

Simms, Donna Y. (ODAG)

From: Simms, Donna Y. (ODAG)
Sent: Monday, May 8, 2017 5:21 PM
To: Terwilliger, Zachary (ODAG); Bonilla, Armando (ODAG); Gauhar, Tashina (ODAG); Lan, Iris (ODAG); Barnett, Gary (ODAG)
Subject: FYSA _ WF 3828115 dojprod_Control_Sheet_DOJ_201758_17196
Attachments: dojprod_Control_Sheet_DOJ_201758_17196.rtf; 3828115.pdf

Attached.

Donna

Donna Simms
Office of the Deputy Attorney General
U.S. Department of Justice
Washington, DC 20530
(202) 514-2073
donna.y.simms@usdoj.gov

Congress of the United States
Washington, DC 20515

May 2, 2017

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Sessions:

We write to inquire about the use of social media monitoring technologies by the federal government and federal law enforcement agencies, as well as funding by the federal government of the use of such technologies by local and state law enforcement agencies.

A 2016 survey of 539 law enforcement agencies in 48 states and the District of Columbia found that nearly three-quarters of the surveyed agencies used social media to conduct intelligence gathering for investigations.^[i] In another study, 156 state and local jurisdictions spent at least \$10,000 on sophisticated social media monitoring technology. However, only 18 had publicly available policies governing their use for criminal investigations or intelligence gathering.^[ii] Critically, less is known about the use of these tools by the federal government, in particular by the FBI, the DEA, and other arms of the Department of Justice. Moreover, additional transparency is sorely needed regarding the federal government's guidelines for funding local entities for acquisition of these tools.

Social media information can be utilized by law enforcement in various ways: by directly observing publicly-available information on social media platforms; by using informants or undercover accounts; or by using analytical tools that analyze relationships, infer individuals' locations, track groups, and more. While social media data can be a useful tool for apprehending criminals in cases related to property destruction, human trafficking and homicide, it can also be misused in ways that implicate Americans' rights to free speech and freedom of association, as well as what the Supreme Court has recognized as the evolving Fourth Amendment right to privacy in our digital age.

There is evidence that social media data has been used to monitor protests and activists, disproportionately affecting communities of color. An investigator at the Oregon Department of Justice used a service called DigitalStakeout to search Twitter for tweets using the hashtag #BlackLivesMatter. On the basis of his tweets – which included political cartoons and commentary but no indications of criminal activity or violence – the Department's own Director of Civil Rights was deemed a "threat to public safety."^[iii] The investigator was subsequently fired by the Oregon Attorney General after the Director filed a complaint.^[iv] In Baltimore, after

the death of Freddie Gray, the city's police used a service called Geofeedia to monitor protestors, including high school students who planned a walk-out; some evidence suggests that the online surveillance may itself have contributed to an escalation of the tensions between the community and the police.^[vi]

Notably, the ACLU of Northern California obtained records last fall indicating that Geofeedia had advertised its services for precisely that purpose.^[vi] Several of the major social media platforms have barred Geofeedia and other similar companies from using their data for surveillance purposes in the wake of these revelations, but this is unlikely to be the last word, given the rapid evolution of technology. In addition, this move does not impact the ability of police departments to monitor social media in more direct ways.^[vii]

Undercover accounts, for example, may be used to monitor lawful protest activities. The Mall of America, for instance, created undercover Facebook accounts to connect with activists and build dossiers on them; these actions appear to have been undertaken in coordination with the Bloomington, Minn. City Attorney's Office, and with the involvements of an FBI Joint Terrorism Task Force as well.^[viii] Fusion centers, which were created under the auspices of the Department of Justice and Department of Homeland Security to focus on counterterrorism efforts in the wake of 9/11, have also spent resources observing activists on Twitter and Facebook.^[ix]

Youth of color are often disproportionately monitored online. Perhaps the most notorious example is that of Jelani Henry, a teenager who was wrongly charged with murder based in large part on having been deemed a criminal affiliate after "liking" friends' videos on Facebook.^[x] Henry ultimately spent two years on Rikers Island awaiting trial, including nine months in solitary confinement, until his case was dismissed.

In addition, some analytic technologies assign a "threat score" to individuals based on a variety of factors, including the content of their social media posts. This process is not transparent and could result in errors, raising questions about the reliability of the technology, how it is being used by law enforcement agencies, and the mechanisms for oversight and accountability.^[xi]

Finally, there are concerns that social media monitoring technologies can extrapolate data about users' locations through geotagging and other methods, and can infer large volumes of information about individuals that might otherwise be inaccessible.^[xii] One company was described as having the ability to "scrape and analyze massive volumes of data from Facebook and Twitter and process it for keywords and geographic locations that reveal 'patterns of interest.'"^[xiii] These data mining capabilities could run afoul of an individual's right to privacy, in light of the Supreme Court's growing recognition of the Fourth Amendment impact of inexpensive, large-scale surveillance capabilities.^[xiv]

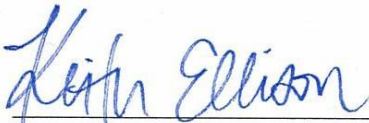
In order to ensure transparency and accountability, we seek answers to the following questions:

- 1) How does the federal government use social media monitoring technology, whether directly monitoring social media platforms, using informants or undercover accounts, or utilizing an analytical software product provided by a third party or developed within an agency? Please detail why this technology is used in each example.

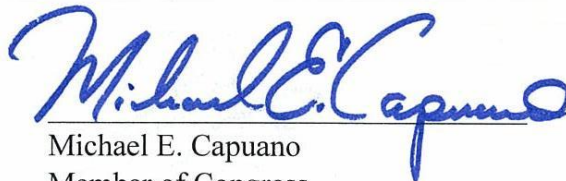
- 2) What measures are in place to protect First Amendment rights, including ensuring that social media monitoring are not used to monitor or track people solely on the basis of the First Amendment-protected speech or associations? This would include monitoring individuals based on a hashtag such as #BlackLivesMatter or inferring the shared location of a group of people who are associating or planning to assemble.
- 3) What measures are in place to protect Fourth Amendment rights, particularly in light of the acknowledgement of a majority of justices in *U.S. v. Jones* and *California v. Riley* that the accumulation and analysis of a quantity of information that previously would have been impossible or prohibitively expensive to collect implicates Constitutional rights to privacy?
- 4) What measures are in place to prevent an undue amount of scrutiny on communities of color, religious minorities, or immigrant and refugee communities?
- 5) How is the use of these technologies audited? How often do audits occur, who is responsible for conducting them, and how is the resulting data used?
- 6) How long does law enforcement store the data collected?
- 7) What training is provided regarding social media monitoring to ensure that social media data is collected and used responsibly and accurately? Does the training, if any, include information about the disproportionate use of social media monitoring against communities of color, the privacy interests implicated by social media monitoring, or the susceptibility of social media postings to misinterpretation?
- 8) What guidelines or standards are in place to guide judgments about when interaction on social media rises to the level of a criminal involvement? Relatedly, what guidelines are in place to ensure that non-criminal social media data collected about an individual is not stored and used for a separate, unrelated crime investigation of the same individual at a later date?
- 9) How much funding has the Department of Justice provided to local and state law enforcement agencies to conduct social media monitoring, either by the agency itself or through the purchase of social media monitoring software? Please break this amount down into the following categories: total annual amount for each year funding has been provided; each agency or entity receiving such funding, the year in which such funding was provided, and the purpose or purposes for which such funding was provided; and copies of any agreements or memoranda of understanding between such agency and the Department of Justice, or the social media monitoring company and the Department of Justice, regarding such funding or purchases.

- 10) What reporting does the Department of Justice require from local or state entities that receive funding to conduct social media monitoring? For instance, does the DOJ require that agencies conduct an analysis of possible discriminatory use or impact of such tools, have auditing procedures in place and provide confirmation that such audits are occurring on a regular basis, or other requirements?
- 11) How much has the Department of Justice spent on technology for the purpose of monitoring, tracking, following, or investigating persons or groups on social media? Please break this amount down into the following categories: total annual amount for each year spending has occurred; the DOJ arm on whose behalf such money has been expended (e.g., FBI, DEA, U.S. Marshal's Office, etc.) in each year; the company, if any, that has received such money; and copies of any relevant contracts or memoranda of understanding between the DOJ and such companies.

Sincerely,



Keith Ellison
Member of Congress



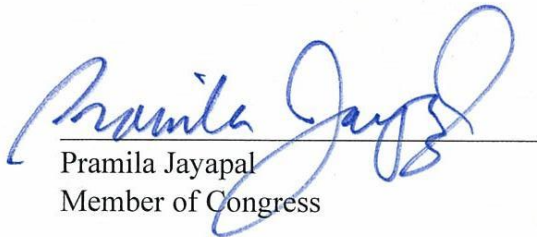
Michael E. Capuano
Member of Congress



Dwight Evans
Member of Congress



Raul M. Grijalva
Member of Congress



Pramila Jayapal
Member of Congress



Henry C. (Hank) Johnson Jr.
Member of Congress



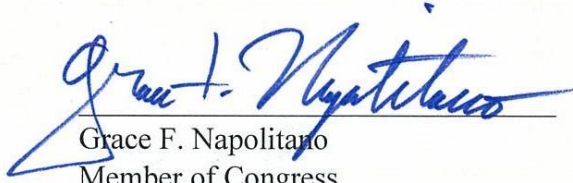
Brenda L. Lawrence
Member of Congress



Barbara Lee
Member of Congress



Gwen Moore
Member of Congress



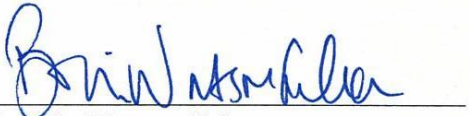
Grace F. Napolitano
Member of Congress



Jan Schakowsky
Member of Congress



Mark Takano
Member of Congress



Bonnie Watson Coleman
Member of Congress

^[i] <http://www.theiacp.org/Portals/0/documents/pdfs/2016-law-enforcement-use-of-social-media-survey.pdf>

^[ii] See <https://www.brennancenter.org/analysis/map-social-media-monitoring-police-departments-cities-and-counties>.

^[iii] See <http://www.wweek.com/news/2016/04/15/oregon-department-of-justice-civil-rights-chief-intends-to-sue-his-agency-over-black-lives-matter-surveillance/>;
<https://s3.amazonaws.com/wapopartners.com/wweek-wp/wp-content/uploads/2016/04/15172052/Johnson-complaint.pdf>.

^[iv] http://www.oregonlive.com/politics/index.ssf/2016/10/black_lives_matter_profiling.html.

^[v] <http://www.spin.com/2016/10/social-media-surveillance-probably-played-a-role-in-sparking-the-freddie-gray-riot/>

^[vi] https://medium.com/@ACLU_NorCal/police-use-of-social-media-surveillance-software-is-escalating-and-activists-are-in-the-digital-d29d8f89c48#.q206gibzb.

^[vii] <https://techcrunch.com/2016/10/11/facebook-twitter-cut-off-data-access-for-geofeedia-a-social-media-surveillance-startup/>.

^[viii] <https://theintercept.com/2015/03/18/mall-americas-intelligence-analyst-catfished-black-lives-matter-activists-collect-information/>; <http://www.citypages.com/news/emails-show-city-attorney-colluded-with-mall-of-america-to-prosecute-protesters-6537820>; <https://theintercept.com/2015/03/12/fbi-appeared-use-informant-track-black-lives-matter-protest/>.

^[ix] <https://privacysos.org/blog/so-called-counterterror-fusion-center-in-massachusetts-monitored-black-lives-matter-protesters/>.

^[x] <http://www.theverge.com/2014/12/10/7341077/nypd-harlem-crews-social-media-rikers-prison>

^[xi] http://www.aclunc.org/docs/201512-social_media_monitoring_software_pra_response.pdf;
https://www.washingtonpost.com/local/public-safety/the-new-way-police-are-surveilling-you-calculating-your-threat-score/2016/01/10/e42bccac-8e15-11e5-baf4-bdf37355da0c_story.html?utm_term=.ed0553f1ca7b.

^[xii] See, e.g., <http://www.officer.com/article/12155701/how-to-use-social-media-amidst-protests>

^[xiii] <https://www.revealnews.org/article/homeland-security-office-oks-efforts-to-monitor-threats-via-social-media/>.

^[xiv] See, e.g., <https://object.cato.org/sites/cato.org/files/serials/files/supreme-court-review/2014/9/pincus.pdf>.

Pings, Anne (OLA)

From: Pings, Anne (OLA)
Sent: Thursday, May 3, 2018 2:21 PM
To: Ferrato, Katherine M. (ODAG); Loveland, Daniel (ODAG); Hall, Jeffrey (OASG)
Subject: Congressional Response re: Social media monitoring - Ellison et al #3828115
Attachments: 2017-5-2 Social media monitoring technologies by the federal gov't and f....pdf; DOJ to Ellison (Social Media) DRAFT FINAL - Ellison #3828115 (#4000876).....docx; DOJ to Ellison Attachments.pdf

Hi ODAG and OASG –

Attached is a proposed response to Rep. Ellison and other signers regarding social media monitoring technologies by DOJ LEAs. It also includes (b) (5)

Please let us know if you clear.

Best regards,
Anne

Anne Pings / Attorney Advisor / Office of Legislative Affairs / U.S. Department of Justice / (b) (6)

Cox, Stephen (OASG)

From: Cox, Stephen (OASG)
Sent: Friday, May 11, 2018 1:51 PM
To: Hall, Jeffrey (OASG)
Subject: RE: Congressional Response re: Social media monitoring - Ellison et al #3828115

No comments from me.

From: Hall, Jeffrey (OASG)
Sent: Friday, May 11, 2018 11:20 AM
To: Cox, Stephen (OASG) <scox@jmd.usdoj.gov>
Subject: FW: Congressional Response re: Social media monitoring - Ellison et al #3828115

Duplicative Material



Pings, Anne (OLA)

From: Pings, Anne (OLA)
Sent: Friday, May 11, 2018 4:20 PM
To: Ferrato, Katherine M. (ODAG)
Cc: Hall, Jeffrey (OASG); Loveland, Daniel (ODAG); Spolar, Ellen S. (ODAG)
Subject: RE: Congressional Response re: Social media monitoring - Ellison et al #3828115

Thanks all!

From: Ferrato, Katherine M. (ODAG)
Sent: Friday, May 11, 2018 3:55 PM
To: Pings, Anne (OLA) <apings@jmd.usdoj.gov>
Cc: Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>; Loveland, Daniel (ODAG) <dloveland@jmd.usdoj.gov>; Spolar, Ellen S. (ODAG) <esspolar@jmd.usdoj.gov>
Subject: RE: Congressional Response re: Social media monitoring - Ellison et al #3828115

ODAG clears

From: Hall, Jeffrey (OASG)
Sent: Friday, May 11, 2018 1:56 PM
To: Pings, Anne (OLA) <apings@jmd.usdoj.gov>; Ferrato, Katherine M. (ODAG) <kferrato@jmd.usdoj.gov>; Loveland, Daniel (ODAG) <dloveland@jmd.usdoj.gov>
Subject: RE: Congressional Response re: Social media monitoring - Ellison et al #3828115

OASG clears

From: Pings, Anne (OLA)
Sent: Thursday, May 3, 2018 2:21 PM
To: Ferrato, Katherine M. (ODAG) <kferrato@jmd.usdoj.gov>; Loveland, Daniel (ODAG) <dloveland@jmd.usdoj.gov>; Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>
Subject: Congressional Response re: Social media monitoring - Ellison et al #3828115

Duplicative Material



Hall, Jeffrey (OASG)

From: Hall, Jeffrey (OASG)
Sent: Friday, May 11, 2018 11:20 AM
To: Cox, Stephen (OASG)
Subject: FW: Congressional Response re: Social media monitoring - Ellison et al #3828115
Attachments: 2017-5-2 Social media monitoring technologies by the federal gov't and f....pdf; DOJ to Ellison (Social Media) DRAFT FINAL - Ellison #3828115 (#4000876).....docx; DOJ to Ellison Attachments.pdf

OLA pinged again

From: Hall, Jeffrey (OASG)
Sent: Thursday, May 3, 2018 3:59 PM
To: Cox, Stephen (OASG) <scox@jmd.usdoj.gov>
Subject: FW: Congressional Response re: Social media monitoring - Ellison et al #3828115

From: Pings, Anne (OLA)
Sent: Thursday, May 3, 2018 2:21 PM
To: Ferrato, Katherine M. (ODAG) <kferrato@jmd.usdoj.gov>; Loveland, Daniel (ODAG) <dloveland@jmd.usdoj.gov>; Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>
Subject: Congressional Response re: Social media monitoring - Ellison et al #3828115

Duplicative Material



American Security Today

From: American Security Today
Sent: Wednesday, October 12, 2016 7:30 AM
To: Werner, Sharon (OAG)
Subject: Social Media - Geofeedia - Law Enforcment - ACLU... (Video Interview)

Cutting-Edge Products and Technologies to help Keep Our Nation
Safe, One City at a Time

[View this email in your browser](#)



October 12, 2016



[FB, Twitter Cut Off Access for Geofeedia \(Video Interview\)](#)

By Lora Kolodny, TechCrunch

According to a new study published today from the American Civil Liberties Union, major social networks including Twitter, Facebook and Instagram have recently provided user data access to Geofeedia, the location-based... [Read More](#)



[McMurdo to Design Recovery](#)



[Device for Soldiers \(Video\)](#)

McMurdo, a trusted name in emergency readiness & response, has received a US Army contract to provide working prototypes of a custom, militarized personnel recovery device (PRD), to alert & notify if a soldier becomes isolated, missing, detained or captured... **[Read More](#)**

[NICE to Demo Policing & Invest Software at IACP \(Video\)](#)

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[RRA Offers Vetting Solution for Refugee Screening \(Video\)](#)



A projected 110,000 refugees will enter the US in 2017, requiring a new paradigm, or "extreme vetting." RRA technology provides an evaluation platform that enhances human capabilities to determine risk factors & threat... [Read More](#)

[Engility Wins Award to Combat Chikungunya Virus \(See Video\)](#)



Engility has been awarded a \$10 million task order by the Walter Reed Army Institute of Research to conduct clinical trials for vaccines to combat the mosquito-borne Chikungunya virus. The TO was awarded under the \$900 million... [Read More](#)

[Accenture Names Emr NSA](#)



Accenture Names Former NSA

OFL to Lead Fed Intel Practice

Harold 'Hal' Smith, a former ADD at the National Security Agency, and seasoned intelligence & defense executive, has joined Accenture Federal Services as a managing director to lead its intelligence practice. Smith brings a unique... [**Read More**](#)



USCG Airlifts Man Fallen from Cliff in Acadia National Park



A helicopter crew from Coast Guard Air Station Cape Cod hoisted a climber from an 80-foot cliff in Acadia National Park in ME. A watchstander from the Air Force Rescue Coordination Center, called the USCG after a National Park Ranger... [Read More](#)

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T3 Motion, will exhibit its innovative Tactical Technology range of products at the influential IACP, including the T3 Patroller, T3 Vision, T3 TG-3 IED Containment Device, T3 TG-5 Tactical Breach Bladder, T3 TG-7 Ballistic Vest Insert Pads... [Read More](#)

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Siklu, the leader in millimeter wave wireless solutions, unveils new 5-Gigabit full duplex wireless solution with the EtherHaul™ -5500FD, a reliable fiber extension, to provide robust multi-GB throughput in any environment... [Read More](#)





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Bressler, Steven (OLP)

From: Bressler, Steven (OLP)
Sent: Monday, May 9, 2016 8:51 AM
To: Berman, Julia (CIV); Soskin, Eric (CIV); Snead, Jacqueline (CIV); Coppolino, Tony (CIV); Kneedler, Jennie L. (CIV); Cedrone, Gerard J (CIV)
Subject: Twitter

Twitter Cuts Off Intelligence Agencies' Access To Full Stream Of Tweets. The Wall Street Journal (5/8, A1, Stewart, Maremont, Subscription Publication, 6.27M) reports Twitter has cut off US intelligence agencies' access to a service that shows its entire livestream of public tweets. The service is provided by Dataminr, the only company Twitter authorizes to access the full stream and sell it to clients. Twitter does not own Dataminr, but owns a small stake in it. The rescinding of access has not been publicly announced, but was confirmed to the Journal by an intelligence official and others.

Chogyal, Tashi (OLA)

From: Chogyal, Tashi (OLA)
Sent: Friday, December 18, 2015 3:16 PM
To: OLA (JMD)
Subject: 2015-12-17 HOGR Hearing Transcript (National Security) - FINAL
Attachments: 2015-12-17 HOGR Hearing Transcript (National Security) - FINAL.pdf; 2015-12-17 HOGR Hearing Transcript (National Security) - FINAL.docx

House Oversight and Government Reform Committee Holds Hearing on Terrorist Travel

CQ CONGRESSIONAL TRANSCRIPTS

Congressional Hearings

December 17, 2015 Final

CHAFFETZ:

The Committee on Oversight and Government Reform will come to order. And without objection, the chair is authorized to declare a recess at any time.

The United States has the most generous immigration system in the world. In Fiscal Year 2015, the State Department issued almost 10 million visas for people seeking temporary entry into the United States. The State Department issued an additional 531,463 immigrant visas last year alone. Those 10.5 million immigrants and non-immigrant visa holders joined an estimated 20 million others who entered the United States without visas under the visa waiver program.

Our government also issued 1,075,63 border crossing cards to Mexican nationals in just the first 10 months of Fiscal Year 2015. There are an estimated, we're guessing, close to 10 million border crossing cards in circulation today.

On top of that, more than a million non-immigrant students are lawfully studying in the United States on student visas. Some 2,093,711 individuals were granted employment authorization in Fiscal Year 2015. In Fiscal Year 2013, the last year for which statistics are available, the United States granted asylum status to 25,199 people. And from Fiscal Year 2008 to Fiscal Year 2014, the number of individuals claiming a credible fear of persecution in their home country increased some 921 percent. If we can put that graphic up, I would appreciate it.

We are seeing a rapid rise in people coming to the United States, stepping foot into our country and claiming asylum. We've had a lot of discussion about refugees who the administration wants to import to the United States of America, but let's also understand the surge that's happening on our borders.

Just today, on the front page of The Washington Post, they're talking -- has a front page story about the number of children that are coming across our borders. You can put that graphic down. Thank you.

The total number of asylum applications filed between Fiscal Year 2010 and Fiscal Year 2014 more than doubled, going from 47,000-plus to over 108,000. And 69,933 refugees were resettled in the United States just last year.

So that's an incomplete picture, and evidently not enough for the Obama administration. Not everyone who is here came legally or obtained lawful status once they got here. In Fiscal Year 2013, 241,442 people were processed for expedited removal. In Fiscal Year 2014, the border patrol made 486,651 apprehensions.

Still, there's up to an estimated 15 million people that are here illegally. It's estimated that 40 percent of those folks entered legally and simply did not leave.

These numbers beg the question whether the United States is doing enough to vet people who are applying to come to the United States. Our world is changing, and along with it the types of threats that we encounter. Certainly, with our experience with 9/11, the Boston bombers, and more recent terrorist attacks make it clear the immigration screening process is a critical element in protecting the American people. Reviewing the backgrounds of foreign nationals before they come to the United States is crucial in understanding who is entering the United States. And the recent terrorist attacks in San Bernardino and Paris highlight how important these background checks have to be.

We've seen some of the most horrific terror episodes that we've had in our nation recently in California, 14 people murdered, wounding 21 more. It was a deadliest terrorist attack on the United States soil since September 11.

Tashfeen Malik came to the United States on a fiancée visa before getting her green card. She reportedly passed three background checks as she emigrated to the United States from Pakistan. First, DHS checked her name against the American law enforcement and national security databases. Then the State Department used her fingerprints to do a criminal background check. Finally, when she was applying for lawful permanent resident status, DHS checked her out again. She cleared each check. No red flags were raised.

But it was pretty clear now, looking back, that it was well known among her friends and family that she supported violent jihad against the United States. It's being reported this morning, I think it's MSNBC, that as early as 2011, Homeland Security was preparing to check social media, and yet Homeland Security decided that was a bad idea.

Almost every story I've ever heard, read and seen is about -- even the president has made comments about terrorists who are really good at using social media. And back in 2011, when Homeland Security was thinking about using social media, the decision at Homeland Security was, Bad idea. They made the wrong call. They made the really wrong call.

It is unclear what DHS will actually do when it encounters fraud via social media or other tools it utilizes for applicants seeking admission to the United States. It's my understanding that Homeland Security might start looking at it.

This is publicly available information. Under current law, overstaying a visa, violating its terms or committing fraud in the immigration process is sufficient to render an alien deportable, but now, pursuant to executive action, such conduct is not necessarily a priority for removal. All too often, we hear stories of offenders who are encountered by law enforcement until (ph) they overstayed (ph) and committed crimes!

And then Jeh Johnson, the secretary of Homeland Security, puts out guidance and say, Even if you commit sex crimes, even if you do certain other crimes, don't necessarily need to deport them! They're here illegally! They commit a crime, and Homeland Security is saying, Use discretion. We may not want to -- we may not want to deport these people. It's not a threat to

public safety. You tell a woman who's been raped that it's not -- that it's not against public safety to have that person here! We're going to go through that in this committee here today.

A joint subcommittee hearing last Thursday left many in this committee's members frustrated and confused about the country's ability to address the growing threat. Homeland Security sent its deputy assistant secretary for screening coordination office to this committee. It was an embarrassment!

As the deputy assistant secretary, her bio states she, quote, "deters, detects and denies access to or withholds benefits from individuals who may pose a threat to the United States of America." She couldn't answer a single question! I don't know. I'll have to get back with you. All the promises she made, by the way, she didn't fulfill.

She couldn't even tell me if more people come in by land, by sea or by air! She thinks most people come into this country by air. And she's in charge of screening!

You can see why we're scared to death that this administration, the Department of Homeland Security, the State Department is not protecting the American people! She has worked in that office since 2007. The basic lack of information of a senior official raises serious concerns. It inspires little confidence.

And Americans have legitimate concerns about the threat that radical extremists pose to their safety and the safety of their friends, families and communities.

I'd like to complete my opening remarks with a video. This is of the national security adviser and then followed up by -- followed up by -- you'll see. It'll speak for itself.

(BEGIN VIDEO CLIP)

CHRIS WALLACE, HOST, "FOX NEWS SUNDAY":

Is President Obama reconsidering his plan to accept 10,000 Syrian refugees over the next year?

BEN RHODES, DEPUTY NATIONAL SECURITY ADVISER FOR STRATEGIC COMMUNICATIONS: No, Chris, we're still planning to take in Syrian refugees. We have very robust vetting procedures for those refugees. It involves our intelligence community, our National Counterterrorism Center, extensive interviews, vetting them against all the available information.

CHUCK TODD, HOST, "MEET THE PRESS":

Bringing Syrian refugees into the United States?

RHODES:

No, Chuck, we have very extensive screening procedures for all Syrian refugees who would come to the United States. There's a very careful vetting process that includes our intelligence

community, our National Counterterrorism Center, the Department of Homeland Security. So we can make sure that we're carefully screening anybody who comes to the United States.

JAKE TAPPER, CNN ANCHOR:

And are you confident enough in our vetting process, as the United States brings Syrian refugees into our country, to pledge that this will never happen here?

RHODES:

With respect to refugees, we have the most extensive security vetting that we've ever had to deal with Syrian refugees coming into the United States that involves not just the Department of Homeland Security and the State Department, but also our intelligence community, the National Counterterrorism Center, so that anybody who comes to the United States, we are carefully vetting against all of our information.

FBI DIRECTOR JAMES COMEY:

I think that's the challenge we're all talking about is that we can only query against that which we have collected. And so if someone has never made a ripple in the pond in Syria in a way that would get their identity or their interests reflected in our database, we can query our database until the cows come home, but we're not going to -- there'll be nothing show up because we have no record on that person. That's what Assistant Director Steinbach was talking about. You can only query what you've collected.

(END VIDEO CLIP)

CHAFFETZ:

At least the FBI director calls it like it is. At least the FBI director is telling us candidly what's happening out there. And in the case of the most recent terrorist attacks, when the person maybe hasn't been here or there are other circumstances, you can see why we have great cause for concern.

CHAFFETZ:

So we have a series of questions today. What I'd like to do is introduce the panel, allow for their opening statements, then we will have the opening statement for Mr. Cummings and we will go to questions from there. I would -- I will hold the record for five legislative days for any members who would like to submit a written statement.

We're now going to recognize our witnesses.

We are pleased to welcome the Honorable Alan Bersin, assistant secretary for international affairs and chief diplomatic officer for the Office of Policy at the United States Department of Homeland Security; the Honorable Leon Rodriguez, director of United States Citizenship and Immigration Services; the Honorable Michele Thoren Bond, assistant secretary of the Bureau of

Consular Affairs at the United States -- at the United States Department of State; and the Honorable Anne Richard, assistant secretary, Bureau of Population, Refugees and Migration, the United States Department of State.

We welcome you all and thank you for being here. Pursuant to committee rules, all witnesses are sworn before they testify. If you will please rise and raise your right hand? Do you solemnly swear or affirm that the testimony you're about to give will be the truth, the whole truth and nothing but the truth? Thank you. Please be seated. Let the record reflect that the witnesses answered in the affirmative.

In order to allow time for discussion, we would appreciate it if you'd please limit your oral testimony to five minutes. Your entire written -- the entire written record will be -- statement will be made part of the record. We'll do the four opening statements, and then we'll hear the opening statements from Mr. Cummings, and then we will go to questions from there.

Mr. Bersin, you are now recognized for five minutes.

BERSIN:

Good morning, Mr. Chairman, members of the committee. The last time I had the privilege of being here was to discuss the issue of Libya. I'm happy to be here this morning, look forward to our dialogue.

I also, in this 15th year since 2001, since September 11, 2001, want to express the support and sympathy that I and my family feel and I'm sure my colleagues on the panel share and our colleagues across federal service for the families of those killed in San Bernardino and for the families and the victims who were injured, 21 victims injured in that terrorist attack.

Our written testimonies and the statements submitted to the committee actually describe in some detail the systems that have been put in place for screening of terrorist travel. What I'd like to do in the four minutes I have left is to give you an overview to look at the system and the four major shaping factors that have built it since 9/11.

And I point out that this is a system that was built under the leadership of two presidents, one Republican and one Democrat. It was built under the leadership of four Homeland Security secretaries, two Democratic and two Republican. It was built under four secretaries of state, two Republicans and two Democrats.

What we faced after 9/11 was a situation in which we did not have a unified system. I was the United States attorney in southern California, and I recall in the 1990s that there were terrorist watch lists in each of the various departments. We were stovepiped.

In the aftermath, in the 14 years since 9/11, we have built a system that brings together the information of the United States government and institutionalizes it in a multi-agency way. We have the National Counterterrorism Center, the NTCT, that maintains the TIDE, Terrorist Identities Database Environment. We have the TSDB, the terrorist screening database, managed by a multi-agency terrorist screening center, terrorist watch list.

We actually have brought the system together, and we do communicate, and I trust during this hearing, we will have an opportunity to discuss that.

The second major shaping influence was we realized that 98 or 99 percent of all trade and travel into the United States is perfectly lawful and legitimate, and therefore, we needed to see security and travel facilitation and trade not as being mutually exclusive but as being part of the same process. We needed to introduce a risk management into the trade and travel vetting systems.

The third influence was that we recognized in a global world, where there's a massive instantaneous, constant flow of goods, people, ideas, capital, electrons, images and ideas, that, in fact, protecting the homeland, the homeland security enterprise is inherently transnational. And we built out a system in which together with the State Department, the Defense Department, the intelligence agencies, DHS has a presence abroad to watch the movement of cargo and the movement of persons toward the homeland.

And fourthly, what we've seen recently and that is shaping the system now is that, in fact, we have a transnational threat that is cyber-enabled and that our terrorist enemies are actually using the Internet to radicalize those who listen to their message and are receptive to it.

So at end, what we have built and what we need to continue to build, hopefully in a bipartisan fashion, is a system that protects the American people by building up a homeland security enterprise that takes into account pre-departure toward the United States, departure toward the United States, entry at the United States, and then exit from the United States in due course.

Lastly, Mr. Chairman, I would be -- with all due respect, I would be remiss if I did not say on behalf of Kelli Ann Burriesci that I know of no other career person in the Policy Office that I'm responsible for who is more dedicated, more knowledgeable about screening. The fact of the matter is, Mr. Chairman, she came to this hearing expecting to talk about the visa waiver program, and she was hardly questioned at all about it. I make no apologies for her. She is first rate. She is an American. She's a patriot. And I regret that you came away with a different impression.

Thank you, sir.

CHAFFETZ:

That we will be discussing.

Mr. Rodriguez, you are now recognized for five minutes.

RODRIGUEZ:

Good morning, Chairman, ranking member, members of the committee.

One of our very most obligation as public servants is to safeguard public safety and national security. That is particularly true when we are granting benefits and privileges. So when we give somebody a driver's license, we require a test so we know that that person will drive safely.

When we give professionals licenses, we tested them to know that they can practice their professions in a manner that poses minimal threat of harm.

We work in every respect in what we do to minimize risk. That is particularly true in the area of citizenship and immigration. When we grant citizenship and immigration benefits, we take a number of safeguards to protect the national security.

An observation made by Congressman Gowdy last week at a hearing before his subcommittee resonated with me particularly, and he challenged us that when incidents occur, we be talking not just about what we are doing in response to that incident, but that we really be thinking in terms of prevention of future challenges.

And as I reflected on that, that, in fact, has been our posture and will continue to be our posture in the future. And I'll give you a few examples. We are, as Secretary Johnson has frequently observed, in an evolving threat environment. More and more, the threats are not the threats posed by organizations acting in a concerted manner, but increasingly, those threats are the threats of isolated individuals or isolated groups of people perhaps inspired by the organizations that present a threat to our country.

In light of that combination of threats, the organized and also the isolated threats, we have been taking a number of measures over the past few years to reinforce the work that we do. One clear example is the institution of the interagency check that we apply in refugee vetting and in other environments. That gives us a very organized, a very methodical way to query against intelligence databases when we are screening particular individuals.

So I know there have been discussions about individuals who entered the United States at earlier times. Some of those individuals were not subject to that sort of screening. They would be today, and in many cases, that would have prevented their entry.

When we screen Syrian refugees, we prescreen the cases before interviews are conducted. That is another innovation in a spirit of prevention. And we have been piloting the use of social media for the vetting of particular categories of people seeking individuals (sic).

There have, in fact, been three pilots that USCIS has used in combination with its intelligence community and law enforcement partners to screen particular categories of individuals seeking immigration benefits. We've already concluded two of those pilots, which operated on a relatively small group of people. We have learned a number of important lessons from that pilot, which no doubt I will have an opportunity to expand on those lessons in this hearing.

And now we are in the midst of a third pilot, which, in fact, has been applied and is in the process of being applied to literally thousands of applicants for immigration benefits.

So any thought that the Department of Homeland Security had simply foregone the use of social media for purposes of immigration screening is a mistaken thought. We have not spoken about it in great detail because the fact is, the more we speak about it, the more those who will use it will cease to use it, knowing that we will be examining that content.

What happened in San Bernardino is a tragedy, and we should take no other lesson from what happened in San Bernardino that we need to look at what we do and make sure that something like that does not happen again, that a tragedy of that type does not happen again. And in fact, we have been working together with our partners at the State Department, our partners elsewhere in DHS, our partners in the intelligence community to further look at opportunities to strengthen the manner in which we screen individuals.

As I read news accounts of what occurred in San Bernardino, I am struck by the fact that among the victims in San Bernardino are individuals who news reports related were immigrants themselves, who had come from all over the world, who had come here to live lives of service, serving the most vulnerable people in our society. And I do feel that my oath applies to those individuals, as well as all of the victims of San Bernardino to protect them.

While immigration is a privilege as to any one individual, it is not a luxury for our country. It is necessary for the vitality of our economy. It is necessary for the stability and unity of our families. It is fundamental to our values. And I pledge to operate my part of the immigration system in a way that maximizes every opportunity that we have to protect the American people, to protect our national security.

Thank you, Chairman, for inviting us here today.

CHAFFETZ:

Thank you. Ms. Bond, you're now recognized for five minutes.

BOND:

Thank you, Chairman Chaffetz, ranking member Cummings and distinguished members of the committee.

As has been described by my colleagues from the Department of Homeland Security, the Department of State along with partner agencies throughout the federal government have built a layered visa and border security screening system in order to review and assess the visa eligibility and status of foreign visitors from their visa applications throughout their travel to and arrival in the United States.

We take our commitment to protect America's borders and citizens seriously, and we constantly analyze and update clearance procedures and look for new ways to do an even better vetting process.

My written statement, which I request be put in the record, describes the screening regimen that applies to all visa categories. And although the tragedy, the terrorist attack in San Bernardino sparked particular interest in the fiancée visa, we apply equally rigorous security screening to all visa applicants, all travelers to the United States.

The vast majority of visa applicants and all immigrant and fiancée visa applicants are interviewed by a consular officer, and the information that has been provided describes the extensive training which is provided to the officers, a strong emphasis on border security and

fraud prevention, interagency coordination, how to conduct those interviews, how to ensure the name check process throughout the interagency is thoroughly done.

All applicants' data are vetted in this interagency process against databases that contain millions of records of individuals found ineligible for visas or regarding whom potentially derogatory information exists, including the terrorist identity database which was referred to.

We fingerprint them and screen them against DHS and FBI databases of known and suspected terrorists, wanted persons, immigration law violators and criminals. We screen their photos against the photos of known or suspected terrorists and the entire gallery of individuals who have ever applied for a visa, which is contained in our database at the State Department.

BOND:

When the interagency screening process generates a red light hit, the consular officer suspends visa processing and submits the application for a Washington-based interagency review conducted by federal law enforcement and intelligence agencies and the Department of State.

At individual overseas posts, we have additional screening done by DHS's visa security program staff and their Patriot system. The visa security units are located in over 20 high-threat posts, and ICE special agents assigned to the visa security units provide on-site vetting of visa applications and other law enforcement support to consular officers.

Security reviews do not stop when the visa is issued. The department and partner agencies continuously match new threat information with our records of existing visas or visa waiver program travelers, and we use our authority to revoke visas when indicated. Since 2001, the department has revoked over 122,000 visas for a variety of reasons, including nearly 9,500 for suspected links to terrorism.

We are engaged with interagency partners in the senior level review of the fiancée visa process ordered by President Obama, and I expect that recommendations developed in this review will apply to all visa screening.

We're also working with the Department of Homeland Security and the Bureau of Counterterrorism at the department on security screening of visa waiver program travelers and enhancing the data-sharing commitments required for VWP membership. We are investigating the applicability of advanced technology and data analysis, risk screening and credibility assessment tools.

Mr. Chairman, ranking member Cummings and distinguished members, the Department of State has no higher priority than the safety of our fellow citizens at home and abroad and the security of the traveling public. Every visa decision is a national security decision. There is nothing routine about our work. We appreciate the support of Congress as we continuously work to strengthen our defenses.

Mr. Chairman, I know you have visited consular sections in Mexico. I encourage every one of you to visit our consular sections when you are abroad, to meet with our staff and to observe for yourselves the process that applicants undergo.

I look forward to your questions.

CHAFFETZ:

Thank you.

Ms. Richard, you are now recognized for five minutes.

RICHARD:

Chairman Chaffetz and distinguished members of the committee, thank you for the opportunity to appear before this committee regarding the U.S. refugee admissions program and security vetting for refugees considered for resettlement in the United States.

In Fiscal Year 2015, nearly 70,000 refugees of 67 different nationalities were admitted for permanent resettlement in the United States, including 1,700 Syrians. In Fiscal Year 2016, the president has determined that we should increase the overall number to 85,000, including at least 10,000 Syrians.

We recognize that admitting more Syrian refugees to the United States is only part of the solution to the current global refugee and migration crisis, but it is in keeping with our American tradition. It shows the world that we seek to provide refuge for those most in need, it sets an example for others to follow, and it adds to the diversity and strength of American society.

Resettlement is offered to refugees who are among the most vulnerable, people for whom a return to Syria some day would be extremely difficult, if not impossible, such as women and girls at risk, survivors of torture, children and adolescents at risk, and refugees with medical needs, disabilities or physical or legal protection needs.

Families or individuals who could benefit the most from resettlement are referred to the U.S. refugee admissions program by the UNHCR, the U.N. refugee agency. But let me make clear the U.N. refugee agency does not determine who comes to the United States. That determination is made by the Department of Homeland Security.

I know the murderous attacks in Paris on November 13th have raised many questions about the spillover of not just migrants to Europe, but also the spread of violence from war zones in the Middle East to the streets of a major European capital. Let me assure you that the entire executive branch and the State Department that I represent has the safety and security of Americans as our highest priority.

As an essential, fundamental part of the U.S. refugee admissions program, we screen applicants carefully in an effort to ensure no one who poses a threat to the safety and security of Americans is able to enter our country. Consequently, resettlement is a deliberate process that can take 18 to 24 months. Refugees of all nationalities considered for admission to the United States undergo

intensive security screening involving multiple federal intelligence, security and law enforcement agencies, including the National Counterterrorism Center, the FBI's Terrorist Screening Center and the Departments of Homeland Security, State and Defense.

And I want to make clear that we work in very close partnership with USCIS that is headed by Leon Rodriguez. And so it is -- our offices are in constant touch. Our responsibility is to help prepare the refugees for their interview and to prepare them, those who qualify, for life in the United States.

DHS, though, has the heavy burden of determining whether someone qualifies for a refugee and screening out anyone who could pose a possible threat. No one has a right to come to the United States as a refugee, and so if there's any doubt, they screen people out.

Applicants to the U.S. refugee admissions program, as you know, are currently subject to the highest level of security checks of any category of traveler to the United States. These safeguards include biometric or fingerprint and biographic checks and a lengthy in-person overseas interview by specially trained DHS officers who scrutinize the applicant's explanation of individual circumstances to ensure the applicant is a bona fide refugee and is not known to present security concerns to the U.S.

The vast majority of the three million refugees who have been admitted to the United States since the Vietnam era, including from some of the most troubled regions in the world, have proven to be hard-working and productive residents. They pay taxes, send their children to school, and after five years, many take the test to become citizens. Some serve in the U.S. military and undertake other forms of service for their communities and our country.

I'm happy to answer any questions you may have about our refugee resettlement program or our contributions to aid refugees and victims of conflict overseas and our diplomatic efforts related to humanitarian efforts around the world.

Thank you.

CHAFFETZ:

Thank you.

We'll now recognize our ranking member, Mr. Cummings of Maryland.

CUMMINGS:

Thank you very much, Mr. Chairman. And I thank you for calling this hearing. And I think that if we were to -- as I listen to the testimony, I've had two words that ring out for me, and I hope that it will be the theme of this hearing, and they are two words I repeat to my staff over and over and over again -- effectiveness and efficiency. Effectiveness and efficiency.

I believe I speak for every member of this committee when I express our condemnation for the actions of these two depraved terrorists, Syed Farook and Tashfeen Malik, who murdered 14 innocent people in cold blood and injured many others in their sickening rampage in California

just two weeks ago. Certainly, we send our prayers to the people who were injured and to the families of the innocent victims. We know that their lives will be changed forever by this horrific act.

We also extend our profound thanks to the hundreds of law enforcement officials, emergency first responders and health care providers who responded then and are still responding today to this act of cowardice and evil.

This attack was unusual because it was carried out by a husband, a United States citizen, and a woman who came into our country on a fiancée visa, married this man, and then had a baby with him, and that baby was only 6 months old at the time of the attack.

Last week, the director of the FBI, James Comey, testified before the Senate that based on the FBI's ongoing investigation, it appears that both Mr. Farook and Ms. Malik were radicalized before Malik entered the United States.

Director Comey explained yesterday, however, that contrary to the suggestion that a simple Google search would have revealed Malik's radicalism, these terrorists did not post their messages on publicly available social media.

Director Comey stated, and I quote, "We found no evidence of a posting on social media by either of them in that period of time or thereafter reflecting their commitment to jihad or martyrdom," end of quote. Director Comey also said this, and I quote, "I see no indication that either of these killers came across our screen and tripped wires," end of quote. He also stated he had not seen anything that, quote, "should have put them on our screen," end of quote.

Unfortunately, due to the extremely short turnaround for today's hearing, we do not have anyone here from the FBI. Mr. Chairman, I ask unanimous consent to place this Fox News story into the record, which is entitled "San Bernardino terrorists didn't post public messages, FBI Director Comey says."

CHAFFETZ:

Without objection, so ordered.

CUMMINGS:

Thank you, Mr. Chairman.

So if a search of the public social media would not, in fact, have prevented the attack, the question before us today is what else -- and this is the question that is so vital to our witnesses, and we need to know this -- by the way, Mr. Rodriguez, I agree with you when you referred to our distinguished gentleman from South Carolina, Mr. Gowdy, about preventing things.

But the question is, what else (inaudible) we be done to identify foreign nationals seeking to enter the United States who pose a risk to our national security? Again, effectiveness and efficiency. For example, should the United States agencies attempt to access password-protected platforms like the one reportedly used by Ms. Malik? How should they identify people who use

alternate identities, which law enforcement officials also believe Malik apparently used? Which agencies should do it, State Department, the DHS, the FBI, our intelligence agencies, all of them?

And once they conduct the screening, how should they report the results? Should they go into the National Counterterrorism Center's TIDE database, the FBI's terrorist screening database, or others?

And finally, should federal agencies be able to access communications over social media accounts of U.S. citizens who sponsor foreign nationals? And if so, under what circumstances?

These are all very difficult questions, and a lot of the answers may involve classified information. I understand that there are several pilot programs already in the works. I also understand that the president has ordered a review that is currently ongoing.

Our job is to grapple with these issues and develop solutions and help protect this great nation. The American people expect aggressive and urgent action to screen people entering the country to ensure that they do not pose risks to our national security. Again, effectiveness and efficiency.

For these reasons, I believe that one of the most constructive steps our committee can take today is to examine the various information databases used by federal agencies to make sure they are sharing as much information as possible to promote our national security.

And so I thank our State Department and DHS witnesses for being here on such short notice, and I look forward to your testimony as you address that question of how we can be more effective and efficient.

With that, Mr. Chairman, I want to thank you for your courtesy, and I yield back.

CHAFFETZ:

I thank the gentleman.

We'll now recognize the gentleman from Ohio, Mr. Jordan, for five minutes.

JORDAN:

Thank you, Mr. Chairman.

Mr. Bersin, in your opening statement, you said that the witness we had last week, Ms. Burriesci, was a patriot. No one's questioning that. But then you also said that she came prepared to answer questions about the visa waiver program last week. I just want to read from the transcript last week.

Here was question one. "How many visa waiver program overstays are there currently in the United States?" Ms. Burriesci said, "I didn't bring that number." Second question, "How many overstays in the visa waiver program may have traveled to Syria before they got here? Do you have that number?" Her response, "I don't know that number." Final question was, "How many

people came from the visa waiver program country that are here today and they may have been in Syria or Iraq before they came here? Do we know that?" "I don't have that answer."

So she obviously wasn't prepared to answer the questions about the subject you told her.

Now, does Ms. Burriesci work for you, Mr. Bersin?

BERSIN:
Yes, sir.

JORDAN:
So why didn't you just come last week?

BERSIN:
I was in London with Secretary Johnson at the G6-plus-1 meeting with...

JORDAN:
Are you prepared to answer the questions...

(CROSSTALK)

JORDAN:
Are you prepared to give us some numbers today?

(CROSSTALK)

JORDAN:
We sent you an e-mail asking for some of these numbers. Are you prepared to give us the answers today?

BERSIN:
With regard to overstays, as was indicated, Mr. Jordan, the -- this has been an issue spanning both Republican and Democratic administrations. With regard to the overstay...

JORDAN:
Let me ask you some specifics. How many visa waiver programs travelers are in the country today?

BERSIN:

If you give me an opportunity, I'd be pleased to respond to your question.

JORDAN:

OK.

BERSIN:

The overstay report, which has been the subject of attention to this committee and to the Congress for many years -- if you'd like to understand why that report has not been produced, despite 20 years of requests...

JORDAN:

I'm not asking for a report. I'm asking for a number. How many people are -- how many visa waiver program travelers are in the country today? Just the overall number. Not even overstay. Just how many are here today?

BERSIN:

There are 20 million -- there are 20 million persons who enter the country each year on the visa waiver program.

JORDAN:

Twenty million a year. Do we know how many are here today?

BERSIN:

I do not know -- I cannot give you a number on -- given the way in which the...

JORDAN:

Of that 20 million, how many -- how many -- how many overstays are here in a year's time?

(CROSSTALK)

BERSIN:

We track overstays, and we are preparing a report for that. We do not have a number that has been...

JORDAN:

OK, that -- let me ask this. Of the 20 million who come in here in a year, do we know how many of them may have been to Syria or Iraq, some travel there to Syria or Iraq, and then come to the United States in the visa waiver program? Do we know?

BERSIN:

The Homeland Security investigations, the Counterterrorism and Criminal Exploitation unit has opened up a number of investigations with respect to the number of Syrian...

JORDAN:

Do we know a number? You said 20 million come on the visa waiver program in a year. A bunch of those overstay. We know that. You can't give me that number. I'm asking, of the people who come on the visa waiver program, travelers, of those people, do we know of any of those who were in Syria and Iraq some time in the year or so before they come here on the visa waiver program?

BERSIN:

There were 113 investigations opened up by Homeland Security investigations with regard to that matter, Mr. Jordan, and the bulk of those investigations have actually been closed. And in fact, there are 18 ongoing investigations associated with Syrian nationals...

JORDAN:

So that 113 number specific to the question I asked. People on the visa waiver program who may have traveled -- who did travel to Syria or Iraq before they came here.

BERSIN:

I do not have a specific number. I'm telling you that on the overstays that were identified...

JORDAN:

So it could be much higher than 113?

BERSIN:

Mr. Jordan, I am very eager to answer your question, but I cannot...

JORDAN:

I got a minute, 20 seconds.

BERSIN:

... answer the question because you interrupt me every time I begin to do so.

JORDAN:

All right. I'm sorry. Keep going.

BERSIN:

Thank you. There are investigations, and over the last year, in Fiscal Year '15, there have been 118 investigations of Syrians. I cannot tell you which ones of those entered the country on the visa waiver program.

I can tell you that those were overstays that have been identified as having come from Syria. Of that 118, 11 were administratively arrested, and the remainder were closed, with the exception of 18 ongoing investigations...

CHAFFETZ:

OK.

BERSIN:

... which are connected to Syrians and overstays.

JORDAN:

All right. I'm (inaudible) just a few seconds. Let me switch subjects. This news account that I think was MSNBC -- "Top officials at the Department of Homeland Security considered a specific policy to strengthen security screenings for foreign visa applicants' social media accounts, but that proposal was ultimately rejected."

Were you part of the team that put together the memorandum and then rejected the idea of actually screening potential entrants into the country's social media accounts?

BERSIN:

No, sir. I was not in the Office of Policy at that point. I do know that Secretary Johnson has encouraged the components of DHS to continue the work referenced by Director Rodriguez -- to continue the work they've been engaged in with regard to social media.

I'm aware of no memorandum, secret or otherwise, that bars components of DHS from using social media.

JORDAN:

Mr. Chairman, real quick, one -- different -- different subject, but in your opening statement, Mr. Bersin, you mentioned the last time you testified in Congress, you testified about Libya. I'm just curious. Do you think the situation in Libya today is more stable than it was in 2011 or less stable?

BERSIN:

The hearing on which...

JORDAN:

I'm asking your opinion on the stability of Libya today.

BERSIN:

I would defer to the State Department. My personal opinion, which is not relevant, it's not any more stable, but it had nothing to do with the issue...

JORDAN:

Wasn't it true ISIS is now in Libya, as well?

CHAFFETZ:

The gentleman's time has expired. Go ahead and answer the question, Mr. Bersin.

BERSIN:

I'll defer to the State Department on that judgment.

CHAFFETZ:

You are the chief diplomatic officer for policy. I think your opinion is relevant.

BERSIN:

What is that -- the question, Mr. Chairman?

CHAFFETZ:

The question that Mr. Jordan answered -- asked you, what is your opinion of that question? You're...

BERSIN:
With ISIL?

CHAFFETZ:
Yes.

BERSIN:
Or with Libya?

CHAFFETZ:
Well, both.

BERSIN:
I gave the answer with regard to Libya. And with regard to ISIL, I think ISIL remains a substantial threat that is being treated as such by every rational political leader I know across the world, in addition to the European leaders that Secretary Johnson, Attorney General Lynch met with last week in London.

CHAFFETZ:
The gentleman from Massachusetts, Mr. Lynch, is now recognized for five minutes.

LYNCH:
Thank you, Mr. Chairman. Good morning. I want to thank the witnesses for helping the committee with this work and for your service to our country.

I do want to go back, Secretary Bersin, about the overstay issue because last week, Ms. Burriesci, who is a fine person, she just didn't have her numbers person with her. She had four staff, but they had no numbers for us. And that was -- that was tragic, unresponsive to a huge number of questions, unfortunately. And I'm sure she's a fine person, but we're after the facts, and she didn't have many.

OK, so she told us last week -- we had to recess the hearing so she could call the office. She told us that 20 million people a year come in under the visa waiver program. She said that there was 2 percent overstay each year.

That's what she told us, which comes to 400,000 overstays per year. And are you telling me something different here today?

BERSIN:

The estimate is in that range, but the number...

LYNCH:

OK. I'm good with that. I don't want to use up my time on that. But I just -- I just thought I was going to come out of this hearing with less facts than what I came in with.

BERSIN:

But I did want to say that this issue of the overstay and the submission of a report, which is under way, and I admit...

LYNCH:

Yes, it's been under way a long time. I'm not a young man. So I don't even want to do anything more on this because I just don't think that's happening. We've been promised that information for years and...

BERSIN:

Well, I...

LYNCH:

... it ain't happening. All right. When I see the report, I'll believe it.

(CROSSTALK)

LYNCH:

Fair enough. Let me go on. Look, between what Mr. -- what Director Comey has said even just yesterday -- look, if you talk to the folks in our national security community, the Islamic State is using social media as a main recruiting tool. This is their game. This is their world. They're doing this all over the globe.

And yet when we look at what Department of Homeland Security is doing, we don't have a regular widespread requirement that our people review the social media of people coming from trouble areas where you got a lot of terrorists, places like Pakistan, Afghanistan, Syria, Iraq, Tunisia, parts of North Africa where you got, you know, a lot of support for radical jihad, violent jihad. We're not reviewing the social media, even though that's the world in which they operate and we don't regularly review that. And that's a major problem.

So look, I think if someone is applying for citizenship to the United States, it is entirely reasonable that we ask for their social media contacts, their information, that these people don't

radicalize overnight. A lot of them have had public statements, not their private e-mails -- and I know that Tashfeen Malik, maybe her stuff was direct and it was private. We should have got that anyway. We should have said, We want -- we want your social media, but your private and your public stuff. That's entirely reasonable to ask people who are coming from countries that are known to sponsor terrorism.

Why aren't we doing that? Why aren't we asking people for their -- look, my colleges -- you know, I represent Massachusetts. Fifty- two percent of our colleges request all the information on that social media from applicants to college. Half of our employers do. They want to know what's going on on your -- you know, your Facebook, you know, your social media.

If the employers -- if half the employers in America are doing that in the private sector, if your colleges are doing it for students, why the hell wouldn't Department of Homeland Security do it for someone coming from a terrorist country or country that sponsors terrorism coming into the United States? It would seem to be, you know, I dare say a no-brainer, but it's not happening.

So it's got me worried that we're not doing any of this. Anybody care to respond to that?

RODRIGUEZ:

I can -- I can certainly take part of that question, Congressman. I think, as I tried to make clear in my opening remarks, we have been piloting -- and again, the number of cases touched by it...

LYNCH:

Very few, though. It's a pilot program. I know you got some pilot programs there, but we got millions and millions of people that are out there that want to come into this country, and we're doing a very small bit. We don't even look at their public stuff! That's what kills me. DHS doesn't even regularly require that their administration officers for people coming -- we don't even look at their public stuff!

RODRIGUEZ:

To be clear, we are moving both -- in the refugee and other immigration contacts, we have been doing some of it. We are working...

LYNCH:

You got three very small pilot programs going! And I -- look, you know, we've talked to the folks overseas about what they're doing, and it's not regular. It's not routine. It's not widespread, just to be fair.

And even our -- even -- and I talked to you before the hearing about what's going on in Beirut. We haven't had a regular vetting team there in a year. They fly in, they fly out, because of the conditions there.

But I don't want happy talk. And you know, sometimes, I hear a lot of that, that we're doing fine overseas. And when I drill down, when I go to Beirut, you know, when I go to the Syrian border, when you go to Amman -- what you're telling us is just happy talk.

And they say they don't have the resources. They didn't have the resources when we had, you know, 160 applicants a year -- excuse me, a week, 160 a week. Now they're getting 16,000 a week, and we have the same amount of resources we had before to vet them.

It just troubles me greatly. I don't -- I don't think we're doing a good job. And I think we can do better. And I like to get the resources and the people to vet people well, and then if we deem them eligible, then you can take them in as refugees. But we can be smart and then we can be compassionate. But right now, it doesn't seem like we're doing either.

I'll yield back. Thank you, Mr. Chairman.

CHAFFETZ:
Gentleman's time is expired.

We'll now recognize the gentleman from Michigan, Mr. Walberg, for five minutes.

WALBERG:
Thank you, Mr. Chairman.

Mr. Rodriguez, going back to that issue that my colleague, Mr. Lynch, broached with you -- DHS has indicated that it began three pilot programs -- we talked about that -- to include social media screening in the visa adjudication process in the fall of 2014. Has DHS ever had a policy preventing adjudicators and attorneys for reviewing applicants' social media posts?

RODRIGUEZ:
I am not aware of a policy that prevented it per se. There have -- obviously, there are various privacy and other issues that govern, but there has never been a privacy per se. And certainly, during just about the entire time I've been director and that Secretary Johnson has been secretary, what we have been doing is, in fact, piloting and developing the capacity to use social media in a thoughtful, functional manner (OFF-MIKE)

WALBERG:
Well, "per se" bothers me a bit.

RODRIGUEZ:
I'm sorry, sir?

WALBERG:

The "per se" bothers me a bit. You're indicating that there was no direct policy preventing...

RODRIGUEZ:

I am not aware of a policy. I am not...

WALBERG:

Why wasn't it -- why wasn't it happening?

RODRIGUEZ:

Yes, if I use that -- I would not read too much into the phrase "per se." I am not aware of there ever having been a policy that prohibited the use of social media.

WALBERG:

Well, then we have conflicting reports, then, in the last several days...

RODRIGUEZ:

Well, I...

WALBERG:

... that there was and there wasn't.

RODRIGUEZ:

I know full well that during my tenure as director, we have, in fact, been developing and piloting that capacity.

WALBERG:

So it's a good policy that we look into social media.

RODRIGUEZ:

I do believe and I believe that many of my intelligence community partners have the same view, that there is information of vetting value that may be garnered from social media.

WALBERG:

And it will be ramped up.

RODRIGUEZ:

We are in the process of doing that as we speak.

WALBERG:

Mr. Bersin, why did DHS wait -- if there are three basic pilot projects, wait until 2014 to create these pilots?

BERSIN:

The activities with regard to social media have been conducted by the components, principally CIS, Mr. Rodriguez's agency, Homeland Security investigations or ICE and CBP have conducted their activities. There was no headquarters overarching policy prohibiting that. To the contrary, these pilots have been going on under Secretary Johnson's leadership, and he's encouraged the components to actually (OFF-MIKE)

WALBERG:

Why did we wait until 2014 to initiate these pilots? Mr. Rodriguez, could you help me on that?

RODRIGUEZ:

I'm sorry, I...

WALBERG:

Why did we wait until 2014 to initiate or to create these pilot projects?

RODRIGUEZ:

I don't know. Again, during my tenure...

WALBERG:

I think we need -- if you can bring the microphones...

(CROSSTALK)

RODRIGUEZ:

... we have been busy doing this. So I am really unable today to speak to what occurred before. I'm certainly -- would -- would be happy to get that information, to the extent that it's not privileged, and get that before the committee.

WALBERG:

When could we get that? We're getting used to hearing, We don't have that information here and this...

RODRIGUEZ:

Yes. I think for us here, the main point is we are -- we are doing it. One of the reasons -- I just don't know what occurred years before I got here. What we can say now is we are doing it. We are doing it in an abundant manner. We are looking to have it actually be useful for screening purposes. That seems to me the most important discussion. What happened three or four or five years ago, I can't speak to that, sir.

WALBERG:

What have been the results of what you're doing now?

RODRIGUEZ:

Well, I think they're -- there is less there that is actually of screening value than you would expect, at least in those small early samples. Some of the things that we have seen have been more ambiguous than clear. There are challenges in terms of people using foreign alphabets to post. That's a capacity that will need to be developed.

As everybody has observed, many of these communications, as we've now learned from the director may have applied in the San Bernardino situation, are private communications. They're not openly -- open posts. Those are challenges that we've identified.

That said, I think we all continue to believe that there is a potential for there to be information of screening value, particularly, as Congressman Lynch, and I think you have also observed -- in particularly high-risk environments.

WALBERG:

Well, I think -- I think recent events have shown that there's probably significant, significant, important information that we can get using information gained from social media.

RODRIGUEZ:

We do not disagree (OFF-MIKE)

WALBERG:

And we would hope that that would continue, and we hope to get more answers and not to push back that this is something we don't know. We have to know that. And when we hear, as we saw on the video earlier, the White House representative telling us that we're doing everything, our vetting process is secure, and then we see the results that are horrendous take place like in San Bernardino, we've got a problem.

I yield back.

CHAFFETZ:

Gentlemen yields back.

Now recognize the gentleman from California, Mr. Lieu, for five minutes.

LIEU:

Thank you.

Let me first thank the panel for their public service. I have a question for Mr. Rodriguez, but first, I want to make a statement.

I am honored to be a U.S. citizen, and that's because you get amazing benefits of being a citizen of the most amazing country in the world, one of which the Constitution applies to you against your government.

But for some time, it does seem to me that the executive branch has been blurring the lines between U.S. citizens and foreign nationals, and (inaudible) got them backwards. So let me give you three examples.

2011, the executive branch deliberately, and I believe wrongfully, executed an American citizen via a drone strike. The Department of Justice has now said at least four Americans have been killed by U.S. drone strikes, four American citizens.

Second example, the executive branch through the NSA has been seizing hundreds of millions of phone records of U.S. citizens. They knew who we called, when we called, who called us, duration of those calls. And it got so bad that Congress had to step in early this year and prevent NSA from violating the 4th Amendment rights of U.S. citizens.

And then a third example, which is this social media. There's been multiple reports -- ABC News says that a secret U.S. policy blocks agents from looking at social media of folks seeking entry into the United States through the visa program. The Hill reports immigration officials prohibited from looking at visa applicants. Politico says that Secretary Jeh Johnson believes that there are privacy reasons for why DHS is doing this. Mr. Rodriguez, you've mentioned again the privacy reason.

And I just want to know -- the U.S. Constitution does not apply to foreign nationals seeking entry into the United States. And so do not give foreign nationals seeking entry into the United States more rights than American citizens have. If you're an American citizen, you seek a job in the private sector, or in the public sector or in my office, we're going to look at your social media.

And the response I have from you all today is, well, now you're doing three small pilot projects. That is not adequate response. And my question to you is, you need to reverse those -- that policy if, in fact, there is a secret policy. And maybe there isn't, But at the very least, you need to have a department-wide policy that we're going to look at social media, not just three small pilot projects.

Now, I want to know why you can't starting tomorrow have a department-wide policy doing this instead of having three small pilot projects.

RODRIGUEZ:

So let me be clear. First of all, there is not now nor was there ever a secret policy prohibiting use of social media for vetting.

There needs to be a structure to these things. There needs to be a plan for doing these things. That is what we have been doing for many, many months now. In fact, the third of the pilots -- and we're talking about small numbers. The third of the pilots actually is being applied to thousands of individuals. I won't go into details beyond that because I literally -- I don't want to tip people off as to what we might be looking at.

I agree with you that U.S. privacy strictures apply to U.S. citizens. They do not apply in the same way to foreign persons. There are numerous examples in the manner in which we receive people at ports of entries, what we do at our foreign posts, that are evidence of that distinction.

So I do not -- I'm not sure I accept the premise that somehow, we are safeguarding the privacy of foreign nationals to any greater degree. However, there are legal concerns that do need to be (OFF- MIKE)

LIEU:

What are these legal concerns? We asked DHS earlier this week, Give us the legal case or a provision of the Constitution that says there's any privacy, any legal concerns with looking at anything related to a foreign national seeking entry into the United States?

And I don't know where these legal concerns come from. I don't understand the quote that Secretary Johnson has been attributed to him, saying there are, you know, legal concerns about scrutinizing Web postings. What is that case you all are relying on?

RODRIGUEZ:

There -- and again, I am not -- I am not the -- I am not the privacy law expert for purposes of this hearing. In fact, there are issues that we need to make sure are satisfied with respect, potentially, to treaty obligations that apply, with respect to our own laws that may apply, a variety of issues, and we are -- are -- are...

LIEU:
Let me...

(CROSSTALK)

RODRIGUEZ:
I would also -- I would also add...

LIEU:
Let me just suggest the U.S. Constitution does not extend privacy protections to foreign nationals seeking entry into the United States. You need to not just have a few pilot programs. It needs to be a policy of our government to look at social media and other publicly available information of people seeking entry into the United States.

And with that, I yield back.

CHAFFETZ:
Mr. Lieu -- I would ask unanimous consent to enter into the record an article put out today. This is from MSNBC. You said in Fox News. I'm (inaudible)

(LAUGHTER)

CHAFFETZ:
... MSNBC...

(UNKNOWN)
Fair and balanced.

(LAUGHTER)

CHAFFETZ:
Fair and balanced. Fair enough. I must say I appreciate the bipartisan voting.

The title of this article, "Exclusive: Homeland Security rejected plan to vet visa applicants' social media." Included in this is an attachment supposedly from the United States Citizenship and

Immigration Services. We have not vetted that, but in the spirit of getting to the bottom of this, I'd ask unanimous consent to enter that into the record. Without objection, so ordered.

Now recognize the gentleman from Tennessee, Mr. Desjarlais, for five minutes.

DESJARLAIS:

Thank you, Mr. Chairman.

Mrs. Richard, could you -- or do you -- is it your understanding that the president still intends to bring about 10,000 Syrian refugees into the country this year?

RICHARD:

Yes, sir.

DESJARLAIS:

Could you tell the American taxpayer approximately what it costs per refugee per year to bring them here?

RICHARD:

I don't have a per refugee cost. The overall program, though, is -- when you add together the costs of State Department, Department of Homeland Security and Health and Human Services that provides assistance to the states to help refugees once they're here, is close to a billion dollars.

DESJARLAIS:

I'd heard a number about \$84,000 per refugee. Does that sound reasonable?

RICHARD:

I would have to double check that. I didn't have that number.

DESJARLAIS:

OK. How many -- what percentage of the 10,000 refugees would be fighting-age men?

RICHARD:

So far, we are putting a priority on bringing people who are the most vulnerable. So we have only brought 2 percent of -- so far, only 2 percent of the ones we've brought, the Syrians we've brought, are fighting-age men who are traveling without any family.

So it would be a slightly -- it would be a higher percentage in terms of fighting-age men who are traveling with family. But the 2 percent number you may have heard is the ones who come as single without family, no attachment or ties.

DESJARLAIS:

I would just hope next time America gets attacked that our fighting-age men don't want to resettle somewhere else. I hope they would stay and fight for our freedom.

Mr. Burgen, you said about 20 million people come on the visa waiver program each year? Or Bersin -- I'm sorry.

BERSIN:

Yes, sir.

DESJARLAIS:

OK. And did I hear that about 400,000 overstay?

BERSIN:

That's in the range of the estimate made, yes, sir.

DESJARLAIS:

OK. What are the repercussions for overstaying your visa?

BERSIN:

So if it's -- it has two, one potentially legal and one in terms of your attempt to come back into the country after using the ESTEF (ph).

As I indicated, there is an Immigrations and Customs Enforcement unit called the Counterterrorism and Criminal Exploitation unit that tracks the overstay. And there have been relatively few, but some prosecutions for overstay. There have been removals of people who have overstayed, administratively deported and...

DESJARLAIS:

So out of 400,000 who've come here, you've opened 113 cases, so there's not much repercussions for breaking the law for overstaying your visa.

BERSIN:

The main sanction that's applied, sir, is inability to get back into the country, depending on the facts of your particular overstay.

DESJARLAIS:

How many of the -- how many of the terrorists that perpetrated 9/11 were -- had overstayed their visa?

BERSIN:

A number of them, sir, of the...

DESJARLAIS:

So we need to do much better. The Syrian refugees -- how many of the Syrian refugees have been arrested in other countries in 2015 and have been accused of supporting the Islamic State?

BERSIN:

I'm not aware of that number, as we speak. If we have that information, we can certainly...

DESJARLAIS:

OK, and we probably...

BERSIN:

I'm not aware of that (OFF-MIKE)

DESJARLAIS:

Probably actually don't really know, do we. We really probably couldn't get that information due to the lack of infrastructure in Syria.

BERSIN:

And I want to make sure I understand the question. This is individuals now in Europe? Is that your question, or...

DESJARLAIS:

In Europe, yes.

BERSIN:

I see. Yes, I don't know and I doubt, actually, that we would have that information.

DESJARLAIS:

But Mrs. Richards said we're going to go ahead and bring 10,000 Syrian refugees into the country. The president -- President Obama said we're going to go ahead and do this, but yet even the FBI director said there's no way that we can vet these people because we can't access the Syrian database. Bashar al Assad is not going to help us, tell us who the good ones and the bad ones are.

So wouldn't it make sense to halt this program until we can tell the American people that we can safely protect them?

BERSIN:

In addition to the passage by the FBI director that was played on TV earlier, the FBI director has also acknowledged that our vetting process is an extremely tough and thorough vetting process that involves multiple interviews, queries against multiple databases. So I don't think that was ever what the FBI director said.

DESJARLAIS:

I think it was exactly what he said! He said that we don't have access to any records because we have no cooperation with the Syrian government, so we cannot adequately vet these people, correct?

BERSIN:

There is considerable data that we use, as I have repeated many times. In fact, there have been people who have been denied refugee status because of information that we found in law enforcement and intelligence databases, as well as hundreds of people that have been placed on hold either because of what was in those databases or that in combination with information discovered during interviews.

And in fact, that has been acknowledged by Director Comey. Again, you can play one passage on TV, that is not the totality of what Director Comey has said about our screening process.

DESJARLAIS:

I appreciate your confidence, but if we're bringing 10,000 refugees and we miss just 1 percent, that's 100 terrorists. It didn't take that many in Paris, and it certainly didn't take that many in San Bernardino.

CHAFFETZ:

Thank the gentlemen.

Now recognize gentleman from Pennsylvania, Mr. Cartwright, for five minutes.

CARTWRIGHT:

Thank you, Chairman Chaffetz.

I want to follow up the immediately preceding discussion with you, Ms. Richard. You are assistant secretary, Bureau of Population, Refugees and Migration for the State Department, right? Is it fair to say you are intimately familiar with the vetting process for the refugees coming into this country?

RICHARD:

(OFF-MIKE)

CARTWRIGHT:

Would you turn your microphone on, please?

RICHARD:

I don't know the vetting process as intimately as Leon Rodriguez does because he oversees the people doing the vetting, but I am responsible for the overall program.

CARTWRIGHT:

That's what I'm interested in, the overall program, because I think what a lot of people don't realize -- and you correct me if I'm wrong about this, Ms. Richard -- if you're a -- if you're somebody applying to be a refugee and who will be resettled, relocated, you apply to the UNHCR, the United Nations High Commission on Refugees, am I correct in that?

RICHARD:

Yes.

CARTWRIGHT:

And when you apply, you know, you're in one of these migrant camps. You got your little kids with you. You don't know where you're going to turn next. You apply to the UNHCR.

You don't get to say what country you want to go to. Am I correct in that?

RICHARD:

That's correct. You can express a preference if you have family living in Australia, Canada, the U.S., but you don't get to decide that.

CARTWRIGHT:

You don't get to decide where you're going.

RICHARD:

And most refugees do not get resettled. Most stay in these countries to which they've fled.

CARTWRIGHT:

So let's look at it from the shoes of somebody who wants to do harm to the United States. If you're an ISIS terrorist and you want to sneak into the U.S., that would be the dumbest avenue you could take to apply for UNHCR resettlement to the United States because you could end up in Norway after the 24-month vetting process. Am I correct in that?

RICHARD:

I agree. This is not an efficient way for a would-be terrorist to enter the United States. But that doesn't mean we let down our guard because it would only take one bad guy to completely ruin the entire program. And we love this program. This program does so much good for tens of thousands of people every year.

CARTWRIGHT:

Sure. Sure. And by the way, the shootings in California -- were those perpetrated by refugees who resettled?

RICHARD:

No, sir. No. No refugees have carried out terrorist activities in the United States.

CARTWRIGHT:

No refugees have carried out terrorist activities in the United States.

RICHARD:

Successfully carried out an attack against American citizens in the United States.

CARTWRIGHT:

OK, so what we -- so what I've been more concerned about is the visa program. And I want to follow up. Director Rodriguez, FBI Director James Comey reported publicly that the agency had

no incriminating information about the shooters in the San Bernardino case. Is that consistent with your understanding, Director Rodriguez?

RODRIGUEZ:

That is -- that is -- what I've come to understand from -- from Director Comey.

CARTWRIGHT:

And Director Rodriguez and Assistant Secretary Bond, it's also been publicly reported that both the State Department and DHS followed all vetting and background check policies and procedures in this case. Is that also correct?

BOND:

Yes, sir, it is.

CARTWRIGHT:

Now, Mr. Bersin, the K-1 process begins when an American citizen petitions to bring his or her fiancée to the U.S. Is that correct?

BERSIN:

That's my understanding, yes.

CARTWRIGHT:

Mr. Bersin, how does the Department of Homeland Security screen the American citizen's K-1 petition?

(CROSSTALK)

BERSIN:

... my portfolio, sir. So what we do at the point that a petition is made -- remember, the petition -- our sole authorized purpose at the petition stage is just to adjudicate the relationship between two individuals to determine whether they are, in fact, fiancées.

Nonetheless, we do run background checks at that stage, including the text (ph) check, which goes against a number of law enforcement sources, both against the petitioner and the potential beneficiary. The results of those screens are then turned over to the applicable embassy for use in the actual visa screening.

CARTWRIGHT:

Is the American citizen involved in the K-1 petition interviewed at that time?

BERSIN:

Ordinarily not interviewed at that time.

CARTWRIGHT:

Why not?

BERSIN:

Well, that's actually one of the points that we are exploring right now. Again, the adjudicative purpose for that interview at that point is limited. It's really, again, to determine whether the relationship exists.

If we're satisfied on the information provided that that should be granted, obviously, the situation now -- and this is where, again, we say -- we say very clearly we should not act like nothing is wrong here. I don't want to be giving, as Congressman Lynch worries, happy talk here.

This is something we need to be thinking about, whether at least certain individuals need to be interviewed at that stage (OFF-MIKE)

CARTWRIGHT:

That's why I asked the question. And I do encourage you to look hard at adding an interview at that point in the process.

My time is up, and I yield back, Mr. Chairman.

CHAFFETZ:

Thank the gentlemen.

Now recognize the gentlemen from Mr. South Carolina, Mr. Gowdy, for five minutes.

GOWDY:

Thank you, Mr. Chairman. Mr. Bersin, Secretary Johnson is quoted as saying that there were legal limits on his ability to do some background investigations. I think that was a really unfortunate phrase that he used, but let's you and I see if we can kind of demystify that a little bit.

Do you agree that non-citizens who are not in the United States or not afforded any protections under the 4th Amendment?

BERSIN:

That's my understanding, Mr. Gowdy.

GOWDY:

Well, you were a U.S. attorney. You're being modest. Not only is that your understanding, it's also the law. The 4th Amendment does not apply to non-U.S. citizens who are not here, any more than the 8th Amendment applies to non-U.S. citizens who are not here.

Would you agree with me that there is no legal bar to accessing data from non-citizens who are not present in the United States?

BERSIN:

Absent a treaty to the contrary, that's my understanding, sir.

GOWDY:

Would you also agree with me that there is no legal right to immigrate to the United States? It's a privilege that we confer on people, but it is not a right.

BERSIN:

That's correct, sir.

GOWDY:

So would you also agree that you can condition the conference of a privilege on just about anything you want, so long as you don't violate a treaty or...

BERSIN:

Or the Constitution.

GOWDY:

Or the Constitution. But you made, I'm sure, extensive use of polygraphs when you were the United States attorney.

BERSIN:

From time to time, yes, sir.

GOWDY:

All right. And they're not admissible in court, are they?

BERSIN:

Not generally, no.

GOWDY:

But we still use them because they're a very effective investigative tool. Do we use them in the vetting of people who want to come here?

BERSIN:

With regard to immigration benefits -- I'm not familiar with the policy in the refugee context -- we do not regularly use a polygraph. If there's significant doubt in the operational component, given the border authorities that ICE and CBP have, typically, the decision would be made to bar entry, rather than to go to the extent of trying to ascertain veracity.

GOWDY:

But you and I didn't just use polygraphs in our previous lives because we had doubts. Sometime, it -- it incents the person to want to embrace the truth when they think it might be a threat that they're going to be polygraphed.

I mean, you certainly can't admit it in court, so it's not only the result, deception or otherwise, it is the threat that you may be polygraphed that sometimes provides people with the incentive to either tell the truth or they need not apply in the first place, right?

BERSIN:

That can be one reaction from an individual, and I'm not aware, Mr. Gowdy, of any policy that would prevent that. I'm also not aware operationally, as a former CBP commissioner, that it's been used in any regular way.

GOWDY:

Well, let me tell you where I find myself. I just listened to Ben Rhodes give a series of words like "extensive," "thorough," "careful." I have heard "tough." I have heard multiple, all in connection with the word "vetting." It's all amplified the word "vetting."

And I just sat here and thought, Well, if all of that was true, how did we miss the lady in San Bernardino?

BERSIN:

As the FBI director said, Mr. Gowdy, and I think is the fact, that there were no -- there was nothing in the system that we use that would pick that up. There was no data that we would turn into actionable information to deny admission.

GOWDY:

I get you, Mr. Bersin. But I got to be candid with you. That doesn't make me feel any better. I mean, it's one thing to argue that there was information there and we missed it. That's -- that's -- that's -- one set of corrective measures.

It's another thing to argue, as I hear we are currently arguing, this administration, that we missed nothing. So we have someone willing and capable of killing 14 people, and there was nothing in her background that this administration says we missed or should have picked up on, and yet there's still 14 dead people!

So how does that make us feel better?

BERSIN:

Mr. Gowdy, I think -- I don't think anyone would gainsay the sense of tragedy. And I don't think anyone is saying that were that information, that data in the system, that we would not all be over -- relieved and thankful if it had led to the apprehension of that -- of that -- those murderers.

But the issue that you asked is factually were -- were there data in the system by which we could tell that this risk existed. And the answer to that is no. I think the inquiry that's being made here today is a valid one, as Director Rodriguez suggests, and that we need to actually look at this hard and long in terms of the utilization of means.

I will say that there is no secret policy in DHS against the use of social media...

GOWDY:

But...

BERSIN:

... and there is nothing in the privacy policy that would bar it for screening purposes.

GOWDY:

Well, it couldn't be because it doesn't apply to non-U.S. citizens. I'm out of time. I just want to tell you the dichotomy, as I see it. We have a choice. We can either tell the American people that our process and our systems are flawed and that we have missed information that is otherwise available and let them deal with that.

Or we can just tell our fellow citizens we missed nothing. We did everything we were supposed to do, and there's still 14 funerals in California, so you just need to get used to the risk.

Neither one of those is acceptable, I would argue to you.

BERSIN:

Mr. Gowdy, I've not heard anyone who was involved in law enforcement or in the homeland security enterprise that wouldn't say that we need to strengthen our systems. We've been doing that continuously for the 14 years since 9/11.

GOWDY:

Well...

CHAFFETZ:

Gentlemen's time has expired.

GOWDY:

All right. Forgive me for noticing the trend of extending time, but I will yield back.

CHAFFETZ:

Yes, you will.

We will now recognize the gentlewoman from Michigan, Ms. Lawrence, for five minutes.

LAWRENCE:

Thank you, Mr. Chair. To everyone that's here today, thank you for being here.

Assistant Secretary Bond, I want to ask you about the report of the visa office which was issued by the Bureau of Consular Affairs at the State Department. According to this report, in 2014, foreign services posts issued about 467,000 immigrant visas and 9.9 million non-immigrant visas. The K-1 or the fiance visas which has received significant attention recently are classified as a non-immigrant visa. Is that correct?

BOND:

The K-1 visa is an unusual -- you could call it a hybrid. We process it as an immigrant visa case. We do all of the work on a fiance visa that we would do for an immigrant visa case.

For example, the applicant has to undergo a medical exam to show that there are no communicable diseases or other things. We wouldn't do that for a non-immigrant.

But when we actually issue the visa, it's a non-immigrant visa because until that person has married the petitioner and then applied for adjustment to legal permanent resident status, they don't have the right to remain in the United States after entering.

So they're not coming in on an immigrant visa, but it's our immigrant visa unit that does all of the preparatory, all of the work...

(CROSSTALK)

LAWRENCE:

... are we saying that although it's classified as a non-immigrant, you're saying for the record that they must go through everything an immigrant -- through the complete process?

BOND:

Exactly right.

LAWRENCE:

How many non-immigrant visas do we have in the United States whom we're processing, in your department, and what are some of the other non-immigrant visas?

BOND:

There's an alphabet of them.

LAWRENCE:

So how many?

BOND:

Examples of non-immigrant visas are those that we issue to foreign diplomats who are coming here to serve in their embassies or consulates, to people who are coming as tourists or on business, or they might be coming, for example, for medical care. We have people who are coming in as crew members, flying in on planes or coming in on ships.

LAWRENCE:

So Ms. Bond, if I am coming in under the non-immigrant fiance, at what point are we reviewed again to document -- is there any -- is there another step that happens, so I come in, I have to have a non-immigrant, so I come back and just give you a marriage license, and it's done? Or is there additional screening?

BOND:

In most cases, the fiance -- the reason they're getting a fiance visa is that they intend to marry and remain in the United States. So they have 90 days to do that. We give them a one-entry visa. They are allowed to enter the United States, and they have 90 days to -- after entry to either marry or depart.

Most of them, having married, remain in the United States, and therefore, they get in touch with Director Rodriguez's colleagues in order to adjust status. And yes, they would provide proof that they have married.

LAWRENCE:

Now, this is a question I have, and it was referred to by your colleague that they are reviewing the interview process of American spouses because we don't interview the spouse, we just interview this application for the fiance, non-immigrant visa.

My question to you, the president has directed the state department to review them. What is the review? When will this review be completed? And what is -- what is the objective of the review? Can you outline that, please?

BOND:

Yes. The objective of the review, which is an inter- agency effort, we're working very closely with different parts of the Department of Homeland Security and with other parts of the government to take a look at every single element of the process. The specific focus is on the fiance visa. So, you have the initial stage where the American citizen files a petition. We're examining that to see what more can we do there. Then you have the stage where the information is vetted and then transferred to an embassy where the applicant is going to be interviewed. We're looking at that process which is primarily under the direction of my colleagues in the Bureau of Consular Affairs.

LAWRENCE:

My time has run out. So my final question is, what is the timeline to complete this review and to report out?

BOND:

My understanding is that we hope to be providing a review to the NSC in January.

LAWRENCE:

Thank you, Mr. Chair. I yield back.

CHAFFETZ:

Thank you. Members are advised that we have a vote on the floor. There are 11 minutes left in the vote. The intention of the chair is -- I'm going to recognize myself -- recognize myself for questioning. We'll do one more Democrat and then we will recess until approximately 11:00 a.m. or when ever the votes conclude.

So with that, I will now recognize myself. Ms. Richard, you said that state department is helping to prioritize the most vulnerable in Syria. Yet, in Syria, my understanding is in fiscal year 2015, only 29 people were Christians. I would think Christians in Syria are some of the most vulnerable people.

Why is that number so low? It's less than 3 percent of those brought in and yet they -- Christians represent roughly 10 percent of the population in Syria.

RICHARD:

I agree with you that Christians in the Middle East are among some of the most vulnerable people especially in the ISIL- controlled areas. And so, that's one reason we have brought in terms of our Iraqi refugees we brought to the United States 40% have been Christians or other minorities.

(CROSSTALK)

CHAFFETZ:

OK. My question is about Syria -- look. I would appreciate if you get back to me on this. I would spend half hour going through it if I could. Please get back to us on that -- on that question.

RICHARD:

We are bringing Christians from Syria.

CHAFFETZ:

Not very many, 29 in the whole year.

RICHARD:

They're underrepresented in part because they make up of smaller percentage of the refugees from Syria.

CHAFFETZ:

That's -- and that's the problem.

RICHARD:

They're not fleeing because they feel...

(CROSSTALK)

CHAFFETZ:

Ms. Richard, I'm done with that question. I'm moving on. Ms. Bond -- I want you to get back to us with this question. Ms. Bond, you wrote in your testimony since 2001 the department has revoked approximately 122,000 visas for a variety of reasons including nearly 9,500 for suspected links to terrorism. Of the 122,000 revoked visas, how many of those people are still in the United States?

BOND:

I don't know.

CHAFFETZ:

Doesn't that scare you?

BOND:

Many of the people whose visas were revoked were not in the United States when we revoked the visa.

CHAFFETZ:

You have no idea how many of those people are in the United States. Of the revoked visas, do you give those to the Department of Homeland Security?

BOND:

Exactly. We revoke the visa and the information is...

CHAFFETZ:

So homeland security, how many revoked visas are still in the United States of America?

BERSIN (?):

Mr. Chairman, I don't have that...

CHAFFETZ:

You don't have a clue, do you? These are people that the state department -- state department who gave the visas, thought about it, got more information and decided, we better revoke that, 9,500 were tied to terrorists, and you don't have a clue who they are, do you?

BERSIN:

Mr. Chairman, please understand that I head up the office of policy. The operational components would have that information are...

(CROSSTALK)

CHAFFETZ:

When will I get that -- when will I get that information?

BERSIN:

We shall see if we can find that...

CHAFFETZ:

When will I get that information?

BERSIN:

If the operational representatives that information, we'll provide it to you when the hearing starts up again. If not, we'll get it to you as soon as we can. I do not...

CHAFFETZ:

Mr. Rodriguez, do you have anything to add to that?

RODRIGUEZ:

I am -- we are not the operational component. I don't.

CHAFFETZ:

OK. Is a visa overstay a key indicator of a threat to public safety and potential terrorism, Mr. Bersin?

BERSIN:

It could be, depending on the facts. But in -- given the number of people involved in -- who come into this country, who are processed, the million people a day, I don't suspect it's a large fraction at all. No, sir.

CHAFFETZ:

Of the terrorist attacks that have happened in the United States, it's been a disproportionate number, hasn't it? How quickly -- how quickly we forget about 9/11? Nineteen, I believe, of those people are visa overstays, correct? It's not even in the top three priorities for the secretary of homeland security. That's what I got a problem with.

This memo of November 20th 2014 where the secretary outlines the priorities for deportation, Category number two -- and I want you to understand what I'm seeing at the end of category -- this is again not the top priority for removal but number two -- these aliens should be removed, unless, there are factors indicating the alien is not a threat to national security, border security or public safety and should not, therefore, be an enforcement priority.

Now, I don't know how you come to that conclusion about they're not a threat to public safety, border security or national security. First of all, they're here illegally. That should be enough in my book. But let me list to you, offensive -- offense of domestic violence, sexual abuse or exploitation, burglary, unlawful possession of a firearm, drug distribution or trafficking, driving under the influence. And that is not an automatic deportation? You got to be kidding me. And to think that they might -- do you think that's terrorism if a woman is raped? Do you, Mr. Bersin?

BERSIN:

Do I think that that is terrorism?

CHAFFETZ:

Yeah.

BERSIN:

No. But it's an egregious horrible crime, which is the father of...

CHAFFETZ:

I'll tell you what...

(CROSSTALK)

BERSIN:

... I think it is a horrible crime.

CHAFFETZ:

It is for that woman. It is for that family. And you don't deport them. How do you do that? You give them an excuse to make a decision -- some poor officer there to say, "You know, maybe they should go ahead and stay here in this country." We had more than 66,000 criminal aliens in your control and you let them go. You didn't deport them. You let them go. Why do you do that?

BERSIN:

Mr. Chairman, the policy provides that if they are a threat to national security or border security or public safety that they are eligible...

(CROSSTALK)

CHAFFETZ:

Give me a scenario when a woman gets raped and the person is here illegally that they're not a threat to public safety. Explain to me that scenario.

BERSIN:

I didn't say that. I said that they would be subject...

(CROSSTALK)

CHAFFETZ:

That's what the memo says.

BERSIN:

... they would be subject -- I believe the memo says unless they are a threat to border security -- unless they are not a threat to border security, national security and public safety.

CHAFFETZ:

How are they not a threat -- how are they not a threa to public safety?

RODRIGUEZ:

Chairman, if I may, if a woman is raped and the perpetrator is convicted of rape, that is a felony, that is a serious crime, that is a top removal for removal.

CHAFFETZ:

No, it's not. It is not the top priority.

RODRIGUEZ:
I'm not sure where...

CHAFFETZ:
It's priority number two for the Department of Homeland Security, so says the memo.

RODRIGUEZ:
That person would be removed.

CHAFFETZ:
It doesn't say that. It says unless. There are factors indicating the alien is not a threat or should not therefore be an enforcement priority. Jay Johnson went out of his way to tell people if you commit rape, rape, if you're in a DUI situation...

RODRIGUEZ:
I do not...

CHAFFETZ:
... if you commit burglary, don't necessarily deport these people.

RODRIGUEZ:
Respectfully, Congressman, I don't think you are reading that policy correctly. Rape is a serious crime that is a removable offense.

(CROSSTALK)

CHAFFETZ:
It is removable offense unless -- unless -- and it's priority number two for Department of Homeland Security. I want some answers about that. I'll give you a copy to read. You're going to have half hour to go through and I want to understand why you let 66,000 criminal aliens remain in the United States of America. That's a threat to the homeland. That's a threat of terrorism. That's a threat to every American. Those people should be priorities for removal and you did -- you had them in your possession and you let them go. You did not deport them.

CUMMINGS:

Mr. Chairman, this gentleman will yield (ph). Mr. Chairman, you say you'll give us a copy. I just want a copy of whatever you're reading from. We need a -- so we'll know what you're talking about, the memo you just referred.

CHAFFETZ:

I ask unanimous consent to enter it in the record.

CUMMINGS:

No problem.

CHAFFETZ:

I'll make sure that all witnesses have a copy of this.

CUMMINGS:

Yes. I just wanted to make sure we have it.

CHAFFETZ:

Fair enough.

CUMMINGS:

Can we get it quickly?

CHAFFETZ:

Yes. Sorry. Yes. I will now recognize the gentlewoman from New York, Ms. Maloney, for five minutes.

MALONEY:

Thank you very much. And this is an important hearing, but the chairman said how quickly we all forget 9/11. I want to publicly thank all the members of Congress that are remembering 9/11 by including it in the omnibus, which we will be voting on tomorrow. So I think that that is a wonderful way to remember 9/11 by providing permanent healthcare to the heroes and heroines and survivors of 9/11, those who risked their lives to save others.

It was a bipartisan effort and certainly one that we could all agree on and I think we can all agree that we need to really work together on this whole area. Due to the question earlier, the woman who came in from Pakistan who became the terrorist, they didn't find her in the database, but according to a report from the IG in 2015 from the Department of Homeland Security, they said that TSA did not identify 73 people who had links to terrorism, and I find that very troubling.

And according to this IG's report, this happened because TSA was not authorized to receive full information from the TIDE, the terrorist database run by the National Counterterrorism Center.

I think we have two main questions. One is if people are dangerous, we have to figure out how to get them into the database, but it's extremely troubling that they're in the database and yet a visa is given to them, which happened in this particular case. So, I would like to ask Mr. Bersin, can you briefly explain why TSA did not have access to all of the information in the TIDE database which would have kept 73 people out of the country who had links to terrorism?

BERSIN:

Yes, ma'am. Actually, the 73 people referenced in the report were people who were credentialed to be in critical infrastructure, so of equal importance, but not -- this was not a visa situation. Subsequent investigation actually demonstrated those 73 were not known as suspected terrorists. However, the larger point that you make, which is TSA access to TIDE's data was something that is under consideration. I believe a policy decision permitting that access could be made and is certainly under consideration right now.

MALONEY:

Well, it seems to me that it's got -- you've got to have access to -- why have the list if people don't have access to it in making decisions about who comes into the country? I mean, I find that -- I think that is something we can all agree on. We have to -- we certainly want legitimate visitors, but anyone on a terrorist watch list, you know, we should not be granting access.

So, can you give me any reason why TSA should not have access? You're saying it's under consideration that they have access? Why in the world would TSA not have access to this counterterrorism list when it's their role to decide who comes in and who doesn't? I mean...

BERSIN:

It is the policy position of DHS, including TSA, that they have access to that data, ma'am.

MALONEY:

That they have it?

BERSIN:

Yes.

MALONEY:

Well, then, who is stopping that access?

BERSIN:

No, no. That they be authorized to receive that information directly from the...

MALONEY:

But they're not receiving it.

BERSIN:

At this moment, no, but as I indicated that policy is -- has been under review and I believe a decision will be made shortly.

MALONEY:

And who would make that decision?

BERSIN:

Be a combination of interagency process that would determine that...

MALONEY:

Who has the ultimate decision? The state department or which...

BERSIN:

No. Ultimately the secretary would work with his counterparts in the cabinet and it would be a decision that would be made by the interagency of the United States government.

MALONEY:

The interagency, who heads the interagency of the United States government?

BERSIN:

It passes -- at the end of the process, the president, ma'am.

MALONEY:

So it's the president of the United States.

BERSIN:

But this would not be -- it would be decided in the process of the National Security Council headed by Ambassador Rice.

MALONEY:

The national security -- I think this should be changed immediately. This seems like a bureaucratic mistake. So, do you have any sense when they will make this decision?

BERSIN:

The best I can offer you is shortly.

MALONEY:

OK. Well, I would like the committee to send a letter, at least I'll send my own, expressing that this policy change should take place.

May I just ask one brief question? Which entity has the final say on whether a visa applicant is approved to receive a visa?

BOND:

The Department of State issues the visa when every part of the interagency clearance has cleared and there are no objections and no red lights. So, we would not issue over the objection of one of the interagency partners.

MALONEY:

My time has expired.

CHAFFETZ:

Thank you. The committee is going to go into recess. Witnesses are advised that we will reconvene no sooner than five minutes after 11:00 a.m. and we'll pick up from there. The committee stands in recess.

(RECESS)

(JOINED IN PROGRESS)

BERSIN:

... answers with Ms. Maloney had to do with the access of TSA to tie the data and I talked about the policy change that was underway. On a manual case by case basis, that's been gone from time to time. The policy change that I'm confident the member of Congress would be pleased to hear is that this had to do with automated access of TSA to TIDE's data.

The second matter, Mr. Chairman, was that in responding to Mr. Walberg I indicated that the number of visa of overstay were in the 400,000 to 500,000 range and that number was correct -- my staff has corrected me and I apparently misheard. This relates to both Visa Waiver Program and also to all visas. So it was not just the Visa Waiver Program. There are approximately 400,000 to 500,000 overstay, but I believe when the overstay report does come -- and Mr. Lynch is entitled to be skeptical but I believe it is en route to the Congress -- it will indicate a visa -- an overstay for the visa waiver program that is considerably lower than the -- than the number I suggested inaccurately in my testimony having misheard the member of Congress. Thank you, sir.

CHAFFETZ:

I appreciate the clarification. We recognize from Texas, Mr. Farenthold for five minutes.

FARENTHOLD:

Thank you very much. Mr. Bersin, in your testimony you talked about the various watch lists that were coordinated and maintained as a result of 9/11. Can you talk a little bit about how someone gets on one of those watch lists?

BERSIN:

Yes, sir. There is a formal process. There is only one consolidated terrorist watch list in the United States following 9/11. And the way in which that happens is there is an interagency process. Any agency can nominate. There are standards that govern the movement of a name onto the terrorist screening database or the terrorist watch list.

FARENTHOLD:

A wide variety of agencies. Does there have to be some level of proof, a list based on suspicion?

BERSIN:

The standard followed for most -- all cases are -- is reasonable suspicion. There are other placements on the TSDB based on a couple of other factors that are actually much smaller but for various immigration or other reasons.

FARENTHOLD:

So it's pretty easy...

BERSIN:

Reasonable standard.

FARENTHOLD:

But it is easy to get somebody on the list. What about getting off the list? If for some reason let's say I were put on the list, how easy would it be to get off?

BERSIN:

So with regard to...

FARENTHOLD:

And would I know?

BERSIN:

With regard to a subset of the TSDB, which is the way in which people typically know they are on the TSDB is if they are not permitted to fly abroad or within the United States. And there is a redress process that people can apply to be removed, to ask to be removed from...

FARENTHOLD:

Do you happen how long that process typically takes?

BERSIN:

It's an extended process, yes, sir.

FARENTHOLD:

Are we talking years?

BERSIN:

It depends on the particular redress application.

FARENTHOLD:

And there are American citizens on this list?

BERSIN:

Yes, sir.

FARENTHOLD:

Do you have an idea about how many?

BERSIN:

The numbers of American citizens that are on the no fly list are a very, very small fraction.

FARENTHOLD:

But there is a substantial number?

BERSIN:

There is a -- less than .1 percent I am told with regard to the no fly list.

FARENTHOLD:

There has been a lot of talk about using these watch lists for purposes other than they were intended, for instance, in determining whether or not Americans are able to exercise their rights under the second amendment. Do you think it is appropriate that these lists be used outside of what they were designed for?

BERSIN:

I have not heard that. And I don't believe that it would be -- and I believe it would be apples and oranges.

FARENTHOLD:

All right. Thank you very much. Ms. Bond, I wanted to ask you a quick question about the folks that are coming into this country for a visa. That's down in your consular service division, right?

BOND:

Yes, that's right.

FARENTHOLD:

Correct me if I am wrong, that is the entry-level job that almost everybody at the State Department has to start off and do a stint in consular services section?

BOND:

Almost every Foreign Service officer will serve in the consular in their first or second tour.

FARENTHOLD:

How long would someone serve in that position?

BOND:

Two years.

FARENTHOLD:

How many folks that are screening folks coming into the United States have been there -- you know, for an extended period of time and have a high level of experience? You testified they are adequately trained. But it is everybody's first two-year stint. I assume most people don't choose to stay there?

BOND:

I did. The officers, as they arrive at posts, if they are doing this as a first consular tour, they are very carefully monitored.

FARENTHOLD:

I am running out of time. I have a question for Ms. Richards.

BOND:

When we come into the Foreign Service, we come into a cone of approximately 20 percent are code officers.

FARENTHOLD:

Thank you very much. I wanted to ask Ms. Richard, when we are admitting refugees into the United States from folks like Syria or countries of concern, what level of coordination is there with the states. Do we talk to the governors or anybody within the states? I know Governor Abbott in Texas is none too pleased with folks being resettled in Texas?

RICHARD:

Every governor, I think 49 of them, have a state refugee coordinator that is involved in making sure that the governors office works with -- and talks to the local groups that are helping to resettle the refugees.

FARENTHOLD:

But they have no authority to stop it or any formal process for expressing concerns. They're basically just informed.

RICHARD:

We insist that our local partners consult with local government officials, including is the state refugee coordinator from the governor's office. So they should be consulted.

FARENTHOLD:

Can you give me a definition what consulted means.

RICHARD:

Who is coming, how many, where they are going.

FARENTHOLD:

Just basically a one-way...

RICHARD:

Notification.

FARENTHOLD:

All right, thank you -- the states don't have a lot of opportunity. Thank you very much. I yield back.

CHAFFETZ:

I thank the gentleman. We'll recognize the gentlewoman from Illinois, Ms. Duckworth for five minutes.

DUCKWORTH:

Thank you, Mr. Chairman. Ms. Bond, how long is the training process for the new service foreign officers who in consular services?

BOND:

The counselors take a training course that is six weeks long at the Foreign Service institute here. And then, as I say, after arriving at post, are normally engaged in the process that each post sets up for assigning a more experienced officer to work with them the first two months. Of course, we have managers in the section -- more experience officers and the visa decisions, issuances and refusals of the less experienced officers are reviewed by more senior officers and are the

basis of discussion to talk about what that officer looked at, what they based their decision on, what questions they asked, what questions they may have considered or pursued.

And it's -- so there is of course an ongoing training program as people are settling into the job.

DUCKWORTH:

So approximately -- equivalent to an infantryman who goes to basic training and we send him to combat under the supervision of more experienced leaders. If we can trust our young Americans to go to combat, I think we should be able to trust our consular officers training under the officers.

BOND:

Also it's important to note we are talking about Foreign Service officers. They have gone through a competitive program to be admitted to the Foreign Service. Many are lawyers who have formally worked in immigration law or have been teachers. Many are, in fact, former military.

DUCKWORTH:

They are not inexperienced people. If so, they get a decent amount of quantity in training. Somebody we are sending into harm's way. I am sure you're proud of our officers, as am I. Thank them for their service.

BOND:

Thank you.

DUCKWORTH:

I strongly believe we must do everything in our power to protect our country. We can't focus on imaginary problems. I agree we must consider in and all processes. These refugees are fleeing the same terrorists we are fighting, ISIS, and the brutal Assad regime. Turning our backs on people being persecuted and killed betrays our nation's deeply held ideals and values.

And helping ISIL recruit a new generation of terrorists through the anti-American propaganda, as we have already discussed, our current process requires the collaboration of vetting of seven separate departments and takes on average two years to complete. Mr. Bersin and Mr. Rodriguez, You said this process is incredibly rigorous.

I'd like to know if there are any other ways to further strengthen the refugee vetting process. Because of course, I think we should if there are. In your opinion, are there any other ways to further strengthen this process?

RODRIGUEZ:

I certainly think one key way that we have been starting to use piloting could be the use of social media research. There are other tools that we can use that I would not necessarily feel comfortable discussing in a public setting. But needless to say, we are in a constant process of looking to how we reinforce our security and law enforcement vetting across all lines of business.

So I think it is helpful to talk about refugees -- helpful to talk about the K visas. But I think it is also important to realize that these security tools in fact, are ones we need to think about using across all of our lines of business.

DUCKWORTH:

So it is not a stagnant process. And when you have new cases such as in the San Bernardino case, you go back and look at other things that can be done -- Mr. Bersin, you're nodding.

BERSIN:

I think the so-called hot wash, the after incident, particularly the tragedy of that proportion always leads to a lot of examination, soul searching how we strengthen the system. And we will never get to the point where that process ends. This is clearly an example of something that requires continuous improvement.

And when we have an incident, a tragedy of that proportion, yes, we look very carefully at what could have been done, what should have we have known, what can we know, and begin to address that.

DUCKWORTH:

Do you have a process in place that is a periodic review of your processes that result in further improvements or adjustments.

BERSIN:

We do within DHS and we do in the interagency. There is a constant review on an annual basis through, for example, the watch list and guidance. How do we actually manage these vetting processes, yes, ma'am.

DUCKWORTH:

Thank you. I yield back, Mr. Chairman.

CHAFFETZ:

Thank the gentlewoman. We'll now recognize the gentleman from North Carolina, Mr. Meadows for five minutes.

MEADOWS:

Thank you, Mr. Chairman. Thank each of you from your testimony. Mr. Bersin, I am going to come to you. You're a smart guy, Yale, Harvard, Oxford. Looking at your resume, you're a gifted attorney. And so as I look at all that, I am puzzled by a little bit of your opening testimony. Tell me and let me quote you here. Because it says that the second major shaping influence is that we realize that 98 or 99 percent of all trade and travel in the United States is perfectly lawful and legitimate. How do you know that?

BERSIN:

The estimate comes, Mr. Meadows, from when CBP, for example, makes judgments about -- with regard to cargo and the people who are coming in and out of the states. We have those assessments of that. And I think...

MEADOWS:

So following that logic, since it is an estimate, of the 20 million people that come here with a visa, you're saying that between 2 percent and 1 percent come here for less than lawful purposes?

BERSIN:

If you apply that figure...

MEADOWS:

If you apply it to one, you have to apply to all of it. Either it's lawful or unlawful.

BERSIN:

No. The point is that when you look in the globalize world we operate in with the 70,000 containers that come in...

MEADOWS:

Oh, so you're talking about trade?

BERSIN:

No. I am also talking about the 1 million people.

MEADOWS:

Let's talk about the 1 million people because really when we talk about terrorist activity, we're talking about 20 million people who come here with a visa and perhaps overstay. Is that correct?

BERSIN:

No, 20 million people come under the Visa Waiver Program.

MEADOWS:

And of that, how many overstay?

BERSIN:

The estimate, as I indicated to the Chairman on the clarification that I made...

MEADOWS:

Ok, so you're talking about the internal document.

BERSIN:

That's correct, sir.

MEADOWS:

What is the number on the internal document?

BERSIN:

Well, it's less than...

MEADOWS:

What's the number? Now, you've got a two-inch binder there that has all kinds of research. In fact, it has our pictures and our bios. You knew I was going to ask this question, I assume.

BERSIN:

I do. But I also have...

MEADOWS:

So are you going to give me a number?

BERSIN:

Mr. Meadows, no, I am not going to give you a number, no.

MEADOWS:
Why?

BERSIN:
I am not going to give you a number because there is a report in preparation with a process that has to be followed.

MEADOWS:
Is that the report that's been in process for 20 years?

BERSIN:
I -- it's that...

MEADOWS:
Because the person who appointed you, Ms. Napolitano, promised it to this Congress in 2013, December 2013 that it will be here. Are you all still working on that report?

BERSIN:
So, Mr. Meadows, I know you don't have enough time for me to explain why it's happening. But I take the criticism. I think it's a fair criticism.

MEADOWS:
So when will we get the report?

BERSIN:
I believe the report is in process and the expectation is that it will be delivered to the Congress within the next six months.

MEADOWS:
All right. So help me understand this, Mr. Bersin. We're supposed to believe you that you are vetting all the people coming here with unbelievable assuredly. And it's going to take six months to just give me a number?

BERSIN:
No.

MEADOWS:

Let me quote you, Mr. Bersin. You said 400,000 are in the range of the estimate made. Now that is interesting. It is in the range of an estimate that is made. BERSIN: Four hundred to five hundred thousand are the total overstay. That was the clarification asked for.

MEADOWS:

All right. So answer this, the GAO said there was potentially 1.6 million overstay in 2011. The GAO said potentially there was over 1 million overstay in 2013. How did you make such good progress, Mr. Bersin? If it's only 500,000 now, if you take the same numbers, there could be as many as 4,000 people here doing unlawful things.

BERSIN:

In fact, there is the entire exit industry, the exit from our country for the last -- from the time it was organized, did not build in the notion that we would screen people on the way out.

MEADOWS:

That's exactly what I wanted to get to. So Mr., Bersin, your testimony here today is you don't know who leaves this country. That's what you said.

BERSIN:

I didn't say that. I said the difficulty is...

MEADOWS:

So you do know. You do know how many people leave?

BERSIN:

We have a portion through the different mechanisms we have. Yes, we know a certain portion, those who come by air and leave by air.

MEADOWS:

If they leave by boat, car or walk, you don't know.

BERSIN:

No. In the northern border, we worked out with Canada an entry/exit process. It is communicated to us for non-U.S. citizens and non-Canadians, so for that portion we know. But the areas we do...

MEADOWS:

You're under sworn testimony, last question, do you know the number of people that leave the United States each and every year? You're under sworn testimony, yes or no.

BERSIN:

We can give you a large proportion of those but not all, no. So we don't know.

MEADOWS:

All right. I yield back.

CHAFFETZ:

Thank the gentleman. We'll now recognize the Ranking Member, Mr. Cummings for five minutes.

CUMMINGS:

Thank you very much. As I listen to this, it's very upsetting. It really is. I feel like one of the things that I will go to my grave remembering is Katrina. We had a situation there where people constantly told everybody that things were going to be all right if we had an emergency. They said when the rubber meets the road, everything will be fine.

But when it came time for the rubber to meet the road we discovered there was no road. The Chairman and I think when we looked at secret service, we looked at a number of situations where things were not as they appeared to be. And the thing is that lives depend on a lot of these things. I guess what I am trying to figure out is what did we learn?

I am going to get down to the bottom line. We can go through this all day. I want to get to the bottom line about something you said, Mr. Rodriguez, about how we prevent and what are we doing now to make sure things don't happen. First of all, did we learn anything from the San Bernardino incident? If we did, what did we learn and what are we going to do about it and what are we going to do about it?

If you tell me we learned nothing, you can tell me that. But I need to know because I am of the firm belief that we need to be frank about this -- and by the way, I want to know whether it was intelligence failure, what was it, talk to me.

By the way, let me tell you something, that six-month thing, you can do better than that, all right. You need to get that information faster than that. But go ahead.

RODRIGUEZ:

I am just putting outer limit...

CUMMINGS:

You need to bring in the limit a little bit. But go ahead.

RODRIGUEZ:

I hear you.

CUMMINGS:

All right.

BERSIN:

So what did we learn? As I indicated, the fourth major influence is what Secretary Johnson and the President have been indicating, the threat is evolving. In fact, right now we're dealing with something that is an online cyber-enabled radicalization of people. It's the active shooter in the context of the lone wolf or lone wolves that are not necessarily trained and equipped by ISIL but actually inspired by the propaganda that is online.

I think what we have learned, as we saw, it was not in the system. Many of the questions that have been pursued and the inquiry this committee is making about how far can we go with regard to social media, how far can we go into Facebook and private chats are all issues that are legitimate and need to be discussed.

CUMMINGS:

Idealistically, what would you do today that we need to be done prior -- I am trying to get to where we're going to, if we're going anywhere.

BERSIN:

I think with regard to legal authority and privacy policy, I think all of those matters need to be looked at. There are restrictions. But, for example, the privacy policy in DHS does not prohibit the use of social media for screening purposes. The question is what the other purposes that might prevent that.

Where are the other civil liberties and protections that would say to us, no, it would violate our values to actually go there? But that's the debate I take it is triggered...

CUMMINGS:

You want to say something, Mr. Rodriguez?

RODRIGUEZ:

Yeah. I think I would say we are -- we're on top seeing the situation now.

CUMMINGS:
We're what?

RODRIGUEZ:
We are hot washing the situation.

CUMMINGS:
Hot washing?

RODRIGUEZ:
Yeah. We're looking at it to see what lessons are to be learned. The point that Director Comey made about a ripple in the pond, we need to know -- just about everybody actually does leave a ripple in the pond. The question is can we find the ripple in the pond. Social media is clearly something we need to be talking about.

We are building and we need to continue to build. We have been focusing on the refugee settings and non-refugee settings as well. It is a question of how, who, and when we interview. Because of all these tools need to be used together, so one of the questions here is doing things differently, more or less, differently in the interview setting.

That is something we're digging into as part of our inter agency collaborative process.

CUMMINGS:
Mr. Bersin, did TSA submit requests access to all the information it needs from the database?

BERSIN:
As I said, Mr. Cummings, they have manual access right now. The decision will be made before six months to give them full access.

CUMMINGS:
Has the request been made?

BERSIN:
Yes, sir.

CUMMINGS:

You said within six months?

BERSIN:

No, no. I said sooner than six months. Actually, I think in the near future.

CUMMINGS:

The only thing I am trying to get to -- and we all should be concerned about this, is the sharing of information. Is that a problem? You know, I found in federal agencies act in silos. And next thing you know, one person -- somebody has some over here, some have some over there. Is that part of the problem?

BERSIN:

So, Mr. Cummings that was clearly the case before 9/11. The testimony of your witnesses, we know we don't have the silos with regard to the vetting process. There are other silos to be sure but not with regard to the exchange.

CUMMINGS:

Thank you, Mr. Chairman.

MALONEY:

You know who doesn't have access to the terrorist database? TSA doesn't have access to it. Are there other groups that have access to it, the k-1 visa? Do they have they not have access to it? Who doesn't have access to the database? They should all have access to it.

BERSIN:

So the terrorist identity data is actually for it to be operational, it comes into the terrorist screening database. The issue on TSA is in doing its credentialing we want them to have access on an automated basis so they can get flags of potential problems. That's the issue that's at stake right now.

MALONEY:

But I would say the other group should too...

CHAFFETZ:

The gentlewoman's time has expired. We'll now recognize the gentleman from South Carolina, Mr. Mulvaney for five minutes.

MULVANEY:

Thank you, Chairman. Ms. Richard, we have had a chance to meet before. You and I have met with Congressman Gowdy to talk about some resettlement programs in South Carolina and our staffs have worked together closely on that. I appreciate your participation. We found out yesterday in the media that your group has placed some Syrian refugees this month in South Carolina. I like to ask you about that.

Full disclosure, it is a small people. It is one couple, we understand. So this is not specific to these folks. But our governor had reached out to you and asked you not to do this. And we have met previously -- you said one of the things your organization considers is whether or not they're going into areas where you feel they would be welcomed to the point to assimilate.

And I would suggest to you maybe the governors letter to you might send a message that now is not the right time to send Syrian refugees in South Carolina. So why did you do it anyway, and why didn't you tell the Governor you were going to do it?

RICHARD:

I didn't know that we sent Syrian refugees to South Carolina.

MULVANEY:

How is that possible that happened without you knowing? Especially in light -- how many meetings have you had with me, Mr. Gowdy and our staff?

RICHARD:

Oh, several. But I don't track all 70,000 refugees coming to the United States. It is carried out...

MULVANEY:

How many delegations have you met with in the last year, Congressional delegations come to their offices?

RICHARD:

Lots.

MULVANEY:

A dozen.

RICHARD:

I will find out why we have Syrian refugees there. Our program is continuing. It's continuing across the United States. And this is all legal, of course.

MULVANEY:

That wasn't the standard you set. It is not a legal standard. We know you have the right to do it. You have been candid that the governors don't have the right to stop it and that's the law. It is not a legal standard, was it? You were going to try to put them in places where they would be welcomed so it would be easier for them to assimilate?

RICHARD:

Yeah. And I suspect the couple going to South Carolina is welcomed there as well.

MULVANEY:

And let's talk about that. Sorry to cut you off. Let's talk about that. Because I hope very much they are welcomed to South Carolina. Knowing what I know about folks back home, I have a feeling they will be. Here's where we are. We are in the middle of a debate nationwide over your vetting processes. We have the FBI Director saying while they're good, they're not perfect. And he can't certify that everybody who comes in is safe and not a national security threat.

We had a bill in the house, veto proof majority to pause this resettlement program. This issue gets a lot of attention. Now the two folks that are settling in South Carolina, and the certainly the folks in the neighborhood will find out who they are. I am going to have people who look differently at those refugees than they would otherwise. In the back of their mind they will say I wonder if these are the two that got through the system.

The FBI Director tells us it's not safe. Doesn't it make it more difficult for refugees to assimilate if we haven't perfected our vetting process?

RICHARD:

I think we have a very, very strong robust vetting process.

MULVANEY:

Mr. Rodriguez and Mr. Bersin just said this is an evolving threat and they are changing the way they do business. Have you changed the way vetted in the last six months?

RICHARD:

We are going over the way we vet in a very active way.

MULVANEY:

Have you changed the way that you vet...

RICHARD:

Trying to make it even better.

MULVANEY:

Have you made any changes in the way you vet since San Bernardino.

RICHARD:

No, but there were no refugees involved in San Bernardino.

MULVANEY:

I get that. Didn't we have a discussion about silos? Aren't we going to learn something about the fiance visa process and apply it to the refugee process? Are you looking at social media?

RICHARD:

That I would have to defer to Mr. Rodriguez.

MULVANEY:

Are you looking at social media?

RODRIGUEZ:

As I said very clearly, yes. We are not using it 100 percent. We have been piloting the use. We are now in the middle of a third pilot. I think I talked before about the lessons we're using for that and how they will be used. But, yes, we are building the capacity.

MULVANEY:

And there is no way to know if the folks who got to my state yesterday have been through that at all.

RODRIGUEZ:

I think -- as you know, the process is a very long and rigorous one...

MULVANEY:

Here's my point. I am running out of time. Here's my point. Folks on your side of the table, folks on our side of the table recognize the vetting process could be better. I think if we're really interested in having a viable refugee program that allows people to resettle here and to integrate and assimilate, that process has to be the very best that it can be.

And the folks back home are entitled to that. Because they are entitled as citizens to know if you want to place citizens over our objections, they are entitled to know that you have done everything possible to make sure that it is safe to do so. And all I know right now is that we can't tell them that. So I will ask you to do what we have been unable to do legislatively, which is simply pause the process until you can give us that guarantee. With that, I yield back the balance of my time.

CHAFFETZ:

Thank the gentleman from South Carolina. We'll now recognize the gentlewoman from the Virgin Islands, Ms. Plaskett for five minutes.

PLASKETT:

Thank you, Mr. Chairman, Mr. Ranking Member, thank you witnesses for being here today. I have several questions related to a hearing that went on last week about the no-fly list. It's our understanding that TSA draws this list from the terrorist screening database, which is maintained by the FBI. And that the no-fly list contains a small subset of names who, "Are prevented from boarding an aircraft when flying within, to, from, and over the United States."

Assistant Secretary Bersin, according to the FBI's frequently asked questions, I am going to quote here, "Before an individual may be placed on the no-fly list, there must be credible information that demonstrates the individual poses a threat of committing a violent act of terrorism with respect to civil aviation, the home land, the United States' interests abroad or operation capable of doing so."

Could you explain to us what types of information can credibly demonstrate that an individual poses a threat?

BERSIN:

So when a name is imported into the TSDB and they are on the no-fly list, there are numerous kinds of data that would establish reasonable suspicion or provide additional derogatory information that would say this is not someone we wish to have flying to the United States, within the United States, or out of the United States. Things like associations. Things like acts. This may be a person who has been involved in a criminal terrorist investigation.

So, every case stands on all four points. It depends on the facts. But there are many kinds of data that would suggest this is a high risk person that we don't want to take a chance with.

PLASKETT:

Thank you. And I know it's almost unfair since the FBI is not here in asking these questions. Can you explain to us what social media, what the role of social media has in posting in the no-fly list?

BERSIN:

I cannot speak to that in terms of the investigative tools that he used to establish those facts, ma'am.

PLASKETT:

And why can't you speak to them?

BERSIN:

I am not operationally involved in supervising those activities.

PLASKETT:

Ok, so would you be able to explain with visa applicants what information does social media play in the screening for other visa were applications, or is it only for those that have already been considered for the no-fly list?

BOND:

As part of the visa process, as I think has been described, when the vice council is interviewing somebody at the window, they have information already, some of it on their application. Some may have come from the interagency screen that's been done. If it is an individual that's traveled to the states, right there on the computer we can see their face, a photo taken every time they entered. We know they traveled.

So we have a background of information of things we can ask people about. And that -- of questioning that is going to be used with a particular -- you know, if we're interested because they have close family members in the states, then we're going to be pursuing that. If we're interested in where they studied or what they studied, it will depend on the individual.

It happens frequently that the consular officer comes to a decision that if everything that is being said is true, then he or she is comfortable approving that visa. But they want to confirm some of that information. They don't want it to only be based on the interview or what's being said in the interview. In that case, what they often refer the case to the fraud team at the consulate, and everyone has a fraud officer or office. And they often use social media.

PLASKETT:

So the social media component does not come in until the case is flagged, and at that point then the fraud office will then use that.

BOND:

At this point, that is when we typically might use social media as one of the ways. We might also -- for example, if we want to know if someone really works at a particular place, we might have one of the local employees on the staff call that place and ask to speak and confirm it that way.

As part of the review following the attack in San Bernardino, which as I say, is looking at the k-1 process but is applicable really to all that we do, we are -- the agencies are looking at the broader use of...

PLASKETT:

I guess I am just trying to pinpoint -- I am sorry, I don't have a lot of time, and I am an impatient person anyway. In what point in the process do the social media come in? Is it at the point when there is a question on whether the information that's been given is correct? Or is it when the person steps to the screen? You're saying it happens when there's a question about them and it's going to the fraud component, is that correct?

BOND:

That's exactly right. Either the officer is fully satisfied it's a good case and approves it, or has decided to refuse the case and isn't going to waste resources doing more research, or is at a point where he is willing and ready to issue but wants to confirm the data that's been provided. Social media is one of the tools used in confirming the information that's been given.

PLASKETT:

Ok, thank you.

CHAFFETZ:

I thank the gentlewoman. I recognize the gentleman from North Carolina, Mr. Walker, for five minutes.

WALKER:

Thank you, Mr. Chairman. Ms. Richard, the Washington Post reports that Christians are terrorized in U.N. refugee camps and as a result are unfairly excluded from the United Nations process. Is it true that Christians are underrepresented in the refugee camps because they're afraid of being attacked by non-Christians in the refugee camp?

RICHARD:

We're very concerned about Christian refugees. Most refugees are not in camps in the Middle East. So we place a priority on resettling refugees who are Christian or minorities if they are in danger.

WALKER:

You said you place a priority on Christians. Did I hear you earlier say in this hearing, I might have misunderstood it, that Christians are not fleeing Syria because they feel safe? I am pretty sure that that's what you said. Could you play that video, please?

RICHARD:

We are bringing Christians from Syria. They're underrepresented in part because they make up a smaller percentage of the refugees from Syria.

(CROSSTALK)

CHAFFETZ:

-- Because they feel safe. Ms. Richard, how many Christians have we brought in the last five years? Ms. Richard, in the last five years, how many Christian refugees...

RICHARD:

Four percent of all the Syrians we have brought have been Christian or other minorities.

CHAFFETZ:

You brought in 53. Are you telling me that's 4 percent?

RICHARD:

We can give you that during the break.

WALKER:

There are 2 million Christians decimated, according to Pope Francis, he calls it genocide. Last month, a Syrian bishop was pleading for ransom money, 200 hostages held. Do you know what ISIS does to the young females? It's brutal. I am sure you're aware of that, working for the State Department. Please tell me why you have brought in 53 Christians. How do you know they're Christians?

RICHARD:

We checked the number, 4 percent of the 2400 total Syrians brought in since 2011 have been Christians or other minorities. They are brought in because they feel that they are in danger

because of that. We agree with you 100 percent that these people should be given a chance for resettlement if they present a case.

WALKER:

But you said today that Christians are not fleeing Syria because they feel safer. Would you like to retract that?

RICHARD:

Some.

WALKER:

How many is some?

RICHARD:

Ten percent of the pre-war population of Syria was Christian.

WALKER:

Around 2 million, yes.

RICHARD:

And so we're seeing less than 10 percent of the refugees coming out are Christian.

WALKER:

Two hundred thousand, according to my numbers.

RICHARD:

A proportionate number of Syrians staying in the country are Christian. Why is this? It's because a higher percentage of them support Assad and feel safer with him there. The ones who come out, who choose to flee and feel they are in danger, those are the people we want to help.

WALKER:

Nine per year for the last six years. You see where there's a credibility issue, Ms. Richard. I would like to yield the balance of my time to Mr. Trey Gowdy.

GOWDY:

I thank my friend from North Carolina. Mr. Chairman, we have two former prosecutors here. I want to see if we can kind of disabuse some folks of some incorrect apprehensions with respect to the current gun laws. Mr. Bersin and Mr. Rodriguez, would you agree with me that it is currently against the law for somebody who crosses the border without permission to possess or purchase a firearm?

RODRIGUEZ:

I am remembering back to my days prosecuting gun crimes, which has been a while, Congressman, I think you and I share that. I think my recollection is that yes that would be...

GOWDY:

It is sometimes unfair to put pop quizzes to folks who haven't done something in a while. So just trust me when I tell you that if you cross the border without permission, you cannot legally purchase or possess a firearm. If you overstayed a visa, you cannot legally purchase or possess a firearm. If you're legally here on a visa, only in very limited circumstances can you legally possess or purchase a firearm.

So those are all categories with existing law where you can't purchase or possess a firearm. Are those lists made available to federally licensed firearms dealers so they can make sure they don't sell firearms to those three categories of prohibited people?

BERSIN:

Mr. Gowdy, I am just not familiar with the ATF process with regard to that. I know that -- I don't believe that DHS circulates those lists.

GOWDY:

Well, this is the frustration I face. I listen to an administration call for additional gun laws. They want additional gun control in the wake of almost every tragedy. That's the very first place they run. It forces me to ask how we're doing with the current gun laws we have. I am not going to ask you about the statistics because you shouldn't be prepared and probably would be not prepared.

But I would encourage you as former prosecutors to look at the statistics coming out of the Department of Justice on how many prosecutions exist for current gun law violations in all those three categories. And if we're going to create a list with, by the way, no due process called a watch list, then at a minimum you ought to give the list of visa overstays to federally licensed firearms dealers, because that list already exists.

We already know who is on that list. So your due process rights have already been afforded to you. If there's going to be a list given to FFL's, I would think it would be the visa overstay list rather than some list conjured up by folks that we're not familiar with. I would encourage you to put on your former hats and maybe we can meet privately and find out what you learn on that. With that, I yield back to the Chairman.

CHAFFETZ:

Thank you, gentleman yields. Mr. Connolly of Virginia is now recognized for five minutes.

CONNOLLY:

Let me ask about the line of questioning that somehow applies -- we ought to prioritize a particular religious group over all others, Mr. Bersin, Mr. Rodriguez, Ms. Bond, would that be constitutional?

RICHARD:

Related to refugees, Mr. Connolly, one of the five ways that someone can be determined to be a refugee is if they've been persecuted on the basis of their religion. And from the perspective of my office, it doesn't matter what the religion is. But if it's the reason they're being persecuted, then they could qualify to be determined to be a refugee. And so we see people fleeing from around the world...

CONNOLLY:

But that's not my question. And I don't think that was the question being asked. Are we constitutionally permitted, could you and your office put a little asterisk, we give a little extra weight if you're of a particular religion. Is that constitutional? Do you have the authority to do that?

RICHARD:

If it's the cause of their...

CONNOLLY:

No, no. I am not asking that question.

RICHARD:

I am not going to change the program to somehow bring more of one particular religion than another.

CONNOLLY:

You're going to look at the nature of the refugee status.

RICHARD:

Right.

CONNOLLY:
Irrespective of religion.

RICHARD:
That's right.

CONNOLLY:
Is that how it should work, in your opinion?

RICHARD:
Yes, I am very comfortable with that.

CONNOLLY:
Because actually that's what refugee programs are designed to do, isn't it? We're trying to help people who are suffering violence, oppression, discrimination, in extremis, and provide a safe haven. After all, it's not a huge program, right, about 70,000 a year total refugees?

RICHARD:
And proposing to go to 85,000 this year.

CONNOLLY:
Ok. And the actual number, for example, the Syrian refugees is very small.

RICHARD:
That's right.

CONNOLLY:
Have I got it right that it's fewer than 3,000 in the last three years?

RICHARD:
Yes, 2,400 total since 2011.

CONNOLLY:
In the last four years.

RICHARD:

Yes.

CONNOLLY:

Why is that such a small number given the fact we have 4.5 million Syrian refugees?

RICHARD:

Part of the reason is the first response to a refugee crisis should not be to resettle people, instead it should be to make sure that they're safe where they've gotten to, and also to see if the crisis can be resolved so they can go home again. Most Syrian refugees would prefer to go home again and live in peace in their home country.

However, as time went on it became clear that for some of the Syrian refugees, there would be no going home again, they had seen terrible things happen to them and their families. For the most vulnerable people who can't make it on their own in the cities and towns in the Middle East which they've fled or the camps they may be living in, we have a program to offer resettlement in other countries, and the U.S. is the leader in taking refugees under that program.

CONNOLLY:

My understanding is it takes on average for Syrian refugees 18 to 24 months.

RICHARD:

That's correct.

CONNOLLY:

Is that unusually long?

RICHARD:

It's longer than other countries.

CONNOLLY:

And the reason for that is?

RICHARD:

We are very thorough.

CONNOLLY:

Ok. So we're being careful.

RICHARD:

Yes.

CONNOLLY:

I assume it can also be -- I mean, if you flee an insurgent group or the Syrian army is going to shell your village, your town, you may have to leave with what's on your back and your family and that's it?

RICHARD:

That's correct.

CONNOLLY:

So you don't have documents to prove who you are?

RICHARD:

The surprising thing to me is our colleagues at DHS are finding that many of the Syrian refugees do have documents. But documents aren't the only piece of evidence that they have to provide to make the case that they are bonafide refugees. It's a multi- layered, multifaceted review.

CONNOLLY:

Mr. Rodriguez, I know you've covered the use of social media. We have a pilot program. I guess my question would be a little bit broader. In the private sector, people who look for employment go to public social media sites as part of a screening process. Why wouldn't we do that routinely when it comes to granting somebody a status to come into the United States, whether it is refugee status, visa, various visa statuses and so forth?

Why wouldn't we do that just like we do any other background document, because it's part of the landscape now?

RODRIGUEZ:

That may well be where we end up. I think we have been focusing on areas where we detect heightened risk, obviously in many of our conversations when we talk about individuals coming from countries where there is active terrorist activity, active terrorist recruitment, those seem to be the areas where we should primarily focus.

I think the question is going to be what ends up being the value. And if in fact there is value, if the work that we're doing shows that there is value, and then we may well end up exactly in the place that you describe. That is what we have been evaluating for months now. We're certainly increasing the scope of our pilots. So it may well be that the point that you make turns out to be correct.

CONNOLLY:

I guess I am a little puzzled, with somebody with public sector and private sector management experience. I mean, clearly the private sector sees the value in using it as part of the background check when they are hiring or screening. Why wouldn't we do that in this case? And then I'll yield back my time.

RODRIGUEZ:

I personally believe that as we get further into this, we will discover information of value. I think what is also going to be happen, though, is that people will go underground. And knowing that we're looking at those mediums will cease to use them, certainly in a public environment.

CONNOLLY:

Thank you.

CHAFFETZ:

The gentleman yields back. I recognize the gentleman from Georgia, Mr. Hice for five minutes.

HICE:

Thank you, Mr. Chairman. I asked this question the other day to Ms. (Inaudible), in fact, there were many, many questions as you've already heard today that she was absolutely unable to answer, basic questions. I want to ask you, Mr. Bersin, do you have any idea how many passports are reported stolen each year?

BERSIN:

I am pausing, Congressman, because I know that the -- as the former Vice President of Interpol, which maintains the lost and stolen passport database, I have a number of how many there are. I would defer to Ms. Bond who administers the passport, because I am certain...

HICE:

Ms. Bond, do you have any idea how many are reported stolen?

BOND:

In terms of how many U.S. passports are reported stolen every year, I am going to find out right now. I did not bring that number with me.

HICE:

All right, what about non-U.S. passports, do you have any way of getting that number?

BOND:

Individual governments report that data to Interpol. Yes, we can go to Interpol for that. That's not data that this government maintains.

HICE:

Ok, well if you could get of those for me as well. Whether you or Mr. Rodriguez, with that awareness that we don't know, I would think that some of you would know how many passports are stolen, that's kind of what this whole hearing is about, in an indirect way. We want to know what kind of problem -- what is the standard procedure when a passport is stolen or missing? What if anything is done do we do to make sure that it's not fraudulently picked up and used?

BOND:

When a U.S. passport is reported lost or stolen, we immediately deactivate it. It wouldn't be accepted. You wouldn't be able to travel with it, wouldn't be able to board a plane with it. And we notify Interpol very promptly.

HICE:

What about a passport from somewhere else in the world? Are we notified in any way, Mr. Bersin?

BERSIN:

This would be on the vetting. So when someone comes to the port of entry or actually applies through the program, presents the passport, part of the database that it's run against for vetting would be the stolen, lost travel document database of Interpol, which has just under 55 million records in it. And you would then be told if there were an alert that that was in the database. Then further inquiry would certainly be made.

HICE:

Is there a penalty for a country that does not report this type of information?

BERSIN:

So with respect to -- currently no, there is not a penalty. And in fact, that's one of the problems we have in terms of international information sharing.

HICE:

So how do we know that those passports that have been stolen are being reported to Interpol?

BERSIN:

We have as part of a Visa Waiver Program, with the 38 countries that are part of the Visa Waiver Program, that's a requirement that they actually report...

HICE:

Is there a penalty for 1 of those 38 countries if they do not report that information?

BERSIN:

They would then be subject to being suspended or being put on provisional status in the Visa Waiver Program.

HICE:

So there is a penalty?

BERSIN:

Yes, sir.

HICE:

Is that automatic?

BERSIN:

It's not automatic, no, sir.

HICE:

Ok. So it has to go through what kind of procedure -- quickly.

BERSIN:

Yes. But the monitoring of the Visa Waiver Program that's done on a two-year basis that under Representative Miller's bill would actually be shortened to a one-year period.

HICE:

Ok. Let me ask this, then. What about -- be it Syrian refugees or -- well, let's just use the Syrian refugees who are being resettled in Europe. Are they able to travel to the United States through the Visa Waiver Program?

BOND:

No, they are not.

HICE:

Ok. Then let me go back. I am glad to hear that. Let me go back, Mr. Rodriguez, to the social media question. Did I hear you correctly a moment ago when you said that an applicant's social media profile is now a part of the screening process?

RODRIGUEZ:

No. We are piloting it with certain groups. The size of those groups is increasing. I don't want to leave the impression that that has yet become a comprehensive part of what we do. We're building toward that as we speak.

HICE:

Ok. Could you discuss the lessons that have been learned from the piloted programs? Is getting info from social media working?

RODRIGUEZ:

So far, the information that we have seen in the pilots has been ambiguous rather than conclusive about an individual's intent. And it shows the importance, however we proceed down this enterprise of social media use, that it really be that you have in the context of all the tools that we use to screen people, that this be thought of as a holistic process that involves interviews, screening across law enforcement and intelligence databases, further investigation and inquiry as the case might be appropriate.

Right now, the things that we've seen so far are relatively ambiguous. They would not necessarily lead you to conclude that the individual would trigger inadmissibility. Under our laws, they would require further inquiry.

HICE:

Thank you, Mr. Chairman.

BOND:

Mr. Chairman, forgive me. I do have an answer for Mr. Hice's question. He asked how many U.S. passports are reported lost or stolen annually. On average, 300,000 passports worldwide are reported lost or stolen and about 20,000 passport cards, which as you may know are used for people going across land borders.

HICE:

There are 300,000 U.S. citizen passports?

BOND:

Exactly. And it's also perhaps of interest that when we are adjudicating visa applications, we always check the Interpol database to be sure the person is not presenting a passport that's been reported lost or stolen.

CHAFFETZ:

Thank you. Appreciate the clarification. Ms. Kelly is now recognized for five minutes.

KELLY:

Thank you, Mr. Chair. I wanted to ask about information sharing with our allies. The 9/11 Commission recognized the importance of working with other nations when it wrote in its 2004 report, and "The U.S. government cannot meet its own obligations to the American people to prevent the injury of terrorists without a major effort to collaborate with other governments. We should do more to exchange terrorist information with trusted allies and raise U.S. and global security standards for travel and border crossing over the medium and long term through extensive international cooperation."

Assistant Secretary Bond, it's been 11 years since the 9/11 Commission issued that finding. How are we doing on information sharing with our allies?

BERSIN:

Ms. Kelly, I am probably better positioned to respond to that. So international information sharing relates to that third -- that what I call the second major influence on our vetting process, the idea that the Homeland Security enterprise is transnational, inherently transnational, which means that we need to increase the information sharing with our foreign partners.

And we do that, for example, while there's a long way to go, the Visa Waiver Program, with regard to the 38 countries in the Visa Waiver Program, they're required by Congressional statute to provide information regarding known or suspected terrorists, and also certain criminal information under the so-called preventing and combating serious crime.

Part of Secretary Johnson's enhancements introduced during the summer that are echoed in Representative Miller's bill on the Visa Waiver Program actually now will embody the

requirement, the legal requirement that for countries that do not respond under those agreements, that there would be sanctions under the Visa Waiver Program.

So I think one of the challenges we face is that we do not have the information sharing internationally that would be of utility. That's why the administration, led by Secretary Johnson in this case, actually went to the U.N. and sought under U.N. Security Council Resolution 2178 the idea that we need to be sharing information about foreign terrorist fighters in ways that we had not been. So the point is well taken, ma'am.

KELLY:

And how is it accepted? Do you see that there's going to be an improvement?

BERSIN:

There will be an improvement, I suspect, to the extent that countries that want very much the benefits, including ourselves, of the Visa Waiver Program will understand that it's not optional. And in fact, since the secretary began the enhancements last summer, we've seen in our engagements with visa waiver countries a real stepping up, that frankly, together with the events in Europe including Paris, have actually led to much greater willingness on the part of European countries in particular to extend their willingness to share information.

KELLY:

Also, information sharing as you know is one piece of the puzzle, but there are other ways to engage our global partners. So to the extent that you can in an unclassified setting, can you discuss how our existing databases and information portals draw on information gathered by our international allies and partners?

BERSIN:

So it probably would be more appropriate in a different setting to go into great detail about the way in which that data is ingested, so-called, and disseminated.

KELLY:

I'll accept that. I yield back.

CHAFFETZ:

I thank the gentlewoman. We'll now recognize the gentleman from Oklahoma, Mr. Russell, for five minutes.

RUSSELL:

Thank you, Mr. Chairman. Secretary Bersin, in rough figures, how many people are on the terror watch list?

BERSIN:

So I am just checking to see what -- on the terrorist -- the consolidated terrorist watch list, we're talking just fewer than 1 million.

RUSSELL:

Under 1 million. What countries -- and this could be for anyone, constitute the greatest threat and attempts to enter the United States illegally, that would be -- you know, perhaps flagged by being on these lists?

BERSIN:

I can't -- so of those million records, there are subsets of the no-fly list, which is about 100,000, and the selected list, which are about 25,000. And I cannot give you the breakdown on the countries from which they come.

RUSSELL:

Do one or two come to mind?

BERSIN:

Well, I think the ones in which we have seen terrorist threats would be obvious candidates.

RUSSELL:

Such as?

BERSIN:

We have seen threats in Libya. We've seen threats in Pakistan. We've seen threats in a variety of countries in the Middle East, in the Levant, and some in central Asia.

RUSSELL:

Of the half million a year that we think are overstaying their visas, given that we have no comprehensive exit tracking program, what countries have abused this the most?

BERSIN:

So Mr. Russell, remember, in order to come into the country in the first place, whether by visa or by the Visa Waiver Program, there is extensive vetting against all of the lists. In order to enter the country there is a vetting.

RUSSELL:

I understand the visa waiver will have necessarily a better or a higher bar. But of those that have been granted visas, and they have overstayed them, what countries would you say violate that the most, to the extent that we don't have an exit tracking program that's comprehensive, who would they be, what countries?

BERSIN:

The first point is that they were not on any of the lists. The known or suspected terrorist lists that we've discussed. In terms of what the breakdown is of that estimate, I cannot...

RUSSELL:

Do a couple of countries come to mind?

BERSIN:

I suspect they are those in which many of the people come from countries in which you send many people here and you might see people here for violating the no work rule, for example, people who are coming here for -- they purport to come from tourist b-1, b-2 reasons, and they stay for work. That's going to be a different subset of countries.

RUSSELL:

That goes to my point, Mr. Secretary. I think that the magnitude the problem in trying to protect our country, it is enormous. We all recognize that. And we certainly recognize the dedication of the administration to administration of folks like you. You didn't just enter this field. You've been at it for decades through different administrations.

And I respect that. But I point these things out because wouldn't we want to focus on those particular areas where the threat may be highest? And with regard to visa waivers, once an individual obtains an electronic system travel authorization, it is good for two full years as long as the passport is valid, but given that ISIS' rise has been less than two years, what steps are being taken to change the two-year eligibility of the electronic travel authorization, and is this an area that is even being examined?

BERSIN:

Yes, indeed, Mr. Russell. The ability to dial up and dial down the validity of the ESTA is one that the secretary is very well aware of. It's contained in the Miller Bill. And in fact, Secretary Johnson as part of his own enhancements actually added questions to the ESTA.

RUSSELL:

Don't you think we ought to just reset all eligibility at this point, given that ISIS has been on the rise for less than two years, and now we have two-year eligibilities out there, they could have been co-opted, converted. There's any number of issues that could have happened.

BERSIN:

The way in which these databases operate and the way in which the vetting process takes place is there is 24/7, 365 re-vetting of that against whatever new information might come into the database. In fact, it is updated by this constant refreshing of the database and the re-vetting of the names against the lists.

RUSSELL:

And then my last question, with the Chairman's indulgence, is given that we have 1.8 million Chinese that come to the United States each year for travel and tourism and the like, they don't seem to have a problem conducting business. I would suggest that this entire Visa Waiver Program, although it will have material impact on economies and other things, what do you see as the way ahead to restrict it so that we can secure our people the best, when other countries seem to be able to operate without it?

BERSIN:

So the Visa Waiver Program, the only difference -- first of all, China is not a member of the Visa Waiver Program.

RUSSELL:

That's my point.

BERSIN:

And not contemplated to become one. The Visa Waiver Program -- the only difference between the waiver process and the Visa Waiver Program is the consular office interview. You defer the time that the official looks someone in the eye to the time when a consular office sees that person coming in. But there's been all of this security vetting through the ESTA before the person arrives.

RUSSELL:

Through your eligibility on the ESTA, correct? So once you've been eligible, it's good for two years.

CHAFFETZ:

The gentleman's time has expired.

BERSIN:

A CPB officer could actually make a counter decision upon encountering someone at the port of entry.

CHAFFETZ:

We'll now recognize the gentleman from California, Mr. DeSaulnier.

DESAULNIER:

Thank you, Mr. Chairman. And I want to thank all of you for testifying. Assistant Secretary Bersin, I wanted to talk to in general about -- as Mr. Rodriguez said, areas of heightened risk and specifically the patriot program, or as that acronym has bureaucratically been introduced, in previous testimony before this committee and the House Judiciary Committee last year you said, "Patriot is currently operational at 20 security programs staff locations overseas and will be rolled out incrementally worldwide throughout 2015. When implemented, patriot will prescreen 100 percent of nonimmigrant visa applications submitted online before the Department of State adjudicates the application."

So could you tell me a little bit about how staff is using the patriot program in the rollout, in the sense of areas of heightened concern? And then what differentiates an application going through this program versus the general population?

BERSIN:

Something that both Ms. Bond and I can address. Let me begin. So the patriot system is actually installed abroad and it works with the visa security units, the Homeland Security investigators, the 1811s who are stationed abroad for the purpose of assisting of the State Department to make judgments about whether this person should or should not receive a visa.

So what the patriot system does is it automates the vetting process so that the kinds of checks that we've talked about here today are actually being done through a federated computer search of all the databases, so that when a visa security agent working with the Consular Affairs Office, they've got the benefit of that, and if something needs to be investigated that then proceeds.

So it is an automation of -- and acceleration, a telescoping of the process so that the consular officer has the benefit of it before a decision is made.

DESAULNIER:

So to the point that Mr. Cummings made about agencies working together, at least the concept here is everybody is working together, and the investment is being targeted. So tell me a little bit about -- I appreciate the background, but how in the rollout, how are you vetting this to make sure that you're actually getting really good returns on the system?

BERSIN:

So when the plan for the visa security units to expand this around to additional HSI offices is something that -- it's a decision that is being made subject to the budgetary resources being made available in the appropriations. But there's a positive result, yes.

DESAULNIER:

So you've evaluated it, it's working, it's in high risk areas, it's in the Middle East, it's in Islamabad, I am told.

BERSIN:

Yes.

DESAULNIER:

So coming from California, specifically to San Bernardino, Ms. Malik went through this system, is that right?

BOND:

Yes. At the 20 posts roughly where we have the visa security units who are officers from DHS, those officers review all of the issued visas. In other words, if a consular officer has approved a visa for issuance, it then gets a second look by the colleagues from DHS. Of course, they're all working together in the same space.

And so they are talking about -- if there were disagreement, they would be talking about, you know, I am seeing this and I think it's not a good case and so forth. It is extremely close collaboration. The team from the DHS colleagues has access to the DHS data. And a lot of that has to do with things like overstays or people who were refused admittance at the border even though they arrived with a visa and so forth.

Sometimes those are instances where it is possible to resolve and approve issuance, where they can say the person did this or that but it wasn't a security threat, it may have been a mistake.

DESAULNIER:

I am going to interrupt because I have just a few seconds left. So the program you think is working in terms of your assessment, but -- and I know this is just one instance, but this is a heightened screening process, as I take it, using the resources more effectively. Unfortunately,

Ms. Malik went through this program. So the President has asked you to evaluate the program. It would be helpful at least for me and I think the committee to know what kind of evaluation you use.

And Mr. Rodriguez, just back to the social media, it is a little frustrating, as Mr. Connolly said, we want you to do your due diligence to make sure it's an investment you want to make. But given that there are other applications at less risk in the private sector, when is the point when you say the pilot project has some merit and we should go forward, which seems as a generalist pretty obvious, that you probably should use social media to vet.

RODRIGUEZ:

What I would say -- we're moving both in the refugee context and other contexts pretty aggressively, pretty quickly. Probably the next time we're all together, we'll have a whole lot more to say about this subject. But we are moving very, very decisively. I would not venture to talk beyond that.

CHAFFETZ:

I thank the gentleman. I now recognize the gentleman from Alabama, Mr. Palmer, for five minutes.

PALMER:

Thank you, Mr. Chairman. Ms. Richard, regarding an earlier line of questions, you pointed out that a refugee may request any country for refugee status, is that correct?

RICHARD:

I am sorry. I didn't understand the question.

PALMER:

In response to a question from Mr. Cartwright, you said that just because a refugee requests entry into one particular country, that doesn't necessarily mean they'll gain entrance. They could be sent to...

RICHARD:

That's right.

PALMER:

-- any country. Has it occurred to you that any foreign national who gains refugee status in another country is not necessarily prevented from obtaining a visa or passport in that nation and

subsequently entering the United States, particularly in regard to the number of lost or stolen passports?

BOND:

Sir, if I may respond to that, if someone is -- for example, accepted in a country that is a visa waiver country, it is given permission to settle there with his family, they would -- they may at some point obtain citizenship in that country. And in principle would be eligible to apply to use the Visa Waiver Program. But that would be a period of some years, of course, after arriving.

PALMER:

It's not that long. Its five years. In response to a question earlier that you gave to Mr. Hice, you didn't really make that clear. He asked you if someone could get a visa, go through the Visa Waiver Program, and I don't think that you made that clear.

BOND:

I apologize if that was unclear. The question from Mr. Hice was can these people who are arriving in Europe qualify for the Visa Waiver Program. And I should have said no, they cannot.

PALMER:

Ma'am, what we're trying to figure out is how many holes there are in a bucket in terms of our ability to screen people getting into this country. And I think we sit here for an hour and a half, two hours, whatever it takes, trying to get information. And it's increasingly difficult to get straight answers.

And the answer to his question frankly was yes, if they stay there long enough, they can get a visa waiver. Now my question is, are we evaluating those people, whether they're citizens of Belgium, France, Germany, doesn't matter of they came from one of these countries that we ought to be tracking, are you evaluating those, Ms. Bond?

BOND:

So -- and I do apologize for the fact that I was responding to his specific reference to arriving refugees. An individual who has become a citizen of a visa waiver country is eligible to apply to use the Visa Waiver Program.

PALMER:

I get that.

BOND:

They apply by signing up for ESTA. And those are not always approved. But it is a DHS program, so I would ask Mr. Bersin to respond.

BERSIN:

So the issue is after the vetting, would they be precluded. The Miller Bill actually has a provision that says for those people who have traveled to certain -- Syria, Iraq, other war zones, and who don't -- were not there for diplomatic or military reasons that those people could not participate in the Visa Waiver Program.

PALMER:

My concern about that is -- is that they travel back and forth, they don't have the same security for passports in a lot of the European countries that we do, particularly on the fingerprint database, they're not using the information that Interpol has. So are we being proactive in vetting these people before they come in, whether they're citizens of another country or not.

BERSIN:

Yes, sir. Anyone coming in under the Visa Waiver Program would go through the extensive vetting that we've talked about.

PALMER:

Well, apparently Malik didn't.

BERSIN:

She didn't come in under the Visa Waiver Program.

PALMER:

It was my understanding that you had an opportunity to evaluate her, you didn't take advantage of that through the social media, and it concerns me that we're not doing our due diligence to make sure that we know who is coming into the country and making sure that people who pose a potential threat to us are kept out. Would you like to respond?

BERSIN:

That's -- that is without question the intent and the reason for the vetting to the extent that we currently do it, sir.

BOND:

Sir, if I may also add that is also the purpose of the review that is currently under way, to examine what more can we do as part of the process, because the very thorough review that was

done for that visa applicant did not reveal the fact that she was coming to the United States and either then or later decided to commit murder.

So the purpose of the review is to look at is there more that we can do then in order to identify this, if possible.

PALMER:

That's our number one obligation to the American people. Thank you, Mr. Chairman. I yield.

CHAFFETZ:

I thank the gentleman. Ms. Grisham, you're recognized for five minutes.

LUJAN GRISHAM:

Thank you, Mr. Chairman. Ms. Bond, you actually gave me a great lead-in, because I think that's our frustration, and frankly in the last hearing last week, I was so frustrated, I was having trouble -- I was having trouble making it as fair as possible because when you don't get any information from the administration, and when there's this continual sense of -- we're doing everything, and we're -- no matter what we do you'll have some gaps, I want specificity.

Exactly what are you doing to close those holes, to assure that those gaps get narrowed? I don't want to hear we're working together. And in fact, I think that getting a response during this hearing about -- we've got to really assess the value, certainly we understand that this is all subject to priorities and resources. But beyond that, keeping this country safe, there should be no limitation in figuring out what you can do to do it all better.

And you ought to be proactive about it. It shouldn't take one tragedy after another, and quite frankly what I expect is that you come to this committee and say, wow, we figured out 12 things we can do better, and we want your assistance, if you need our assistance, to make sure they're fully integrated, or they're in the hands of the central agency that needs those tools and resources the most.

And given that, I wouldn't hire anyone today in my official capacity or my unofficial capacity, where I don't do a Facebook check or social media check that doesn't create a privacy problem, and we understand there are those issues. But just what exactly are you doing with great specificity that's proactive in nature, that gives us the confidence that you evaluate with or without a tragedy, figuring out how you can securely and safely and effectively, given all the other things that you've got to control, including other countries' data points, to do a better job?

Give me one that you're doing since the last tragedy in San Bernardino.

BOND:

First of all, let me say that we all agree with you 100 percent that there is nothing that is more important than getting it right, and there is never a point when anybody would say, ok, this is

good enough, we've got it, we've nailed it. We are always looking for ways to improve the vetting and to improve the screening and to identify a trigger that indicates we should look more carefully at this case.

That is what we did not see in this case of Malik, that there wasn't anything in that case that was a flag. So one of the things that is under way since the tragedy in San Bernardino is a careful examination of what else could we look at...

LUJAN GRISHAM:

Can you be specific about that?

BOND:

All right. For example -- and there's a review process, so people are talking about it. So for example, would it make sense to interview someone after arrival in the United States, after marrying the fiancé as promised, and they get to the point where they're going to change status, should they be interviewed again at that point, or should we be looking at is there some other database we could be looking at, maybe social media, I don't know.

So that's an example of what we're looking at...

LUJAN GRISHAM:

You go outside your agencies and tell me how you are using that same evaluation process with all of your international partners. Do they get to weigh in? Do we take their ideas credibly too? Again, this is after the fact, and while I don't want to dispute that idea, I appreciate the notion that someone's here, let's continue to the degree that we can to look at that individual, but what could we have done better to maybe not approve that Ms. Malik came to the United States in the first place, because she's not going to be alone.

We know that other folks are going to try to get here, or frankly are already here. What are we doing about that?

BOND:

Well, I'll give an answer, and then I think Mr. Bersin will probably want to speak to this.

LUJAN GRISHAM:

I have got 20 seconds, unfortunately.

BOND:

Absolutely, talking to the government of Pakistan, because she was a citizen of Pakistan, to say what more could we do in terms of our collaboration to try to share information about people

who might be a threat to our citizens or to Pakistan's, what information do you have, what information do we have and are we sharing it effectively.

We are of course, having that conversation with other governments too. What more could we be doing to share information.

LUJAN GRISHAM:

So my time is expired, Mr. Chairman, with your indulgence, I would really like -- without creating a written record that's problematic for national security, of course, but I want specificity. What's transpiring after these conversations that would give us, this committee, and our constituents a sense that we're doing better all of the time and this is a constant process that's meaningful, because I am not there? Thank you, Mr. Chairman.

BERSIN:

Mr. Chairman, may I just add one...

CHAFFETZ:

Very briefly, go ahead.

BERSIN:

We're the people who actually do the vetting. And what you rightfully said, how do we actually get additional information, and I would suggest, if the committee hasn't, remember, with regard to the domestic affairs, the Federal Bureau of Investigation has the principal counterintelligence and intelligence function. And with regard to abroad, it's the national security agencies that do that.

I am not just passing it along. We use that information. But I would think a classified hearing in which you would understand exactly what the FBI is doing in a classified setting, and what the intelligence agencies are doing, I think would be of great utility in answering your questions.

MICA:

We might want to arrange that.

LUJAN GRISHAM:

We've all participated in all of that high level -- I want to make sure that the viewers recognize that members of Congress have been invited to a series of significant classified briefings. We take that very seriously. And we still have questions.

MICA:

Well, for all the witnesses, and sort of in conclusion as we get to the end of the hearing here, we basically have lost control of our borders. We have somewhere between 11 and I have heard 15 million people here who are illegal entrants, is that correct, anyone?

BERSIN:

The usual number is 11 million.

MICA:

Eleven to fifteen.

RODRIGUEZ:

Yes. The number that I have always heard is 11, and actually declining, sir.

MICA:

Ok, 11 to 15, everybody pretty much agrees. We'll just take it at 11. And about half of those people here overstayed a visa or a tourist thing or student, I am told -- just round numbers, and the others just came across the border illegally, in that range, Mr. Rodriguez, about that range?

RODRIGUEZ:

That's consistent with what...

MICA:

Ok, thank you. The President's executive -- and we're talking about a visa -- controlling our visas and the visa waiver control. And we have here about 4 to 6 million people, in that range, who have overstayed their visa. The biggest visa overstay in the history of mankind is the Obama waiver. He gave an executive order to allow those people to stay in spite of their being here illegally. Isn't that correct?

RODRIGUEZ:

The President...

MICA:

Yes, it's correct. The President gave an executive order...

RODRIGUEZ:

Well, we...

MICA:

No.

RODRIGUEZ:

We're not implementing...

MICA:

We had to go to court. But he implemented -- again, we've got -- you've got hundreds of thousands of them that are illegal's. It's your job, Mr. Rodriguez, to deport some of those people. And I see that numbers of people, the removals, has actually -- where are my figures here? Let's go, 2008, 244,000 were removed, 2013, 133,000, 2014, last year, we're down to 104,000. Are these figures basically correct?

RODRIGUEZ:

They sound right to me. We are exercising our...

MICA:

It's not a question of resources. We provided enough money to deport up to 400,000, which is the request we had from you. So ISIS is doing less with more resources. Criminal alien arrests have declined by 11 percent between 2012 and 2013, are you aware of that, Mr. Rodriguez? Is it your job to deport those people?

RODRIGUEZ:

No, it is not my...

MICA:

Under your...

RODRIGUEZ:

Department of Homeland Security.

MICA:

So we've got illegal's here. Ms. Bond, we interviewed that lady, the council official interviewed that terrorist from San Bernardino how many years ago, a couple of years ago?

BOND:
In 2014.

MICA:
Last year?

BOND:
Yes.

MICA:
Ok, and -- but she came here and she was fully vetted, according to the process that we have now, is that correct?

BOND:
Yes, it is.

MICA:
Ok. And she thwarted that process. Is there anything you could recommend to us that we could do to stop that? If she thwarted it, then we've got hundreds of thousands of people who've entered the United States illegally and then we have them coming in and you approving them legally -- you see why the American people have concerns about what's coming next. Is there anything that you could recommend that we can do to change that situation?

BOND:
We are conducting a very thorough review.

MICA:
Of what took place?

BOND:
Not only of what took place, but also of what it is that we do...

MICA:
Do you tape that interview?

BOND:

No.

MICA:

You don't?

BOND:

No.

MICA:

I just wondered if it was taped, if we had any record. Have any of you known anyone who's joined ISIS of the Christian faith? Does anyone know anyone who is involved or -- no? Ok, I just thought I would ask that question. Obviously, we closed the door too late. We also have now information that ISIS has obtained Syrian passport machines. Does anyone know about that? Have they obtained them? Can you disclose that to the committee?

BOND:

I do have some information on that, sir. In August 2015, the State Department received a report of 3,800 stolen Syrian...

MICA:

No. This is not stolen. There are many stolen. We disclosed today, 300,000 lost or misplaced American passports. I am told that ISIS has captured passport machines in Syria. Is that correct? Does anyone know, Mr. Bersin?

BERSIN:

There have been -- I have seen open source reports to that effect.

MICA:

Ok. Well, that creates a whole new set of problems. And then you're the refugee screener lady. I was told that you get these Syrian refugees, they're first vetted by the U.N., is that correct?

RICHARD:

UNHCR takes the initial application applications.

MICA:

So we're getting our recommended entrants from the U.N.?

RICHARD:

Normally. Not 100 percent, but normally that's true.

MICA:

Where is the rest of it?

RICHARD:

Sometimes if someone comes to the attention of the embassy, they could be put in...

MICA:

But that's a small percentage.

RICHARD:

That's correct.

MICA:

And have you vetted the U.N. process?

RICHARD:

Yeah.

MICA:

And they're checking with Syrians to see if they have any ISIS connections?

RICHARD:

We wouldn't check with the Assad regime.

MICA:

You're saying the U.N. -- they're recommending these people. That's where you're getting them from. And they've told us, don't worry, the U.N. has approved these people, and we're recommending them for entry into the United States.

RICHARD:

They don't get to decide whether they come to the United States. They're referring the case to us to match the things we've asked them to find.

MICA:

But again, do you know if the U.N. is vetting them with Syrian and Assad officials and checking to see if they have ISIS connections?

RICHARD:

I hope they don't check with the Assad officials, because some of these people are fleeing Assad's torture chambers.

MICA:

I recognize Mr. Gosar.

GOSAR:

I thank the gentleman. I would like to get some clarification from all the witnesses on the vetting and investigative process for seeking entry into the U.S. by visa or refugee status. Mr. Bersin, but the same question for all four of you, are there specific guidance, documents, directives or memorandum in effect now either from this or a previous administration that ties the hands of investigators to make informed decisions for those seeking to enter the U.S.?

BERSIN:

Only to the extent that there are constitutional and/or privacy policy...

GOSAR:

There are no constitutional applications for those seeking asylum as citizens, and Mr. Gowdy went through that before. Again, specific guidance's, doctrines or memorandum in effect now either from this or previous administrations that ties the hands of investigators in regards to getting the information they need to make informed admission decisions for those seeking to enter the U.S.

BERSIN:

I am not familiar with any except to the extent that there are privacy concerns, Congressman. But I am aware of no restrictions of that...

GOSAR:
But you earlier made...

BERSIN:
For careening purposes.

GOSAR:
Constitutional remarks to our constitution do not apply to refugees or those non-citizens.

BERSIN:
I didn't hear asylum or refugee.

GOSAR:
But your answer is no.

BERSIN:
Yes.

GOSAR:
Mr. Rodriguez?

RODRIGUEZ:
No.

GOSAR:
Ms. Bond.

BOND:
No.

GOSAR:
Ms. Richard?

RICHARD:

No.

GOSAR:

So under the current policy and procedure, you have access to all the information you need to make an accurate security assessment for all visitors, Mr. Bersin?

BERSIN:

We could always strengthen, and I think that's what the discussion has been but, yes, we seek to strengthen. We have the authority to do the screening that we need to do, yes.

GOSAR:

Mr. Rodriguez?

RODRIGUEZ:

As to the refugees that we screen and the immigrant visas we process, yes, we have quite robust resources that we bring to bear.

BOND:

There are no restrictions on access to the information that we seek unless we can't get it. Sometimes some other government might have it but there's nothing from the part of our government that ties our hands in terms of seeking information we need to adjudicate a visa.

GOSAR:

Ms. Richard?

RICHARD:

I defer to Director Rodriguez's judgment on this, but I want to reassure all of you that if you think there are sources out there that we're not checking that we should be, we're very open to looking at more work on this but we have a very robust refugee vetting system.

GOSAR:

So there are no firewalls at all between the agencies for sharing this pertinent information?

BERSIN:

That's my understanding, yes, sir.

GOSAR:
Mr. Rodriguez?

RODRIGUEZ:
Also mine, Congressman.

GOSAR:
Ms. Bond?

BOND:
Yes, the screening of applications goes through the entire interagency process.

GOSAR:
No firewalls? Ms. Richard?

RICHARD:
No.

GOSAR:
Ms. Richard, earlier in testimony, you made the comment that you are not aware of -- you didn't say that, there is no relationship to a political asylee for acts of terrorism in this country, is that true?

RICHARD:
No, I didn't address that. I said no refugee that came into this process has carried out a successful terrorist attack against Americans in the United States. There have been some trouble makers that have come in through this process.

GOSAR:
How many?

RICHARD:
About a dozen.

GOSAR:
About a dozen?

RICHARD:
Yeah.

GOSAR:
Any in Arizona?

RICHARD:
And then probably -- you know there's also an element of people who break the law that are probably bigger. (CROSSTALK)

RICHARD:
I have to refer you to the FBI on specific cases.

GOSAR:
I'd like to get those numbers. What happens when they have a problem?

RICHARD:
The FBI has a program to track people that they're afraid will be -- their counterintelligence program to track people so I have to defer to them but we do -- have heard of -- the famous case was the two Iraqis who were brought to Bowling Green, Kentucky, and then it was discovered that they had been up to no good in Iraq so they were arrested.

GOSAR:
We had a gentleman in Casa Grande, Arizona that tried to blow up a social security building during my first term, so that was kind of fun. That's why I ask the question. I do have -- a little indulgence here. There's a reason I asked you a question about guidance to specific memos. Are you familiar with the words matter memo, Mr. Bersin?

BERSIN:
Not by that title, no, sir.

GOSAR:

Mr. Rodriguez?

RODRIGUEZ:

No, sir.

GOSAR:

Ms. Bond? Ok. I thank the gentleman and yield back.

CHAFFETZ:

I now recognize myself. I have few wrap up questions or maybe another member or two comes back. Ms. Richard, you were quoted in this hearing as saying -- by the way were the shootings -- Mr. Cartwright said "By the way were the shootings in California perpetrated by refugees who were resettled?" Your answer was no. But then you went on and said no refugees have carried out terrorist activities in the United States.

And then Mr. Cartwright repeated that and you said -- that have successfully carried out an attack against American citizens in the United States.

RICHARD:

Correct, correct. So the second is correct.

CHAFFETZ:

The first statement by itself is not correct.

RICHARD:

Well, I think the FBI is concerned about small number of refugees that have come in. That's under the current system we haven't had anyone in that category.

CHAFFETZ:

I would point to -- at least I have got about a dozen names here, Senator Sessions sits up on Breitbart. One of the more recent charges here is August 12, 2015. I can't pronounce his last name. Last name Kurbidov? A native of Uzbekistan came to the United States as a refugee in 2009 and was found guilty that he attempted to provide materiel support to terrorist organizations and possessed an unregistered destructive device. U.S. Assistant Attorney General John Carlin stated that he "Conspired to provide materiel support to the Islamic movement of Uzbekistan and procured bomb-making materials in the interest of perpetrating a terrorist attack on American soil came to the country as a refugee in 2009."

But most of the refugees that I have interacted with have a healthy population in Utah. They're good decent people who come from terrible situations. I don't think anybody suggests we don't bring any refugees in. We have asked for a pause and time out to we can make sure vetting is in place. When you have the FBI director saying we can only vet as good as the information is, it's an overstatement to say, hey, refugees are not your problem.

So refugees are imported to the United States of America. You have people claiming asylum who come somehow to the United States of America. You can come here legally and lawfully, but you can also sneak into the country as I witnessed down in the Arizona border. They didn't run from border patrol, they wanted to get caught. The reason they wanted to get caught is they wanted to go through this process.

So Mr. Rodriguez, I want to ask you about this. This is a massive rise in the number of people claiming credible fear of asylum. How many asylum officers do you -- are there at Homeland Security?

RICHARD:

The asylums corps is approximately 400 individuals.

CHAFFETZ:

So you have 400 individuals and in 2014 we had 51,001 people claiming credible fear. There's been a lot from the administration about these exhaustive interviews. How much time does an officer spend interviewing somebody who claims credible fear?

RICHARD:

I think credible fear varies on the case. I have observed them. They seem to be approximately an hour...

CHAFFETZ:

Is that on average?

RICHARD:

Viewing them -- that is my understanding. As a former prosecutor, observing those interviews, they appear to be robust interviews by well-trained officer.

CHAFFETZ:

So you have one officer -- I want to get the math right here. You're saying one officer will take one hour to interview somebody. You have 400 officers and we have over 50,000 people just in 2014 making that claim. You were looking at some notes, go ahead.

RICHARD:

I am sorry. In the particular case of credible fear, we have actually plussed up in the locations where we are screening people for credible fear. As a result, those screenings are getting conducted actually quite expeditiously.

CHAFFETZ:

That's my concern is that they're too expeditious. My question is how long is the average interview and how many people are doing the interviews.

RICHARD:

I have to get back to you on...

CHAFFETZ:

This is a hearing about vetting. I am asking a question about vetting.

RICHARD:

At any given time, there are approximately 40 individuals give or take, we'll get you the exact number, but that's the neighborhood of the number who are screening individuals who have come across the border and they are conducting those credible fear and reasonable fear interviews, again, within the time frames of the law that the law and our policies require.

CHAFFETZ:

Ok. You've put a lot of asterisks on it.

RICHARD:

You also asked me about the duration...

CHAFFETZ:

Forty or four hundred?

RICHARD:

I -- 400 is the total asylum corps. So they're doing credible fear and asylum, credible fear and reasonable fear. They're also doing the general work of asylum screening as well.

CHAFFETZ:

So who are the 40?

RICHARD:

The 40 are the ones who are deployed specifically to be meeting our goals to process individuals claiming credible fear and reasonable fear at the border.

CHAFFETZ:

How long if you come across -- I assume they come across illegally. There are people that come across legally but a lot are coming across illegally. How long are they detained until they've completed that process on average?

RICHARD:

I would -- it's roughly -- I think our target, basically, is 20 days if there are -- in terms of either getting them into expedited removal or moving them into some sort of proceedings. A lot of those people obviously go into...

CHAFFETZ:

You said you're going to give some additional information. When will I get that?

RICHARD:

We'll work to get it to you as soon as possible.

CHAFFETZ:

I know it's the holiday season.

RICHARD:

Let's target the end of the first week of January.

CHAFFETZ:

The end of the first week of January. I think that's reasonable. Because the math doesn't add up -- here's the problem. Refugees have the State Department and other assets working towards that, and I got huge, huge questions. But now we're saying we have 40 people with 50,000 people coming in the door. Think of a football stadium. Think of a football stadium full of people coming at us each year.

You're saying these people do interviews, background checks, and write-ups. They have other responsibilities, paperwork they've got to do. Here's the problem. Here's what I experience. When I went to Arizona and I saw people come across and they wanted to claim credible fear,

they would go to a judge and say -- an administrative judge and say your honor, I have credible fear and they'd read a statement and then the judge would say ok, we have to go through the adjudication process. And that adjudication process means what? What in Arizona is the next time we'll see these people?

RICHARD:

That's the ordinary asylum process and it's a number of -- quite a number of months before...

CHAFFETZ:

You mean years?

RICHARD:

It can be years, yes.

CHAFFETZ:

So in Arizona when I went there last year, I believe it was last year, the dates they were giving out were for 2020. And so what often happens is the people have come here illegally they claim asylum and they say oh, you might have credible fear we'll give you a court date and now the backlog is so big that they won't get a court date until 2020. Then what happens? They do what? They apply for a work permit. How many work permits are you handing out each year?

RICHARD:

I don't know the exact number.

CHAFFETZ:

It's a big one. Now they're in the United States legally. They can work and they can compete with an American taxpayer for jobs and all the other resources. They get benefits. They go to our schools, they do a lot of things just like an American citizen does, and I have a problem with that. I have a problem with that. Mr. Bersin, did you want to say something?

BERSIN:

Sir, when -- the last time we had the surge in the summer of '14, the administration put a bill up and one of the key elements of the bill was to build an immigration court system that actually would work, because you put your finger on the problem. We have 243 immigration judges and we need many more in order for an immigration process to work and produce the result -- either way but to produce a result in a timely fashion.

CHAFFETZ:

And the frustration is you have to lock down the border and get rid of the people who are here committing crimes for goodness sake. They're here illegally committing crimes and you release them into the public, some 60,000 times plus you did that. These are the criminal element. Don't tell me about the nice lady trying to help her family. These are people committing crimes get caught. They get convicted, and they're in your hands and Homeland Security says no, go back out into the community, right? Did I say anything wrong?

RICHARD:

Again, to be clear, the removal priorities are that in an individual is convicted of a felony they're a priority one for removal. Returning to our earlier conversation, that includes rape. That's a priority one priority for...

CHAFFETZ:

So if they commit a rape, am I wrong, they plead down to say, sexual abuse and exploitation -- that is not good enough?

RICHARD:

If the person is -- if their top count of conviction is rape which is a serious felony?

CHAFFETZ:

But sexual abuse is not?

RICHARD:

Sexual abuse may not necessarily be rape.

CHAFFETZ:

But it might, right?

RICHARD:

Well, certainly as a prosecutor I have seen people plead down to sexual abuse so let's be clear about that. What sexual abuse actually means in the criminal law is not rape.

CHAFFETZ:

So based on the Homeland Security directive from Secretary Johnson, if you commit and are convicted of sexual abuse or exploitation that is priority two?

RICHARD:

Which means that you are still a priority for removal...

CHAFFETZ:

You're not the top priority.

RICHARD:

If you're convicted of rape, the felony of rape, you are a top priority for removal. Let's not have people misunderstand that fact.

CHAFFETZ:

So it can be sexual abuse...

RICHARD:

If you are convicted of rape you are top priority for removal. Let's not have the American people believe anything else.

CHAFFETZ:

Let's get the list of the things number two. Offense of domestic violence, sexual abuse or exploitation, burglary, unlawful possession or use of a firearm, drug distribution or trafficking, driving under the influence, all of which are not the top priority of Homeland Security.

BERSIN:

Mr. Chairman, you've heard Secretary Johnson say that his top priority is national security and public safety. With all due respect, priority one goes to felonies, priority two and sexual abuse can often -- short of rape -- be a felony. If it's a felony it's priority one. Priority two you're referring to are significant misdemeanors. As a former prosecutor, I think felonies should take precedence. It doesn't mean we don't pay attention.

CHAFFETZ:

Why not just get rid of all of them. You have them in your possession.

BERSIN:

Because you know when you allocate resources...

CHAFFETZ:

Are you saying it's a resource problem?

BERSIN:

I am saying when you have a choice to be made...

CHAFFETZ:

If somebody is convicted for any crime, why are they not deported immediately? I mean or serve time and then be deported. Why don't they all get deported? Why are there exceptions?

BERSIN:

So 90 percent of priority one and two removals -- I don't think it's fair to suggest...

CHAFFETZ:

Those other 10 percent -- we obviously have a policy discussion. I think you understand this. My point is you have people convicted, they're here illegally. They're convicted and you let them go. If it's only 90 percent...

BERSIN:

That's a different -- that's a different issue than the priorities for enforcement. The issue of removal...

CHAFFETZ:

Is it true or not true during 2 fiscal years you had 66,000 people in your possession that were convicted of crimes that you released into the public, true or false.

BERSIN:

What crimes?

CHAFFETZ:

Any crimes.

BERSIN:

Well, you say any -- traffic violation, misdemeanor.

CHAFFETZ:

Are there people on priority one and two?

BERSIN:

There are minor offenses that are misdemeanors that are not...

CHAFFETZ:

I just listed -- no. Yes or no, 66,000 people over 2 year fiscal year period that you had in your possession that you released into the public. You did not deport them, correct, true or false?

BERSIN:

It's not just a yes or no because you know there are requirements...

CHAFFETZ:

It's a true or false.

BERSIN:

The answer is that there are requirements to release people under court decisions that you're aware of.

CHAFFETZ:

That's what is so screwed up about the Obama administration. You're here illegally, commit a crime, deport them. Get rid of them. Serve your time and get rid of them. They are a threat to public safety. They are a threat for terrorism, and they should not be released into the public. That's what's outrageous. Let me recognize the gentleman from Florida, Mr. DeSantis for five minutes.

DESANTIS:

The priorities are related to your failure to remove these folks because you say, oh, they're priority two, we'll get to them. The fact is of those 66,000, when we got the individual offenses you had people convicted of homicide that were released. You had people convicted of sexual assault, rape, child molestation, significant crimes, and to say they're court decisions, that's a rationalization for why you released them but you did and that's putting the public at risk.

So I second the Chairman's concern about that. The fact of the matter is I was a prosecutor, particularly with the child molestation stuff, you plead that down. Some prosecutors do because you don't want to put the child on the stand, and so they end up with offenses that could probably be considered priority two, and that's putting the American people at risk. But I digress.

Ms. Richard, you were quoted recently as saying the biggest myth is people coming here could be terrorists in relation to the Syrian refugee situation. Why are you dismissive of the possibility they'll have terrorists in the refugee flow?

RICHARD:

I am not dismissive of the idea that terrorist organizations...

DESANTIS:

You said it was a myth. Why did you say it was a myth?

RICHARD:

I don't remember saying that.

DESANTIS:

You said the biggest myth is that people coming could be terrorist, and your point was that they were likely to be fleeing terrorists -- but if you have 10,000 people, 99 percent of them are no threat, 1 percent is a significant number of people. We saw two refugees linked to the Paris attack were arrested in an Austrian refugee camp, and you will acknowledge would you not that we have had refugees come to this country who have been prosecuted for materiel support to terrorism, correct?

RICHARD:

Correct.

DESANTIS:

You will acknowledge that?

RICHARD:

Yes.

DESANTIS:

Because we had a number of them this year. The eastern district of Virginia -- you had people Mohammed from a western district of Texas. The fact is these are folks who have come through the program and have gone to terrorism. Let me ask you this, what is your appraisal of how the Somali refugee community in Minnesota has worked out for the interest of the United States?

RICHARD:

What I wanted to say was that most -- all bonafide refugees are people fleeing terrible things including terrorists.

DESANTIS:

That's the point. A lot of us are concerned that we can't tell the difference between a bonafide refugee -- given what the FBI director has said and what other high officials have said. But what about the situation with the Somali refugees in Minneapolis, there's tens of thousands have settled there over the last 20 years. We know there are high rates of cash assistance and food assistance paid for by the taxpayer. Here's the thing.

We've had over 50 people from that community join ISIS or Al Shabaab or other terrorist groups in the Middle East. Is that something that's in the United States' interest?

RICHARD:

It's not.

DESANTIS:

How did it happen? How did it end up happening then?

RICHARD:

This is the key question. Why anyone would be attracted by ISIL or Al Shabaab, people born in the United States, people who are converts to this -- these people who are refugees.

DESANTIS:

You're not sure why it happens.

RICHARD:

This is a key question for all of us, what is the attraction?

DESANTIS:

But here's what your statement bothered me, because I think what the Somali experience in Minnesota shows, a lot of people coming directly when they were adults were not necessarily involved in terrorism and did not pursue terrorism, but then they have families and you have the second generation. You have U.S. citizens. So they could have grown up in Somalia and they draw the biggest -- like a royal flush to be able to grow up in America and given that entire how do they thank the United States? They join the Jihad.

RICHARD:

I agree with you 100 percent. This is what keeps me awake at night. Why would someone who grows up in the United States be attracted to this?

DESANTIS:

But here's the point. The refugee policies we have, even getting beyond the vetting initially, you have to try to figure out what will happen 10, 20 years down the road. So the folks we're bringing in now, we don't know the downstream effects of that so when I see something like what's happening in Somalia it gives me cause for concern.

Mr. Rodriguez, let me ask you this. We got Tashfeen Malik's form when she was applying for her k-1 visa. There's a question on there basically saying are you a terrorist, check yes or no. Is that really the best we can do? I think she probably doesn't even have to lie, she doesn't consider herself to be a terrorist.

RICHARD:

I think you're referring to the consular interview. I will talk about what we know and think we need to do, for example, in the refugee screening process, we develop lines of questioning as part of the interview that go beyond what might appear in a form.

DESANTIS:

So you're in the process of developing that?

RICHARD:

That's existed for years and those are being reinforced...

DESANTIS:

What about her adjustment application?

RICHARD:

Under current practice, unless there is a specific trigger or some derogatory information -- we don't. Obviously, that's one of the things we need to think about.

DESANTIS:

This is somebody who obviously we know there were statements she had been making over the internet. She's traveling from Pakistan and Saudi Arabia. Those are hot beds of salafis ideology, very dicey when you start talking about individuals. Ms. Bond is the State Department recommending Congress -- do you need us to change any laws so we can have a system that would screen out people like Tashfeen Malik?

BOND:

We do have laws that would screen out people like Tashfeen Malik.

DESANTIS:

So you don't think there needs to be changes.

BOND:

If we identify them and we are looking at...

DESANTIS:

But that's my point. Does Congress need to give you authority or change policy in any way so that they are identified? Obviously, if they are identified -- we're not identifying everybody now and the question is this a bureaucratic mistakes or do we need to change policies? Do you have recommendations for us?

BOND:

I do not at this moment, but I think based on the review that we're looking at now it's possible some of the ideas that we generate might require a change in the law.

DESANTIS:

Thank you, I yield back.

CHAFFETZ:

Thank you, as we conclude, I do have to get through a couple more and we will be done. I really do believe one of the untold stories, the biggest -- one of the biggest threats that we have are those coming illegally to the United States and those coming to the country illegally and claiming asylum, because they will get papers, they will be working, they don't go through a vigorous, insightful interview. And I think that's a huge gaping hole that has to be plugged.

There's a reason why that we've had this huge assent. I went to the Eloy Detention Facility in Arizona. There were some 150 different countries represented there. A lot of people coming that have to be addressed. We still in this country don't have an entry/exit program. There have been at least a half dozen times where law has been put in place since 1996. Why do we not have an entry/exit program?

BERSIN:

With respect, I have been asked -- and I am prepared to answer that, Mr. Chairman to the best of my ability. There was an agreement for a hard stop at 1 o'clock and I would ask if we can in due course bring the hearing to a conclusion as staff has negotiated, I happen to have...

CHAFFETZ:

I am sorry, but I am not negotiating the end time here. We're going to answer these questions. I think it will be a few minutes.

BERSIN:

In 2012, CBP started to get the resources to start to develop in earnest the entry/exit system. As I indicated before, Mr. Chairman, the way in which our airports, our whole infrastructure was constructed it was not -- you were not able to capture biometrics on the way out. There was no screening on the way out. The focus was screening on the way in. So CBP -- and I remember this during my tenure there, Mr. Chairman, there were three ways you could do it. You could actually rebuild the infrastructure and that was rejected for cost reasons.

CHAFFETZ:

Who rejected that?

BERSIN:

That was a decision made with -- I participated in it, I recommended that in fact, we not rebuild the airports and seaports.

CHAFFETZ:

Where is the proposal and when was it rejected?

BERSIN:

If in fact it was ever -- if it came to the Congress which I don't believe it did, I will endeavor to get it by the...

CHAFFETZ:

When will I get that?

BERSIN:

The second reason was...

CHAFFETZ:

When will I get that proposal?

BERSIN:

Consistent with Mr. Rodriguez's schedule, by the end of January.

CHAFFETZ:

The end of the first week of January, I believe is what he said.

BERSIN:

Were you that generous, Mr. Rodriguez?

RODRIGUEZ:

I think a more modest...

CHAFFETZ:

I want you to leave right now as you want to at 1 o'clock, but I am hopeful it's to get that report.

BERSIN:

The second was...

CHAFFETZ:

No, what's the date. Tell me the date.

BERSIN:

January 30.

CHAFFETZ:

Ok.

BERSIN:

The second was to put CBP officers and we actually had a pilot which CBP officers would be placed at the ports of entry, and the estimate there was that that would take resources away from other functions we didn't have in terms of CBP officers.

CHAFFETZ:

So you're saying this is rejected, those two instances, because of money?

BERSIN:

Yes, sir.

CHAFFETZ:

And yet...

BERSIN:

Well, not only money in the first order because, in fact, it would have required a complete restructuring of our ports of entry. So it was -- it would also interfere with commercial activities and other interests...

CHAFFETZ:

There was a conscious choice not to have an exit program. My question here -- and I am trying to wrap up -- if it's a resource problem why did Homeland Security come and reprogram \$113 million from ICE and give it to Secret Service and FEMA?

BERSIN:

I am not familiar with that decision, Mr. Chairman.

CHAFFETZ:

Homeland Security recently gave \$150 million to the Mexican government. It may be worthwhile, but I don't understand why there isn't an exit program. I don't understand that.

BERSIN:

The effort to get an overstays report, which I have communicated to the committee is underway - - is part of this process that has been initiated to capture all of the biographic. We actually do a fair amount, you'll see in the overstays report. We do a fair amount that actually captures biographic, those who come in and those that go out.

CHAFFETZ:

Do most people come in by land, sea or air?

BERSIN:

There are 180 crossings -- 182 million crossings on the land. We have about 1 million people a day processed in, and most of the people are coming by air.

CHAFFETZ:

You think most people are coming in the air?

BERSIN:

Individual people. So I am saying of the 182 million crossings that we have, those are repeated crossings going back and forth. Separate individuals but in terms of sheer traffic it's the land obviously. But the crossings and individual people is actually more coming by air.

CHAFFETZ:

With nearly 10 million border crossing cards, do you collect biographical -- biometric information on those people?

BERSIN:

We do not, no.

CHAFFETZ:

Ok, I could go on and on. It is such a mess and a disaster. Let me recognize the gentleman from Georgia, Mr. Carter for five minutes.

CARTER:

Thank you, Mr. Chairman, I'll be very brief. Thank you for staying. I'll be respectful of your time and I'll try to be as quick as I can. Ms. Bond, based on earlier testimony, a k-1 fiance visa is classified like a non-immigrant visa, but the applicant must go through the full immigration visa screening process, is that correct?

BOND:

Yes.

CARTER:

So what kind of screening and test must a k-1 applicant pass?

BOND:

Because it is treated like an immigrant visa, in other words, this is an individual we expect to remain permanently in the United States, and so they get exactly the same security screening as any other traveler to the United States. We don't distinguish between immigrant and non-immigrant in terms of the interagency security, terrorism, criminal background, all of that review.

However, for example, if you are applying for an immigrant visa, you do have to undergo a medical exam. And so someone is getting a fiance visa gets the medical exam. If you are applying for an immigrant visa you have to present a police certificate from any country where

you have lived for more than six months since you were 16, showing you didn't have a criminal record in that country.

CARTER:

So that's the background check that you...

BOND:

That is part of the process for immigrant visas that you wouldn't require if someone is coming in a non-immigrant capacity.

CARTER:

Ok, was Tashfeen Malik subject to that process as a k-1 visa applicant?

BOND:

Yes.

CARTER:

She was. So non-immigrant visas such as those that under the Visa Waiver Program -- are they less stringent than a k-1 visa?

BOND:

If you're applying for a non-immigrant visa, for example a tourist visa, we don't require you to submit proof that you have a clean criminal record in every country where you've lived.

CARTER:

So your answer would be yes?

BOND:

Yes.

CARTER:

So a non-immigrant visa such as those under the Visa Waiver Program, they are less stringent than a k-1 visa?

BOND:

We asked the question about whether you have any criminal record but you are not required to prove it.

CARTER:

So we've got 1.6 million overstays in the backlog, 400,000 of which are from the Visa Waiver Program which is the less stringent program, correct?

BOND:

The Visa Waiver Program is not less stringent in terms of the security check that is done than the other visa...

CARTER:

But the background is.

BOND:

Well, the interagency name check is the same for all of them. But if you're traveling as a non-immigrant, you are normally not required to provide the police certificate, for example. You're not required to undergo a health exam that you would if you were coming in as an immigrant.

CARTER:

Well, I would say that's less stringent. Would you not agree?

BOND:

Yes, I agree that the paperwork that is required -- for example also, if you're coming in as an immigrant, we have to see a certified copy of your birth certificate. If you're coming in as a married couple, we need a certified copy of your marriage certificate. We're not asking for that kind of documentation for non-immigrants. So there are a number of documents that have to be in the file if you are moving permanently to the United States, which we do not require if you are...

CHAFFETZ:

Will the gentleman yield?

CARTER:

I yield.

CHAFFETZ:

You don't have to actually provide a marriage certificate prior to coming on a k-1 visa, correct?

BOND:

No. If you're coming on a k-1 visa you wouldn't have a marriage certificate. But you would have to provide a -- in other words, if you're not married you don't have to provide a marriage certificate. However, you would have to provide -- suppose you're someone who has been married before. We would need a certified copy...

CHAFFETZ:

You suggested if I heard it right you suggested that they had -- anyway, I want to clarify because in the case of San Bernardino, that's how she got here was claiming she would get married. Looks like she did get married based on records I have seen, but I wanted to clarify that.

BOND:

But what I was saying was if you were a married couple coming to the United States on immigrant visas, we would need to see your marriage certificate. I wasn't talking about a fiance. Although, again, if she were previously married or if the petitioner is previously married, we have to see the certified copy of the death certificate and the divorce decree that ended the previous marriage.

CHAFFETZ:

I yield back.

CARTER:

So we've got almost 400,000 immigrants who are under this Visa Waiver Program who are on backlog as we understand it, through a system that you're telling me is perhaps less stringent than what we require out of others, and I am disturbed by that, you can understand where my concern is. Especially in light of the recent events we've experienced on our homeland. Mr. Chairman, I yield back.

CHAFFETZ:

Thank you. I want to thank all the members and our witnesses today, as the clarifier particularly to Mr. Gowdy's comments about the sharing of lists, and there were several members on both sides of the aisle talking about sharing as we go through the vetting process. There are people that are here illegally. There are people that are here legally and have committed crimes. There are people that are here on visas. There are people who have overstayed their visas. I can keep going on and on.

But they are not eligible to purchase a firearm. The question is do you share that information with appropriate authorities and is -- are those lists given to those other agencies, particularly

ATF, FBI, there's others I am not thinking about but certainly state needs as well. When can you give me that information? I mean, we're simply interested in whether or not -- it should be a fairly easy -- there are other agencies, particularly the Department of Justice, that is responsible for those.

But I need to know if you're giving it to them.

BERSIN:

We need to make inquiry. Let me make inquiry by the last week in January. The question being asked in return is whether or not people who are on the terrorist screening database ought to be included as well. That's the question.

CHAFFETZ:

Correct. There are a lot of lists that you all go to great lengths to populate. Then the question becomes do those populated lists get in the hands of somebody was here as say, a visa overstay and they go to purchase a firearm -- because there are states handing out driver's licenses. One of my questions that I would appreciate part of that answer is if you have somebody here illegally and they've taken their driver's license and they've gotten a driver's license, we know and have now identified that person, can we, have we shared that information? So last week of January, is that fair enough?

BERSIN:

Yes, sir.

CHAFFETZ:

I thank you. And I would like to know on the -- those that are here with refugees, do you track in terms of those people, have they committed any crimes.

BOND:

No, my bureau does not do that.

CHAFFETZ:

Give us one moment. Mr. Palmer has two quick questions then we will adjourn.

PALMER:

Thank you for your indulgence, Mr. Chairman. I want to go back to the discussion we had earlier about people who are allowed to enter the country. In the context of refugees, do you keep track of people who transition from refugee status to immigrant status?

RODRIGUEZ:

We keep track of them in the sense that at the time presumably they apply for adjustment which they're, in fact, required to do, we encounter them again, we know they've applied for adjustment, we know the address they're giving at that time, we run a fresh set of checks at that point so in that respect I -- we do keep track of them.

PALMER:

Is there a time limit that -- is there a length of time that they have to be here before they're eligible to apply for immigrant status?

RODRIGUEZ:

They're expected to apply for adjustment within a year.

PALMER:

Well, I am -- I am asking is that -- do you have to be here a year before you're eligible to apply?

RODRIGUEZ:

That is the time of your eligibility. That is correct.

PALMER:

So after you've been here one year you can apply?

RODRIGUEZ:

That is correct.

PALMER:

After they've been here for a year can they apply for citizenship.

RODRIGUEZ:

They need to wait five years before they can become citizens.

PALMER:

So six years?

RODRIGUEZ:

That is correct.

PALMER:

Ok. And what is the typical wait time for them once they've applied for citizenship?

RODRIGUEZ:

As we speak right now, we are at target on processing naturalization applications, which is five months.

PALMER:

Five months?

RODRIGUEZ:

Yes, sir.

PALMER:

So you have people who have applied for citizenship who've come here legally and applied for citizenship that literally wait years and at enormous cost. But are we giving -- are we expediting, giving priority to the folks who have come here as refugees then became -- applied for immigrant status then applied for citizenship?

RICHARD:

Not in any of those processes, no. They here in the queue, first, first out.

PALMER:

Why is it you can process them faster than people who have been here for years?

RICHARD:

The law for refugees is they are expected to apply for permanent legal residence within a year. Their wait time to become citizens is another five years. That's the law.

PALMER:

But that five-year wait applies to...

RICHARD:

To anybody who has become a legal permanent resident.

PALMER:

But people who came here legally -- who came here legally -- Mr. Chairman, I hear report after report after report of people who have immigrated here legally who applied for citizenship after five years that literally have to wait years and spend enormous amounts of money relative to their net worth and are still on a waiting list to become citizens. It troubles me, Mr. Chairman that it appears are we not doing a good job of vetting people on visas.

We're not adequately vetting the refugees before we admit them, particularly from countries that might be problematic -- somehow people get moved ahead of the line. Thank you, Mr. Chairman. I yield the balance of my time.

CHAFFETZ:

Thank you. I want to thank the witnesses here today. I want to thank the men and women who do a hard job, thankless job that are out there serving their country and doing so and to the very best of their ability and sometimes the very limited tools and resources. We do this in the spirit of trying to help and fix this in a bipartisan way.

Our thanks and gratitude goes to them. Let me be clear, we do not make deals as to when hearings will end, and so for staff to suggest we agreed 1:00 -- I am sorry, that never came to me. I want to be clear. That's not a deal we're going to make. Under house rules, each member is allowed to ask five minutes of questions per witness, so all told we can have all of these members ask four sets of five-minute questions.

Most members ask one question, some members didn't show up and I think I asked three questions, so I just want to understand and clarify that. The other thing is we weren't planning to have this hearing this week because we expected last week's hearing to be productive, and it wasn't. I think we've made our point on that, but please help us and provide people who come as witnesses to this committee as you would other committees and make sure they are properly prepared to answer the full array of questions.

Again, we thank you all for your time and wish you the best this holiday season, and the committee stands adjourned.

CQ Transcriptions, Dec. 17, 2015

List of Panel Members and Witnesses

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