

**Five Years After the Intelligence Reform and Terrorism Prevention Act (IRTPA):
Stopping Terrorist Travel
Homeland Security and Governmental Affairs Committee
Chairman Joseph Lieberman
December 9, 2009
AS PREPARED FOR DELIVERY**

Good morning and welcome to our hearing, “Five Years After the Intelligence Reform and Terrorism Prevention Act: Stopping Terrorist Travel.” Identifying potential terrorists and denying them the ability to travel into the United States is one of the most important homeland security challenges facing our country. Today, we will hear testimony from four government officials on the frontlines of our nation’s efforts to stop terrorist travel. Their jobs are daunting and complex, and the disastrous consequence of mistakes is a pressure continually weighing upon them – and us.

We cannot afford to let down our guard, which is why I am so concerned about the TSA security breach that was discovered this past weekend. A highly sensitive screening manual was posted online, apparently for months, without being properly redacted. This was a serious breach because this manual includes information that could help terrorists to defeat the TSA inspection process. In this age of freely flowing information we must have adequate safeguards in place to ensure that terrorists aren’t being given any advantages as they plot their nefarious acts.

As we all know, the 19 hijackers who attacked our country on September 11, 2001, traveled to the United States with visas, some obtained fraudulently, but most obtained legally. Two of the terrorists had overstayed their visas. The arrests in September of a number of people charged with planning terrorist attacks in the United States – Najibullah Zazi, Betim Kaziu, Michael Finton, and Hosam Smadi - are the most recent reminders that terrorists are still crossing our borders legally, living among us, and plotting to attack us.

This Committee takes very seriously its obligation to ensure that the Executive Branch is tackling head on the challenges posed by violent Islamist extremists who would seek glory by killing innocent Americans, and that begins with keeping these terrorists from entering America.

In the eight years since September 11, 2001, this Committee has authored a number of laws that Congress subsequently enacted to protect the homeland and, more specifically, to stop terrorists from coming to the U.S.

The Intelligence Reform and Terrorism Prevention Act of 2004 is notable among these laws because it enacted most of the recommendations made by the 9/11 Commission after its remarkable investigation into the circumstances surrounding 9/11. Many of the programs and systems we will examine today were recommended by the 9/11 Commission and included in the 2004 legislation.

For example, that law, called for a biometric entry and exit system for travelers into and out of the U.S., required travel documents to contain biometric information, and directed consular posts to collect biometric data from foreigners wishing to travel to the U.S.

It directed the President to negotiate agreements with other nations to share information on lost and stolen travel documents; required that consular officers be trained in the detection of terrorist travel patterns and document fraud; and required that anyone applying for visas to the U.S. be subject to personal interviews at consular posts abroad.

The Act further strengthened our screening system by establishing the National Counter-Terrorism Center and requiring that domestic and international airline passengers be screened against terrorist watch lists.

The Implementing Recommendations of the 9/11 Commission Act of 2007 also strengthened the Visa Waiver program -which allows travelers from certain countries to bypass the visa process and come directly to the United States – by creating the Electronic System for Travel Authorization (ESTA), a program that allows the Department of Homeland Security (DHS) to screen travelers before they board an airplane. Although ESTA is not yet fully implemented, it holds great promise. Countries participating in the Visa Waiver Program are also required to share law enforcement information, with the U.S. government.

Thanks to the dedication and hard work of the agencies represented here today, our travel screening system is far more capable of identifying terrorists and denying them entry to the U.S. than it was pre 9/11.

The interview at a consulate abroad is our first opportunity to identify a potential terrorist, which means consular officers must be trained and given the resources they need to detect potential terrorists.

I am concerned that as travel documents become more secure, terrorists and other criminals will use fraudulent primary-source or breeder documents, such as birth certificates, to obtain legitimate travel documents from our consular offices. Tightening the security of primary source documents here in the U.S. is a core component of the PASS-ID Act, which this Committee has reported to the full Senate. I urge the State Department to work with our partners abroad to ensure that they too are taking steps to improve the security of their primary source documents.

The terrorist watch list may be the most important tool to deny terrorists the ability to travel to this country. This database combines all the information the federal government has on people known to participate or suspected of participating in terrorism in any way. One of the government's largest failures leading up to 9/11 was the inability to share this kind of information across departments. For example, the 9/11 Commission found that information concerning known or suspected terrorists that was in the possession of different Federal agencies was not shared effectively. The investigation uncovered that two of the September 11, 2001, hijackers—Nawaf al-Hazmi and Khalid al-Mihdhar—were known to the CIA, the FBI, and the NSA and were regarded as dangerous by all the agencies. But that information was never shared

with the Immigration and Naturalization Service or the State Department, and therefore, these two terrorists were allowed to enter our country on multiple occasions with valid visas and be part of carrying out the most devastating attack on our homeland in our history. The 9/11 Commission concluded that, on four occasions in 2001, the CIA and the FBI had opportunities to take action against Mihdhar and Hazmi, but that “the U.S. government was unable to capitalize on mistakes made by al Qaeda.” Information about these individuals was not entered on the State Department’s TIPOFF database, the precursor to the terrorist watchlist, until August 24, 2001. And this, of course, was far too late to stop the attack.

In the months leading up to 9/11, we know that the system was “blinking red,” as then CIA Director George Tenet famously put it. The system, however, was not set up to share that information among the different federal agencies involved in a timely manner. We now have the ability to leverage the terrorist watchlist and its integrated connections with other government databases to block the accidental entry into the country of anybody suspected of participating in terrorism.

We must also share information on terrorists and other criminals with our partners overseas. This is why I insisted that information-sharing agreements be mandatory for participation in the Visa Waiver Program. I am told that 13 of the 35 visa waiver nations have entered into agreements to share biometric law enforcement and terrorist watch list data with us – and the United States will be sharing the same types of information on a reciprocal basis to these nations. As a stark reminder of the urgency of these international agreements, this week an American citizen, David Headley, was charged in federal court with six counts of conspiracy to bomb public places in India, to murder and maim persons in India and Denmark, to provide material support to foreign terrorist plots, and to provide material support to Lashkar-e-Taiba (LeT), and six counts of aiding and abetting the murder of U.S. citizens in India.

Headley is alleged to have made five trips to Mumbai from 2006 to 2008 to conduct pre-attack planning and surveillance for LeT of many of the targets that were struck in the November 2008 Mumbai attacks. Because Headley was an U.S. citizen, his travel likely did not raise suspicions, and he was able to use the United States as a base of operations while helping to plan one of the most significant terrorist attacks in Indian history. Although it is not clear at this point whether Mr. Headley’s travel raised flags within the U.S. government, this case underscores the need to implement these international agreements as quickly as possible and make sure that all 35 visa waiver nations and other nations with a common interest in preventing acts of terrorism eventually participate in similar agreements.

Finally, the implementation of a biometric entry system at all of our nation’s ports of entry has been the centerpiece of our screening system. But we still do not have a biometric exit system in place despite numerous Congressional mandates. Identifying individuals who overstay their visas is a crucial component to stopping terrorist travel, as we saw in the case of the alleged Texas terrorist, Hosam Smadi.

US-VISIT uses biographical information to track overstays, but this is no substitute for a biometric exit system because a terrorist could game the system by having an associate leave the country with their travel document. This would leave a record of their exit in the system while they were actually still in the U.S., throwing investigators off.

I am even more concerned, however, that in some cases it can take up to 72 hours for US-VISIT to inform Customs and Border Protection of a fingerprint match at a port of entry. This means someone could be allowed entry into the country **before** being identified biometrically as a terrorist or criminal. Surely the advanced state of electronic technology today should permit for these matches to be made in seconds, not minutes or hours.

Because the federal government has made significant progress towards implementing these screening requirements, we are much safer today than were eight years ago. But we must do better. This Committee will be vigilant in the coming months to ensure that the federal government continues to strengthen its systems for ensuring that the events of September 11, 2001, never happen again.

Senator Collins?