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BORDER SECURITY

Additional Actions Needed to Eliminate Weaknesses in the Visa Revocation Process

Statement of Jess T. Ford
Director, International Affairs and Trade

July 13, 2004

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GAO Highlights

Highlights of GAO-04-899T, a testimony before the Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, House of Representatives

Why GAO Did This Study

The *National Strategy for Homeland Security* calls for preventing foreign terrorists from entering our country and using all legal means to identify; halt; and where appropriate, prosecute or bring immigration or other civil charges against terrorists in the United States. GAO reported in June 2003 that the visa revocation process needed to be strengthened as an antiterrorism tool and recommended that the Department of Homeland Security (DHS), in conjunction with the Departments of State (State) and Justice, develop specific policies and procedures to ensure that appropriate agencies are notified of revocations based on terrorism grounds and take proper actions. GAO examined whether weaknesses in the visa revocation process identified in our June 2003 report were addressed.

What GAO Recommends

To improve the visa revocation process as an antiterrorism tool, we recommend that the Secretaries of Homeland Security and State jointly (1) develop a written governmentwide policy that clearly defines agencies' roles and responsibilities and sets performance standards and (2) address outstanding legal and policy issues in this area or provide Congress with specific actions it could take to resolve them. DHS generally concurred with these recommendations. State agreed to consult with DHS regarding our recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-04-899T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Jess T. Ford at (202) 512-4128 or fordj@gao.gov.

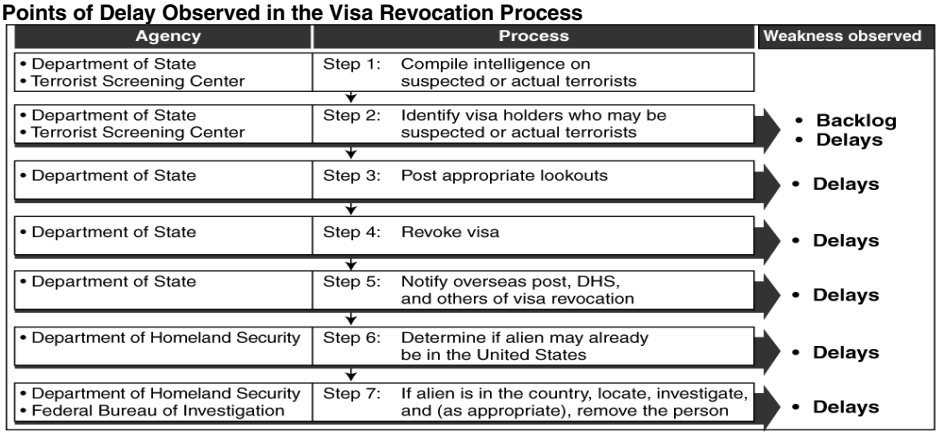
What GAO Found

GAO's analysis shows that the Departments of State and Homeland Security took some actions in summer 2003 to address weaknesses in the visa revocation process that we identified in June 2003. However, GAO's review of visas revoked from October to December 2003, including a detailed review of a random sample of 35 cases, showed that weaknesses remained.

- Delays existed in matching names of suspected terrorists with names of visa holders and in forwarding necessary information to consular officials at State. In at least 3 of the 35 cases, it took State 6 months or longer to revoke visas after receiving a recommendation to do so.
- In 3 cases, State took a week or longer after deciding to revoke visas to post a lookout or notify DHS. Without these notifications, DHS may not know to investigate those individuals who may be in the country.
- In 10 cases, DHS either failed or took several months to notify immigration investigators that individuals with revoked visas may be in the country. It then took more than 2 months for immigration investigators to initiate field investigations of these individuals.

After GAO initiated its inquiry for this report in January 2004, additional actions were taken to improve the process. DHS and State believe these actions will help avoid the delays experienced in the past. In April and May, State revised its procedures and formalized its tracking system for visa revocation cases. In March, DHS developed new written procedures and acted to ensure that immigration investigators were aware of all individuals with revoked visas who may be in the country. State and DHS also took some steps to address legal and policy issues related to visa revocations. Further, in April, the Terrorist Screening Center (TSC), an interagency group organized under the Federal Bureau of Investigation, identified the visa revocation process as a potential homeland security vulnerability and developed an informal process for TSC to handle visa revocation cases. However, weaknesses remain. For example, State's and DHS's procedures are not fully coordinated and lack performance standards, such as specific time frames for completing each step of the process. Moreover, outstanding legal and policy issues continue to exist regarding removing individuals based solely on their visa revocation.

Points of Delay Observed in the Visa Revocation Process



Source: GAO.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here to discuss the report[1] we are issuing today on the visa revocation process and the steps that the Departments of State (State) and Homeland Security (DHS) and other federal agencies have taken to improve the use of this process as an antiterrorism tool. In June 2003 we reported[2] that agencies lacked written procedures to ensure that appropriate personnel are notified and take specific actions when the Department of State revokes visas[3] on terrorism grounds.[4] As a result, lookouts were not always posted, other agencies were not always notified of visa revocations, and there were potential investigative gaps on individuals with visas revoked based on terrorism concerns who were in the United States. We recommended that the Secretary of Homeland Security, in conjunction with the Secretary of State and the Attorney General, develop specific policies and procedures for the interagency visa revocation process to ensure that information is transmitted to the appropriate immigration and law enforcement agencies in a timely manner. We also recommended that they develop a specific policy on actions that immigration and law enforcement agencies should take to investigate and locate individuals who remain in the United States after their visas are revoked.

[1]U.S. General Accounting Office, *Border Security: Additional Actions Needed to Eliminate Weaknesses in the Visa Revocation Process*, GAO-04-795 (Washington, D.C.: July 13, 2004).

[2]U.S. General Accounting Office, *Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process*, GAO-03-798 (Washington, D.C.: June 18, 2003).

[3]In this testimony, we use the term "visa" to refer to nonimmigrant visas only. The United States also grants visas to people who intend to immigrate to the United States. A visa is a travel document that allows a foreign visitor to present himself or herself at a port of entry for admission to the United States.

[4]The Department of State revokes a person's visa as a precautionary measure after it learns that person may be a suspected terrorist. The purpose of this revocation is to obtain additional information from the person to determine if the individual is the same person who is suspected of being a terrorist by requiring him or her to return to the consulate that issued the visa. According to State officials, this authority is an important and useful tool for more closely scrutinizing the individual as he or she reapplies for a new visa. State also revokes visas for reasons other than terrorism, such as alien smuggling, drug trafficking, and misrepresentation. State officials told us that visas revoked on terrorism grounds account for the vast majority of all visas revoked on national security grounds.

At your request, we examined whether weaknesses in the visa revocation process identified in our June 2003 report were addressed. To accomplish our objective, we obtained information on policies and procedures put in place to improve the visa revocation process; interviewed key State and DHS officials responsible for visa revocations; determined the steps taken to resolve legal and policy issues raised in our June 2003 report; and analyzed data on all visas revoked on terrorism grounds over a 3-month period,[5] including detailed information on a random sample of 35 cases selected from data provided by State in February 2004. We did not review activities by the Federal Bureau of Investigation (FBI) to investigate suspected terrorists. This testimony is based on a published report that was done in accordance with generally accepted government auditing standards.

Summary

The Departments of State and Homeland Security took some actions in the summer of 2003 to address the weaknesses identified in our June 2003 report. State and U.S. Customs and Border Protection (CBP), a component of DHS, developed procedures outlining their respective processes for handling visa revocations. However, our analysis of visas revoked based on terrorism concerns from October through December 2003 revealed that weaknesses remained in the implementation of the visa revocation process, especially relating to the timely transmission of information among federal agencies. For instance, we found that backlogs or long delays sometimes occurred in:

- screening names of terrorists against State's database of current visa holders,
- transmitting recommendations to revoke individual visas,
- revoking individual visas after receiving a recommendation to do so,

[5]Our review covered only nonimmigrant visas that State revoked on terrorism grounds from October 1, 2003, through December 31, 2003. In this testimony, when we refer to individuals whose visas have been revoked, we are referring to those individuals for whom the Department of State has issued a visa revocation certificate. According to the terms of the certificate, the revocation is effective immediately on the date the certificate is signed unless the alien is already in the United States, in which case the revocation becomes effective immediately upon the alien's departure from the United States.

- posting appropriate lookouts used to alert border inspectors of the revocation,
- notifying DHS of visa revocations, and
- requesting that field offices investigate individuals with visas revoked on terrorism grounds who may be in the country.

We also found that agencies involved in the visa revocation process had conflicting records of how many visas were revoked for terrorism concerns and whether individuals who held these visas may be in the country. In addition, officials from DHS's Customs and Border Protection could not document that they consistently notified immigration officials of individuals with revoked visas who were present in the United States. Our review of visa revocations shows that DHS has located individuals in the country whose visas were revoked because they may be suspected or actual terrorists. DHS officials told us that some are still being investigated, three have been arrested on immigration charges, and others have been cleared. With respect to an alien already present in the United States, the Department of State's current visa revocation certificate makes the revocation effective only upon the alien's departure. Therefore, according to DHS officials, if U.S. Immigration and Customs Enforcement (ICE) special agents locate an alien for whom State has issued a revocation certificate that states the revocation is effective upon his or her departure, ICE would be unable to place the alien in removal proceedings based solely on a visa revocation that had not yet taken place.[6]

After we initiated our inquiry for this report in January 2004, State and DHS took additional actions to address the weaknesses we identified through our analysis. State and DHS believe these actions will avoid delays experienced in the past. In April and May, State made significant revisions to its procedures and formalized its tracking system for visa revocation cases. Between January and May, DHS took steps to develop additional written procedures, improve the sharing of information on visa revocation cases, and ensure that immigration investigators are aware of individuals whose visas were revoked and who may be in the country. Finally, State and DHS began discussing how to address the legal and policy issues regarding the removal of individuals with revoked visas. In addition, the

[6]DHS could also attempt to remove these aliens based on the derogatory information that led State to revoke the individual's visa.

Terrorist Screening Center (TSC), an interagency organization established under the FBI in December 2003, recently took some steps to improve the visa revocation process, including developing written standard operating procedures related to the screening of intelligence information and training additional staff to perform this function. We did not fully assess the effectiveness of these actions because they were taken after the October to December 2003 time period that we reviewed. Nonetheless, additional measures are needed to further improve the process. The written policies and procedures often neither contain performance standards such as time frames for completing individual steps of the visa revocation process, nor do they reflect a fully coordinated approach to implementing the process. Further, State and DHS have not concluded their discussion of legal and policy issues related to removing individuals with revoked visas from the country.

In light of our past work and the weaknesses we identified through our review, we are recommending that the Secretaries of Homeland Security and State work jointly and with other appropriate agencies to develop a written, governmentwide policy that clearly defines roles and responsibilities and sets performance standards for the agencies involved in the visa revocation process. We also recommend that DHS and State address outstanding legal and policy issues related to removing individuals with revoked visas from the country or, by October 1, 2004, provide Congress with a list of specific actions that could help resolve them.

Background

Our nation's border security process involves multiple tools for addressing potential terrorist threats to the United States. These tools generally include (1) preventing potential terrorists from entering the country and (2) identifying, locating, and investigating potential terrorists already in the United States. One such tool is the visa revocation process, which involves multiple federal agencies including the Terrorist Screening Center and the Departments of State and Homeland Security. The visa revocation process typically begins with the development of derogatory information about individuals by various federal agencies. This information is then forwarded to TSC, which, along with State, identifies visa holders who may be suspected or actual terrorists. State then posts lookouts regarding the revocation for these individuals; revokes their visas; and notifies the overseas post that issued the visa, DHS, and other agencies. Based on the notification from State, DHS then determines if any of these individuals may be in the country. If so, DHS attempts to locate, investigate, and, as appropriate, remove them from the country.

Initial Actions Taken to Address Weaknesses Were Inadequate

Mr. Chairman, following our June 2003 report, State and DHS's U.S. Customs and Border Protection developed written policies outlining their respective processes for handling visa revocations. However, our analysis of subsequent visa revocations shows that weaknesses remained in the implementation of the visa revocation process.

Delays Occurred at Many Steps in the Visa Revocation Process

State's July 7, 2003, standard operating procedures outlined its internal process for handling visa revocations, including posting lookouts and notifying other agencies of the visa revocation. U.S. Customs and Border Protection's procedures developed following our June 2003 report explained the process for determining whether an individual with a revoked visa may be in the country and, if so, taking appropriate steps to notify investigators. Despite these initial efforts, our review of visas revoked on terrorism grounds from October through December 2003 showed that weaknesses remained in the visa revocation process, especially regarding timely transmission of information among federal agencies. As shown in figure 1, we found delays in agency efforts to:

- *Identify individuals whose visas should be revoked*. In August and September 2003, there was a backlog of approximately 5,000 names of suspected terrorists that had not been screened to identify any visa holders.

- *Transmit recommendations to consular officials to revoke certain individuals' visas*. Instead of sending the typical average of 2 to 6 recommendations to revoke per day, intelligence screeners waited until they had large batches of nearly 100 recommendations or more before sending them to consular officials at State.

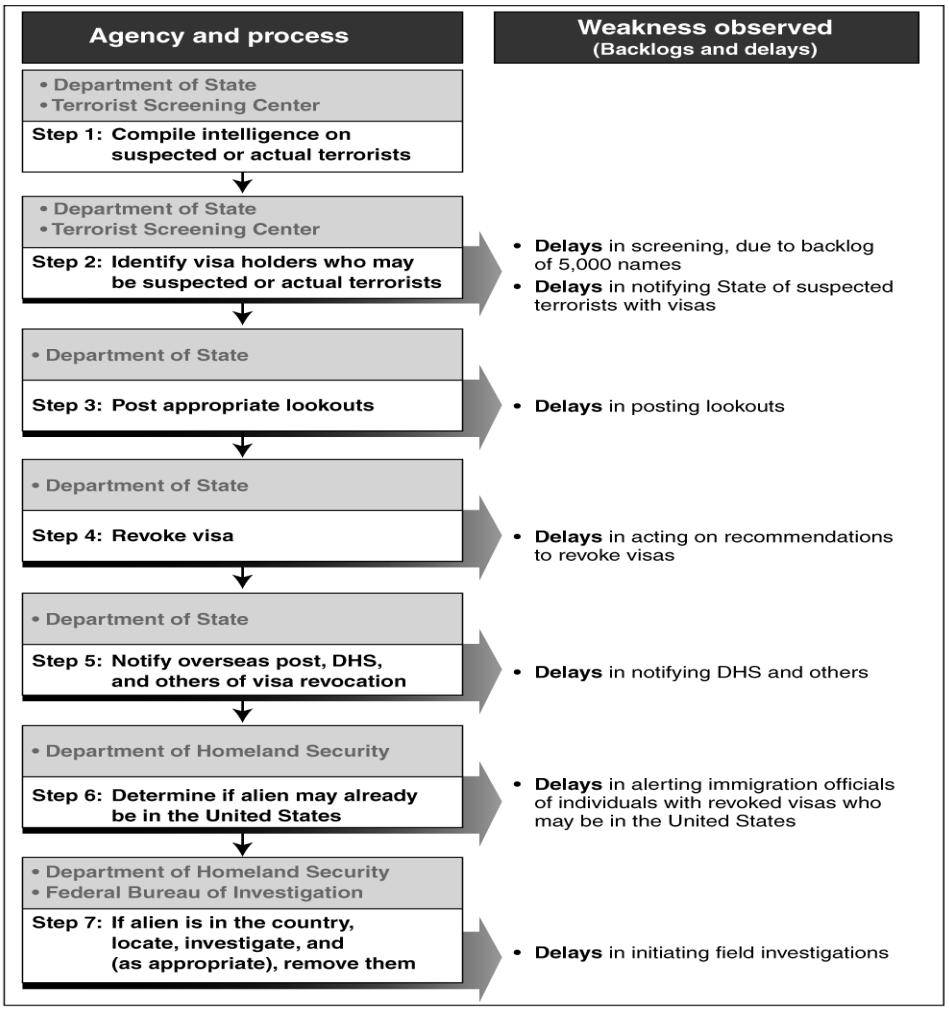
- *Post lookouts to alert border inspectors of visa revocations*. Although State's standard operating procedures directed Consular Affairs officials to post lookouts regarding the revocation before finalizing it, we found that in 6 of the 35 cases we examined in detail, Consular Affairs did not do so until after the revocation was finalized.

- *Revoke individual visas*. State officials told us it should take no more than a week to revoke an individual's visa after receiving a recommendation to do so. In 6 cases, we had sufficient information to determine how long it took State to revoke a visa after receiving a recommendation to do so. In 3 of these cases, it took State at least 6 months and, in one case, as long as 17 months to revoke the individual's visa.

- *Notify DHS of visa revocations*. Of the 35 cases we reviewed in detail, DHS received notification from State the same day a revocation was finalized in 9 cases; in 1 to 6 days in 23 cases; and in 7 days or longer in 3 cases. It is particularly important that these notifications are timely when the alien may already be in the country so that DHS can locate and investigate him or her.

- *Investigate individuals with visas revoked on terrorism grounds who may be in the country.* After receiving notification from State, DHS's U.S. Immigration and Customs Enforcement (ICE) determined that field offices should investigate 8 of the 35 cases we examined in detail. In all 8 of these cases, ICE waited more than 2 months to initiate field investigations.

Figure 1: Points of Delay in the Visa Revocation Process

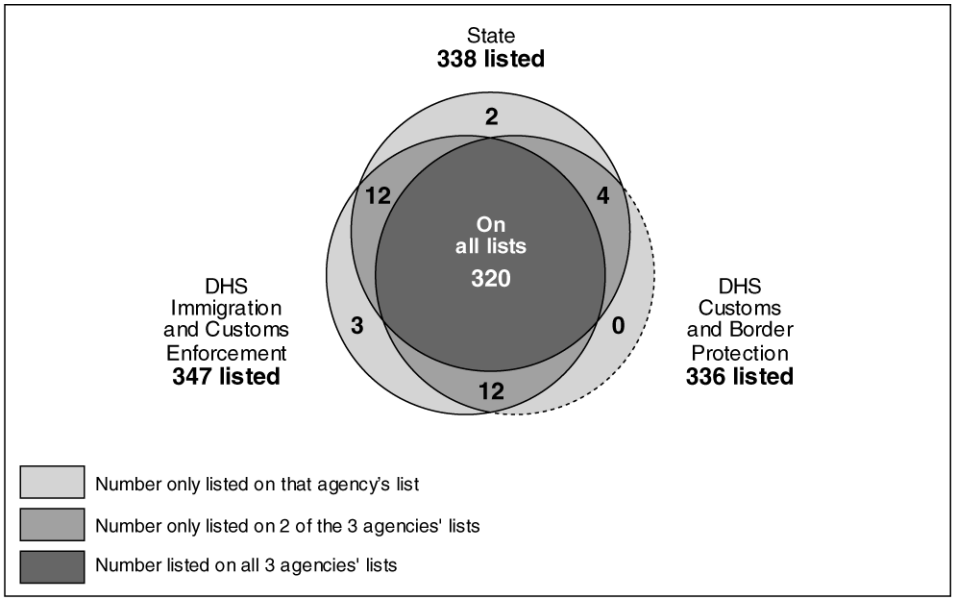


Source: GAO.

Conflicting Data among Agencies

We also found that for the October to December 2003 time period, State, CBP, and ICE reported different numbers of revocations based on terrorism concerns. As shown in figure 2, State listed 338; ICE, 347; and CBP, 336. We found that only 320 names were on all three lists and that some lists contained names that were not on either of the other lists. Instances where a name did not appear on all three lists show a potential breakdown in the visa revocation process and raise concern because DHS may not have been able to take timely action to determine if these individuals were in the country and, if so, to locate and investigate them.

Figure 2: Inconsistencies among Agencies on Number of Visas Revoked from October through December 2003



Source: Conceptual drawing of GAO's analysis of State and Department of Homeland Security data.

Our detailed review of 35 visa revocations on terrorism grounds also showed that CBP's[7] and ICE's records conflicted on whether certain individuals may have been in the country. In 3 of the 35 cases, CBP and ICE disagreed about whether an individual might have been in the country at the time of visa revocation and whether he or she might still be in the country. In 2 of the cases, CBP did not believe the individual was in the country and, therefore, did not refer the cases to ICE for investigation. However, ICE special agents determined that both of these individuals were and still are in the country—one is awaiting adjudication of a political asylum claim, and the other has a pending application to become

[7]CBP's data come from the Nonimmigrant Information System (NIIS), which does not have complete arrival and departure records for all non-U.S. citizens. NIIS records arrivals and departures of foreign citizens through the collection of I-94 forms. Some aliens are required to fill out and turn in these forms to inspectors at air and sea ports of entry as well as at land borders. (Canadians and U.S. permanent residents are not required to fill out I-94 forms when they enter the United States.) NIIS does not have departure data for aliens if they fail to turn in the bottom portion of their I-94 when they depart.

a lawful permanent resident of the United States.[8] In another instance, CBP believed an individual was in the country when his visa was revoked and subsequently notified ICE of the need to locate and investigate him. However, ICE performed its own search of immigration records based on State's notification and concluded that the individual was not in the country. Therefore, it did not investigate him. According to CBP data, this individual has been in the country for more than a year.

Lapses in Notification, Provision of Derogatory Information

We further found that although Customs and Border Protection officials are supposed to immediately notify Immigration and Customs Enforcement of individuals with revoked visas who may be in the country, CBP could not document that it had notified ICE promptly or, in several cases, that it notified ICE at all. According to CBP data on the 35 cases in our sample, 10 aliens might have been in the United States at the time of their revocation. In 3 of these cases, CBP records indicate that ICE was never notified; in the other 7 cases, CBP notified ICE but could not document that the notification occurred until at least 3 months after the revocation.

In addition, Immigration and Customs Enforcement officials stated that they often received no derogatory information showing that individuals whose visas State had revoked on terrorism concerns may pose a national security threat. Without this information, ICE may expend resources conducting investigations on individuals who they believe may pose little or no threat to national security. According to ICE officials, the growing number of visa revocation cases based on terrorism concerns places a significant strain on their investigative resources, forcing ICE to pull agents off active investigations of known national security threats to investigate visa revocation cases.

State officials told us that the vast majority of visa revocations on terrorism grounds are based on derogatory information in the TIPOFF database. However, in May 2004, ICE officials told us that they were not aware that most of State's visa revocations on terrorism grounds are based on information in TIPOFF. According to TSC, of the 35 cases we examined in detail, 32 of the individuals appeared in TIPOFF. In June 2004, ICE

[8]On June 8, 2004, ICE investigators told us that they have no specific derogatory information that would indicate that any of the individuals remaining in the United States currently represent a threat to national security.

informed us that its records check located only 6 of the 35 individuals from our sample in TIPOFF. Also in June, State officials told us they recently began providing the TIPOFF record number to DHS for each individual whose revocation was based on derogatory information in TIPOFF.

Majority of ICE Investigations Concluded, but Legal and Policy Issues Regarding Removing Aliens Remain

Separate from our detailed review of 35 visa revocation cases, we obtained information on the more than 330 visa revocations on terrorism grounds from October through December 2003. According to ICE records, ICE identified 64 individuals whose visas were revoked on national security grounds between October and December 2003 and may be in the country, initiated investigations of all these individuals, and concluded a majority of these investigations. Data provided by ICE show that these investigations resulted in confirming departure of some aliens, clearing others, and arresting 3 on administrative immigration charges.[9] On June 8, 2004, ICE investigators told us that they have no specific derogatory information that would indicate that any of the individuals remaining in the United States currently represent a threat to national security. We also noted several cases where the visa revocation process prevented individuals with visas revoked based on terrorism concerns from entering the United States or helped remove them from the United States.

While ICE has investigated individuals with visas revoked on terrorism grounds, if ICE special agents told us that if they locate an alien in the United States for whom State has issued a revocation certificate using its current wording, ICE would be unable to remove the individual based solely on the visa revocation. State's current visa revocation certificate states that the revocation shall become effective immediately on the date the certificate is signed unless the alien is already in the United States, in which case the revocation will become effective immediately upon the alien's departure.

[9]ICE provided us a breakdown of results of the 64 investigations, but we have not included these data because DHS classified them as law enforcement sensitive.

Actions Have Been Taken Recently to Address Identified Weaknesses

Since we initiated our inquiry in January 2004, State and DHS have taken additional steps to address identified weaknesses in the visa revocation process. These include revising procedures, reviewing past visa revocation cases, and taking steps to address legal and policy issues. In addition, in mid-April, TSC identified visa revocations as a potential homeland security vulnerability and developed an informal process for coordinating actions and sharing information on visa revocations. However, we identified some weaknesses that still need to be addressed.

State Revised Standard Operation Procedures and Formalized Its Revocation Tracking System

In the course of responding to our inquiries, State's Visa Office discovered that its standard operating procedures had not always been followed correctly. As a result, in April and May, State made significant revisions to its procedures to provide more explicit instructions for each step in the process.[10] Also in April, a State official told us that the Visa Office planned to formalize its previously informal system for tracking visa revocations to make it a definitive reference point for information about all visa revocations.

DHS Acted to Improve Policies and Information Sharing, Review Visa Revocations, and Resolve Legal and Policy Issues

DHS also took several actions following the initiation of our inquiry. In January, ICE assigned a special agent to CBP to assist with information exchange and coordination of visa revocation issues and in March issued written standard operating procedures for visa revocation investigations. In May, CBP reviewed all visa revocations in its lookout database to ensure that all appropriate notifications had been sent to ICE and sent additional notifications. This review identified 656 individuals with revoked visas who may be in the country. We reviewed these data and determined that 34 of these individuals' visas were revoked on terrorism grounds during the period of our review.

In February 2004, DHS officials also told us that they were considering a regulation relating to visa revocations that could allow the removal of individuals from the United States because their visas have been revoked by State. In June 2004, DHS officials told us that they were still considering this regulation and were coordinating with State and the Department of Justice. Also in June 2004, DHS officials told us that they had reached an informal understanding with State that, on a case-by-case basis, DHS may

[10]State officials told us that, in light of the evolving relationships among the agencies involved in the visa revocation process, they revise their procedures as necessary.

ask that State change its revocation certificate related to an admitted alien to make the revocation effective retroactively to the date of issuance of the visa, and State will consider such a request in consultation with DHS and the Department of Justice. State and DHS further agreed that should the wording of the revocation certificate be changed, it would not be changed in all instances, but only on a case-by-case basis. According to DHS officials, if State changed the wording of the certificate to make the revocation effective retroactively to the date of issuance of the visa, the government would no longer be effectively barred from litigating the issue. Nonetheless, revocation of a visa is not explicitly a stated grounds for removal under the Immigration and Nationality Act.[11] Moreover, the issue of whether, under current statute and regulations, DHS would have the authority to initiate removal proceedings solely on the basis of a visa revocation has not been litigated and remains unresolved legally. As of June 2004, DHS did not have any specific time frame for completing discussions with State and other agencies regarding legal and policy issues relating to visa revocations.

TSC Developed Procedures, Trained Additional Staff, and Assessed the Visa Revocation Process

Since its formation in December 2003, TSC has taken actions to clarify its role, increase its capacity to handle visa revocation cases, and analyze the visa revocation process as an antiterrorism tool. Specifically, in March 2004, TSC developed written standard operating procedures outlining the process for screening intelligence information to identify visa holders who may be terrorists. TSC also recently began training additional staff to screen terrorism intelligence for matches with visa holders.[12] TSC officials told us that, in mid-April 2004, TSC identified the visa revocation process as a potential vulnerability to homeland security. As a result, it developed a process to enable the Center to coordinate the sharing of information on visa revocation cases without relying on formal notifications transmitted among the agencies.

Additional Actions Still Needed

While steps have been taken to improve the visa revocation process, which State and DHS believe will help avoid delays experienced in the past, additional actions are needed to further improve it. There is no governmentwide policy outlining roles and responsibilities for the visa

[11]8 U.S.C. § 1101 et seq.

[12]Previously, the center had one full-time staff member dedicated to performing this function.

revocation process. Although CBP and ICE have written internal procedures related to their respective roles and responsibilities in the visa revocation process, DHS has still not developed an agencywide policy governing the process. The written procedures also often lack specific time frames for completing individual steps in the process. For instance, State's procedures lack guidance on how quickly Consular Affairs officials should act on recommendations from TSC to revoke individuals' visas, and ICE's written procedures do not specify a time frame for referring cases to field offices. In addition, State and DHS have not concluded their discussions on legal and policy issues related to removing individuals with revoked visas from the United States.

Mr. Chairman, in light of the weaknesses we identified in our most recent review of the visa revocation process as an antiterrorism tool, we are recommending that the Secretary of Homeland Security work jointly with the Secretary of State and other appropriate agencies to take the following two actions:

- Develop a written, governmentwide policy that clearly defines the roles and responsibilities of the agencies involved in the visa revocation process, including the Terrorist Screening Center. This policy should include directions for sharing information and tracking visa revocation cases throughout the interagency visa revocation process. It should incorporate performance standards (e.g., time frames for completing each step in the process) and periodic interagency assessments to determine whether information is being shared among the agencies involved, appropriate follow-up action is being taken, and data differences, if they occur, are being reconciled; and

- Address outstanding legal and policy issues regarding the status of aliens with visas revoked on national security grounds who are in the United States at the time of the revocation. If these issues cannot be addressed, the executive branch should, by October 1, 2004, provide Congress with a list of specific actions (including any potential legislative changes) that could help resolve them.

In commenting on a draft of our report, the Department of Homeland Security said it generally concurred with the report and its recommendations. It added that our identification of areas where improvements are needed will contribute to ongoing efforts to strengthen the visa revocation process. The Department of State indicated that it believes that its handling of the revocation process overall has been

excellent and has improved over time. State indicated that it would consult with DHS regarding implementation of our recommendations.

Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions you or other Members of the Subcommittee may have at this time.

GAO Contacts and Staff Acknowledgments

For further information on this testimony, please call Jess Ford or John Brummet at (202) 512-4128. Individuals making key contributions to this testimony include Jason Bair, Elizabeth Singer, Mary Moutsos, Janey Cohen, and Etana Finkler.

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