border Security and Visa Entry Reform Act mandated that, at least once every 2 years, DHS evaluate the effect of each country's continued participation in the program on the security, law enforcement, and immigration interests of the United

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States.[16] According to officials, DHS assesses, among other things, counterterrorism capabilities and immigration programs. However, DHS had not completed the latest biennial reports for 18 of the 36 Visa Waiver Program countries in a timely manner, and over half of these reports are more than 1 year overdue. Further, in the case of 2 countries, DHS was unable to demonstrate that it had completed reports in the last 4 years. DHS cited a number of reasons for the reporting delays. For example, DHS officials said that they intentionally delayed report completion because they frequently did not receive mandated intelligence assessments in a timely manner and needed to review these before completing Visa Waiver Program country biennial reports. We noted that DHS had not consistently submitted these reports in a timely matter since the legal requirement was made biennial in 2002, and recommended that DHS take steps to address delays in the biennial country review process so that the mandated country reports can be completed on time. DHS concurred with our recommendation and, in March 2012, reported that the Visa Waiver Program Office had implemented a reporting process and schedule to address delays in completing the biennial reviews and associated reports.

Federal Agencies Take Actions against a Small Portion of the Estimated Overstay Population

ICE Investigates Few In-Country Overstays, but Its Efforts Could Benefit from Improved Planning

As we reported in April 2011, ICE CTCEU investigates and arrests a small portion of the estimated in-country overstay population due to, among other things, ICE's competing priorities; however, these efforts could be enhanced by improved planning and performance management. CTCEU, the primary federal entity responsible for taking enforcement action to address in-country overstays, identifies leads for overstay cases; takes steps to verify the accuracy of the leads it identifies by, for example, checking leads against multiple databases; and prioritizes leads to focus on those the unit identifies as being most likely to pose a threat to

[16]See Pub. L. No. 107-173, § 307(a)(2), 116 Stat. 543, 556.

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national security or public safety. CTCEU then requires field offices to initiate investigations on all priority, high-risk leads it identifies.

According to CTCEU data, as of October 2010, ICE field offices had closed about 34,700 overstay investigations that CTCEU headquarters assigned to them from fiscal year 2004 through 2010.[17] These cases resulted in approximately 8,100 arrests (about 23 percent of the 34,700 investigations), relative to a total estimated overstay population of 4 million to 5.5 million.[18] About 26,700 of those investigations (or 77 percent) resulted in one of three outcomes.[19] In 9,900 investigations, evidence was uncovered indicating that the suspected overstay had departed the United States. In 8,600 investigations, evidence was uncovered indicating that the subject of the investigation was in-status (e.g., the subject filed a timely application with the United States Citizenship and Immigration Services (USCIS) to change his or her status and/or extend his or her authorized period of admission in the United States). Finally, in 8,200 investigations, CTCEU investigators exhausted all investigative leads and could not locate the suspected overstay.[20] Of the approximately 34,700 overstay investigations assigned by CTCEU headquarters that ICE field offices closed from fiscal year 2004 through

[17]CTCEU also investigates suspected Visa Waiver Program overstays, out-of-status students and violators of the National Security Entry-Exit Registration System, a program that requires certain visitors or nonimmigrants to register with DHS for national security reasons. For the purpose of this discussion, these investigations are referred to collectively as "overstay" investigations. In addition to CTCEU investigative efforts, other ICE programs within Enforcement and Removal Operations may take enforcement action against overstays, though none of these programs solely or directly focus on overstay enforcement. For example, if the Enforcement and Removal Operations Criminal Alien Program identifies a criminal alien who poses a threat to public safety and is also an overstay, the program may detain and remove that criminal alien from the United States.

[18]The most recent estimates from the Pew Hispanic Center approximated that, in 2006, out of an unauthorized resident alien population of 11.5 million to 12 million in the United States, about 4 million to 5.5 million were overstays. Pew Hispanic Center, *Modes of Entry for the Unauthorized Migrant Population* (Washington, D.C.: May 22, 2006).

[19]Investigations resulting and not resulting in arrest do not total 34,700 due to rounding.

[20]With regard to the second outcome, that the subject is found to be in-status, under certain circumstances, an application for extension or change of status can temporarily prevent a visitor's presence in the United States from being categorized as unauthorized. See Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, USCIS, "Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the [Immigration and Nationality] Act," memorandum, Washington, D.C., May 6, 2009.

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2010, ICE officials attributed the significant portion of overstay cases that resulted in a departure finding, in-status finding, or with all leads being exhausted generally to difficulties associated with locating suspected overstays and the timeliness and completeness of data in DHS's systems used to identify overstays.

Further, ICE reported allocating a small percentage of its resources in terms of investigative work hours to overstay investigations since fiscal year 2006, but the agency expressed an intention to augment the resources it dedicates to overstay enforcement efforts moving forward. Specifically, from fiscal years 2006 through 2010, ICE reported devoting from 3.1 to 3.4 percent of its total field office investigative hours to CTCEU overstay investigations. ICE attributed the small percentage of investigative resources it reported allocating to overstay enforcement efforts primarily to competing enforcement priorities. According to the ICE Assistant Secretary, ICE has resources to remove 400,000 aliens per year, or less than 4 percent of the estimated removable alien population in the United States. In June 2010, the Assistant Secretary stated that ICE must prioritize the use of its resources to ensure that its efforts to remove aliens reflect the agency's highest priorities, namely nonimmigrants, including suspected overstays, who are identified as high risk in terms of being most likely to pose a risk to national security or public safety. As a result, ICE dedicated its limited resources to addressing overstays it identified as most likely to pose a potential threat to national security or public safety and did not generally allocate resources to address suspected overstays that it assessed as non-criminal and low risk. ICE indicated it may allocate more resources to overstay enforcement efforts moving forward, and that it planned to focus primarily on suspected overstays who ICE has identified as high risk or who recently overstayed their authorized periods of admission.

ICE was considering assigning some responsibility for noncriminal overstay enforcement to its Enforcement and Removal Operations (ERO) directorate, which has responsibility for apprehending and removing aliens who do not have lawful immigration status from the United States. However, ERO did not plan to assume this responsibility until ICE assessed the funding and resources doing so would require. ICE had not established a time frame for completing this assessment. We reported in April 2011 that by developing such a time frame and utilizing the assessment findings, as appropriate, ICE could strengthen its planning efforts and be better positioned to hold staff accountable for completing the assessment. We recommended that ICE establish a target time frame for assessing the funding and resources ERO would require in order to

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assume responsibility for civil overstay enforcement and use the results of that assessment. DHS officials agreed with our recommendation and stated that ICE planned to identify resources needed to transition this responsibility to ERO as part of its fiscal year 2013 resource planning process.

More Reliable, Accessible Data Could Improve DHS's Efforts to Identify and Share Information on Overstays

DHS has not yet implemented a comprehensive biometric system to match available information provided by foreign nationals upon their arrival and departure from the United States. In 2002, DHS initiated the United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) to develop a comprehensive entry and exit system to collect biometric data from aliens traveling through U.S. ports of entry. In 2004, US-VISIT initiated the first step of this program by collecting biometric data on aliens entering the United States. In August 2007, we reported that while US-VISIT biometric entry capabilities were operating at air, sea, and land ports of entry, exit capabilities were not, and that DHS did not have a comprehensive plan or a complete schedule for biometric exit implementation.[21] Moreover, in November 2009, we reported that DHS had not adopted an integrated approach to scheduling, executing, and tracking the work that needed to be accomplished to deliver a comprehensive exit solution as part of the US-VISIT program. We concluded that, without a master schedule that was integrated and derived in accordance with relevant guidance, DHS could not reliably commit to when and how it would deliver a comprehensive exit solution or adequately monitor and manage its progress toward this end. We recommended that DHS ensure that an integrated master schedule be developed and maintained. DHS concurred and reported, as of July 2011, that the documentation of schedule practices and procedures was ongoing, and that an updated schedule standard, management plan, and management process that are compliant with schedule guidelines were under review.

[21]The purpose of US-VISIT is to provide biometric (e.g., fingerprint) identification—through the collection, maintenance, and sharing of biometric and selected biographic data—to authorized DHS and other federal agencies. See GAO, *Homeland Security: U.S. Visitor and Immigrant Status Program's Longstanding Lack of Strategic Direction and Management Controls Needs to Be Addressed*, GAO-07-1065 (Washington, D.C.: Aug. 31, 2007).

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In the absence of a comprehensive biometric entry and exit system for identifying and tracking overstays, US-VISIT and CTCEU primarily analyze biographic entry and exit data collected at land, air, and sea ports of entry to identify overstays. In April 2011, we reported that DHS's efforts to identify and report on visa overstays were hindered by unreliable data. Specifically, CBP does not inspect travelers exiting the United States through land ports of entry, including collecting their biometric information, and CBP did not provide a standard mechanism for nonimmigrants departing the United States through land ports of entry to remit their arrival and departure forms. Nonimmigrants departing the United States through land ports of entry turn in their forms on their own initiative. According to CBP officials, at some ports of entry, CBP provides a box for nonimmigrants to drop off their forms, while at other ports of entry departing nonimmigrants may park their cars, enter the port of entry facility, and provide their forms to a CBP officer. These forms contain information, such as arrival and departure dates, used by DHS to identify overstays. If the benefits outweigh the costs, a standard mechanism to provide nonimmigrants with a way to turn in their arrival and departure forms could help DHS obtain more complete and reliable departure data for identifying overstays. We recommended that the Commissioner of CBP analyze the costs and benefits of developing a standard mechanism for collecting these forms at land ports of entry, and do so to the extent that benefits outweigh the costs. CBP agreed with our recommendation and in September 2011 stated that it planned to complete a cost-effective independent evaluation of possible solutions and formulate an action plan based on the evaluation for implementation by March 2012.

Further, we previously reported on weaknesses in DHS processes for collecting departure data, and how these weaknesses impact the determination of overstay rates. The 9/11 Act required that DHS certify that a system is in place that can verify the departure of not less than 97 percent of foreign nationals who depart through U.S. airports in order for DHS to expand the Visa Waiver Program.[22] In September 2008, we reported that DHS's methodology for comparing arrivals and departures for the purpose of departure verification would not inform overall or country-specific overstay rates because DHS's methodology did not begin with arrival records to determine if those foreign nationals departed or remained in the United States beyond their authorized periods of

[22] 8 U.S.C. § 1187(c)(8).

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admission.[23] Rather, DHS's methodology started with departure records and matched them to arrival records. As a result, DHS's methodology counted overstays who left the country, but did not identify overstays who have not departed the United States and appear to have no intention of leaving. We recommended that DHS explore cost-effective actions necessary to further improve the reliability of overstay data. DHS concurred and reported that it is taking steps to improve the accuracy and reliability of the overstay data, by efforts such as continuing to audit carrier performance and working with airlines to improve the accuracy and completeness of data collection. Moreover, by statute, DHS is required to submit an annual report to Congress providing numerical estimates of the number of aliens from each country in each nonimmigrant classification who overstayed an authorized period of admission that expired during the fiscal year prior to the year for which the report is made.[24] DHS officials stated that the department has not provided Congress annual overstay estimates regularly since 1994 because officials do not have sufficient confidence in the quality of the department's overstay data—which is maintained and generated by US-VISIT. As a result, DHS officials stated that the department cannot reliably report overstay rates in accordance with the statute.

In addition, in April 2011 we reported that DHS took several steps to provide its component entities and other federal agencies with information to identify and take enforcement action on overstays, including creating biometric and biographic lookouts—or electronic alerts—on the records of overstay subjects that are recorded in databases. However, DHS did not create lookouts for the following two categories of overstays: (1) temporary visitors who were admitted to the United States using nonimmigrant business and pleasure visas and subsequently overstayed by 90 days or less; and (2) suspected in-country overstays who CTCEU deems not to be a priority for investigation in terms of being most likely to pose a threat to national security or public safety. Broadening the scope of electronic lookouts in federal information systems could enhance overstay information sharing. In April 2011, we recommended that the Secretary of Homeland Security direct the Commissioner of Customs and Border Protection, the Under Secretary of the National Protection and Programs Directorate, and the Assistant Secretary of Immigration and

[23] GAO-08-967.

[24] 8 U.S.C. § 1376(b).

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Customs Enforcement to assess the costs and benefits of creating biometric and biographic lookouts for these two categories of overstays. Agency officials agreed with our recommendation and have actions under way to address it. For example, agency officials stated that they have met to assess the costs and benefits of creating lookouts for those categories of overstays.

Chairman Schumer, Ranking Member Cornyn, and Members of the Subcommittee, this concludes my prepared statement. I would be pleased to respond to any questions that you may have.

Contacts and Acknowledgments

For further information regarding this testimony, please contact Rebecca Gambler at (202) 512-6912 or gamblerr@gao.gov or Michael J. Courts at (202) 512-8980 or courtsm@gao.gov. In addition, contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony are Kathryn H. Bernet, Assistant Director; Anthony Moran, Assistant Director; Frances Cook; Nanette Barton; and, Wendy Johnson.

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