House Committee on Government Reform
Subcommittee on National Security, Emerging Threats, and International Relations
Hearing: Catching the Terrorists Among Us
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Testimony of Catherine Barry, Acting Deputy Assistant Secretary of State
For Visa Services

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to testify today on the subject of visa revocations and how they fit into our overall strategy of strengthening the visa process as an anti-terrorism tool. The GAO has devoted substantial attention to this theme, starting with their report of the same name in October of last year (GAO-03-132NI) and continuing with the report we are now considering. While we at the State Department do not agree with every conclusion reached in these reports we have nonetheless found both to be perceptive analyses of the issue and have used them in fashioning our own plans for improving our visa screening abroad. It cannot be stated too often that border security is a multi-agency mission that requires information sharing, cooperation, and continuous analysis and procedural review so that we stay ahead of the people who would seek to enter the United States to do harm to Americans or our foreign visitors.

Discovering a terrorist or criminal who is making every effort not to be discovered from among a sea of legitimate visa applicants requires knowledge, interviewing skill, good judgment, and solid information to bring everything the US government knows to bear on the application before we allow the person access to our country. While it is always satisfying to crack a tough puzzle, we want to make it as easy as possible for our officers to screen out threats and nothing is so vital in this task as good, specific, and solidly grounded information identifying people who are ineligible for US visas. Since September 11, and helped by legislation that requires data sharing among federal agencies, the State Department's visa officers abroad have access to a database more than double the size of what they could consult prior to that date. We receive extensive records from the FBI and other federal law enforcement agencies through our Consular Lookout and Support System (CLASS). The TIPOFF program, managed by the Bureau of Intelligence and Research at State, provides highly classified intelligence agency information on terrorist threats. Both of these systems are at the fingertips of consular officers who adjudicate visa applications abroad and both are available to DHS inspectors at our Ports of Entry.

While our aim is obviously to make finding an ineligible traveler quickly and unambiguously when he or she applies for a visa, the nature of the terrorist threat is such that we inevitably collect partial, incomplete, and sometimes erroneous data in our search for these identities. It is here that we count on the skill, knowledge, and judgment of the consular officer to compare the applicant before him or her with the information that might relate to that applicant. It is not an easy job, nor is it necessarily quick when confronted with serious derogatory information on common names without complete biographic markers that allow for swift resolution. We err on the side of caution,

carefully examining such cases to ensure that the applicant is not the person on whom we have a file that would lead to a visa refusal, always waiting for a response from other federal agencies where a Washington based security review is required.

Information is neither static nor always available in a timely fashion. Officers will learn of facts which, had they been known about a visa applicant when they applied, would have led to a refusal. They will also be apprised of information that, had it been provided when a particular visa applicant came before them, would have led to a line or lines of inquiry that would have been explored to the officer's satisfaction before a visa would have been issued. I have here more or less defined the two categories of visa revocations: for ineligibility and for prudential reasons. Revocation is the State Department's way of taking action when relevant derogatory information becomes available after a visa was issued.

The first category of revocation is pretty straightforward: we obtain information that clearly relates to an individual holding a validly issued US visa that demonstrates that individual to be ineligible under one or more provisions of the Immigration and Nationality Act (INA). The visa is revoked – it can be done by a consular officer abroad – and the matter ends there if the applicant is overseas. Unfortunately, most of our revocations fall into the latter category of being "prudential". We receive information about a person who may or may not be the person to whom a US visa was issued, telling us something that may or may not render that person ineligible for the visa they received. Since the information – when provided about known or suspected terrorists -- is serious and, if true, could endanger our security, we take the necessary precaution of revoking the visa prudentially. Such "prudential revocations" may only be made in Washington by the Secretary of State, or an official to whom the Secretary has delegated this authority (in practice, the Deputy Assistant Secretary of State for Visa Services). This sort of information about possible terrorists almost always comes to us from TIPOFF and originates with US intelligence agencies. It is often vague and ambiguous and identifies people with common names, often without other biographic information such as birth dates and places of birth that can be used for corroboration.

When we revoke a visa prudentially, we want to see the applicant again so that we can elicit further information that either confirms the ineligibility and leads to a firm visa refusal, or discounts it and clears the applicant for a solid issuance. We recognize that the inspector from DHS is not in the best position to have either the time or resources to interview someone in light of new and normally partial information that derives from intelligence sources. The DHS officer can deny admission to the US to that individual based on the revoked visa. The consular officer will then review the case overseas and re-adjudicate it in consultation with appropriate USG agencies. If the alien has already been admitted to the US, the case can only be handled further by immigration officers.

A second scenario concerns the admission of an alien to the US before a visa was revoked. Such a case must then be handled by DHS immigration officers. In the past, by alerting the former INS lookout unit about a visa revocation, we were alerting the INS,

which would have had the most pertinent information as to whether the alien was in the US.

The system now takes into account the creation of the Department of Homeland Security. Our partner remains the lookout unit that is now part of the Bureau of Customs and Border Protection. We provide that office alerts on visa revocations by making a CLASS entry. We send a copy of the certificate of revocation and a copy of the cable to the appropriate overseas post. We now send a copy of the cable to the Bureau of Immigration and Customs Enforcement to facilitate the internal deliberations within DHS as to how to proceed in a specific case. The FBI also receives copies of the cables that report visa revocations to facilitate communication between DHS and the FBI on enforcement issues.

The system we now have in place shares this information quickly and reliably. The Visa Office checked visas revoked from January 1, 2003 to May 31, 2003 by the Deputy Assistant Secretary of State on a prudential basis and found that all are properly in the lookout system with the correct revocation code.

Last year and in years past we entered such revocations into CLASS through what are known as "quasi refusal" codes, which do not transfer over IBIS to POE inspectors. We sent the revocation certificate to INS (now DHS) by fax when we revoked a visa and sent a cable to that agency and the FBI as a secondary means of notifying them of this action. The language of the revocation certificate, which informs the alien and other relevant USG agencies that the visa is no longer valid, was written in consultation with the (then) INS and the Department of Justice. While we sought to send such a fax the same day as the revocation action, we did not always succeed in doing so. Sending a fax, moreover, did not automatically ensure that a POE inspector had immediate access to that information. Recognizing this vulnerability last summer, we created a revocation code that we now enter into CLASS, which transfers this information automatically to our sister agencies of DHS and DOJ via the Inter-Agency Border Inspection System (IBIS). Such an entry immediately allows a POE inspector to know that a visa presented for admission has been revoked. It likewise allows the FBI to know that there was information about a particular visa applicant that led us to revoke the visa. Unfortunately, the change in procedure was not communicated effectively within the Visa Office until December of last year, when it then became standard operating procedure in the Visa Office.

This gap only affected prudential revocations, since a revocation based on a known visa ineligibility would be accompanied by a CLASS entry based on the underlying ground for the visa refusal and would be available via IBIS anyway. Nonetheless, it was a gap that perhaps represented a carryover from the previous informal system of communication that we regret but which we have now corrected. Use of a revocation code in CLASS not only promptly notifies other concerned agencies of the potential need for action (if the subject of the revocation attempts to or has already entered the US), but allows for transparency in our data collection and auditing. We can now review revocation data and know the numbers of revocations and the reasons they

were revoked. Our partnership with DHS and the FBI in this area has been greatly improved by these system changes, and the previous informal system is now a thing of the past.

Finally, let me discuss the specific cases that were reviewed by the GAO and led to the report we are here to discuss. While they were not free from the improvised nature of our old procedures, I believe they demonstrate how cautiously we proceed when there is the slightest risk of a terrorist connection to a visa applicant. First the 105 cases that the GAO first identified in their October report. Much newspaper ink has been spilled exaggeratedly claiming that the subjects of these revocations are "suspected terrorists". In fact many of these subjects have since been cleared by the FBI and some have been reissued visas. All were subject to the (then) new "Visas Condor" security check that we instituted in January of 2002 for certain applicants whose background or circumstances met certain criteria suggested by the law enforcement community, which required them to be vetted in Washington, despite not appearing as ineligible for a visa in CLASS. Since we began this program using a "clock" mechanism that allowed us to issue a visa once 30 days had passed with no response from the agencies queried, the cases were issued before we were aware that the FBI wished additional time to process them. All this meant was that the names, as checked (or in most cases similar names), came up in FBI records that might need to be consulted prior to visa issuance. We revoked these visas prudentially, some of the affected people were turned away at US POEs and some were able to enter the US in spite of the revocation, but to date we have received no information from law enforcement indicating that any of these applicants was ever a terrorist or a threat to US national security.

The remaining 135 revocations were based on information that we learned via TIPOFF entries from the intelligence community. Whenever we receive new TIPOFF identities we run the name against our database of issued visas to ensure that we have not approved a visa to someone who should not be allowed to enter the US. We revoke any such visas prudentially to stop the applicant from traveling to the US and to allow for resolution of the case in any subsequent application. These cases, since they refer back to specific information about known or suspected terrorists, are potentially more serious than delayed "Condor" clearances, but they are complicated by the same vagueness about identity and ineligibility that accompany the use of incomplete information. In the past we had little ability to use such information in any effective manner. Today, modern computerized systems give us the chance to apply even partial knowledge to our advantage, and we continue to refine our procedures to do just that, as we have in creating a revocation code that is automatically shared with other federal agencies.

The tragedy of September 11 strengthened the resolve of all the parts of the federal government to take every step in our power tosafeguard our borders, and spurred us to think through improvements in our procedures for visa work. The creation of DHS responded to the need felt in the Administration and Congress for an agency that could coordinate our actions so as to close the gaps in our systems through which the 9/11 hijackers passed. We work every day with DHS and the FBI to do exactly that. I wish I could tell you that we have achieved perfect coordination, but I will tell you that we are trying. I likewise wish I could report that the system we have in place now to ensure that

our visa revocations are known and acted upon by the appropriate federal agencies outside of State were in place last year, but I will tell you that they are in place now. Thank you very much; I will be happy to answer any questions you may have.